



DATE: November 6, 2023

TO: GEORGEANNE WHITE, City Manager
City Manager's Office

FROM: BRYON HORN, Chief Information Officer
Information Services Department

A handwritten signature in blue ink, appearing to read "B. Horn", written over the printed name of Bryon Horn.

BILLY ALCORN, Fire Chief
Fire Department

SUBJECT: Uniquely Qualified Services for Vector Solutions Software

The purpose of this memorandum is to request authorization to dispense with the City of Fresno's (COF) standard Request for Proposal (RFP) process set forth in Administrative Order 6-28, so that the Fresno Fire Department (FFD) may enter in to a five (5) year agreement with Vector Solutions in the amount of \$201,441 (\$67,147 annually).

FFD has been using various modules of Vector Solutions software for 14 years. It began in 2009 with the Learning Management System (LMS) and Evaluations + modules formally provided by Target Solutions. The LMS is designed specifically for the public safety and fire service sectors. Due to the unique characteristics and demands of the Department as a public health and safety agency, firefighters are unable to attend routinely scheduled training courses provided by the City. LMS allows Department members to continue meeting not only the training needs of the City but also comply with NFPA standards for training as well as track and report hours for compliance with contracts which reimburse the department for training hours. In addition, LMS maintains a course library that features over 450 hours of fire training which includes 250 hours of accredited CAPCE training and 60 hours of OSHA safety training covering HIPAA, CDC, and first aid.

As an Accredited Local Academy through the California State Fire Marshal and State Board of Fire Services, the Department must adhere to stringent training and performance monitoring guidelines for its trainees. The Evaluations + modules enables the Department to readily design a variety of performance evaluations that comply with State Fire Trainings requirement for reporting accurate results.

In 2019, the Department moved from a server-based staffing program (Telestaff) to a cloud-based program (CrewSense, now called Vector Scheduling). The reason for this move was operationally driven. Telestaff was phasing out the support for the version being used by the Department and issues with access to the information being limited caused delays in meeting staffing needs.

MEMORANDUM

Georgeanne White, City Manager
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Each of these modules has been individually processed on a monthly, quarterly or annual basis. Now that Vector Solutions is the intellectual property owner of all three programs, the department is moving towards a single consolidated annual agreement to meet City purchasing guidelines.

In 2023, the Department renewed the license agreement for the software in addition to converted to an annual payment method utilizing a sole source agreement since there was no other solution that provided the functionality that the Fire Department needed to fulfill its needs. Additionally, Vector Solutions is purchasing other software solutions and incorporating them into its own solution which is further reducing the playing field. The Fire Department has two separate agreements which will be combined into a single agreement which includes all services that will meet Fire's needs as well as meet City purchasing guidelines. Therefore, Fire is utilizing the Uniquely Qualified mechanism per Purchasing's recommendations.

There are no other solutions that provide what is available through Vector Solutions, therefore, Vector Solutions meets the Uniquely Qualified designation and we request authorization to dispense with the City of Fresno's (COF) standard Request for Proposal (RFP) process set forth in Administrative Order 6-28, so that the Fresno Fire Department (FFD) may enter in to a five (5) year agreement with Vector Solutions in the amount of \$201,441 (\$67,147 annually).

Approved Denied

for


Georgeanne White, City Manager



Quote ID
Q-289527

Contact Name
Jackelin Maguire

TargetSolutions Learning, LLC Agreement Schedule A

Date: Thursday, September 21, 2023

Client Information

Client Name: Fresno Fire Department	
Address: 911 H St Fresno, CA 93702	
Primary Contact Name: Christy Cronin	Primary Contact Phone: 559-621-4009

Agreement Term

Effective Date: 03/01/2024	Initial Term: 12 months
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Invoicing Contact Information (Please fill in missing information)

Billing Contact Name: Accounts Payable		
Billing Address: 911 H St Fresno, California 93702		Billing Phone: 559-760-3879 Billing Email: fire.finance@fresno.gov
PO#:	Billing Frequency: Annual	Payment Terms: Net 30

Annual Fee(s)

Product Code	Product	Description	Minimum Annual Commitment	Price	Sub Total
TSPREMIER	Vector LMS, TargetSolutions Edition Premier Membership	Training management for public entities and professionals	430	\$80.00	\$34,400.00
TSMINTFEES	Vector LMS, TargetSolutions Edition - Maintenance Fee	Annual maintenance of Vector LMS, TargetSolutions Edition	1	\$395.00	\$395.00
TSLEARN	Vector LMS, TargetSolutions Edition - Learning Management Package	CSAC Administrator	2	\$49.00	\$98.00
TSCRPRO	Vector Scheduling - Pro	Vector Scheduling - Pro	432	\$72.00	\$31,104.00
TSEVAL	Vector Evaluations+	Vector Evaluations+ for web and mobile	50	\$23.00	\$1,150.00

Annual Total \$67,147.00

One-Time Fee(s)

Product Code	Product	Description	Qty	Price	Sub Total
CTU	Contract True-Up Adjustment	For payment of Vector Evaluations + from 03/01/2024- 09/30/2024 (6 months)	1	(-\$530.45)	(-\$530.45)

One-Time Total: (-\$530.45)

Grand Total (including Annual and One-Time): \$66,616.55

Additional Terms and Conditions.

The following are in addition to the Client Agreement General Terms and Conditions.

1. Additional Named Users added after the Effective Date will be invoiced at the full per Named User fee. Such additional Named Users shall become part of the Minimum Annual Commitment for subsequent years, on the anniversary date of each contract year or upon renewals under the Agreement.
2. You agree to pay for the number of Named Users using or licensed to access the Services in a given contract year. Subject to the Minimum Annual Commitment, Changes in Named User counts will be reflected in the annual contract amount from that period forward for all Users.
3. Subject to the above Minimum Annual Commitment, annual fees for your use of the Services will be based upon the number of Named Users in a given contract year.
4. Named Users deactivated in a given contract year will not count towards the total number of Named Users in the year following such deactivation, unless reactivated.
5. Fees, both during the Initial Term, as well as any Renewal Terms, shall be increased by 0% per contract year. Changes in Named User counts will be reflected in the annual contract amount from that period forward for all Users.
6. All undisputed invoices are due and payable Net 30 days after invoice date ("Due Date"). Any fees unpaid for more than 10 days past the Due Date shall bear interest at 1.5% per month or the highest applicable rate permitted by law.
7. **AUTOMATIC RENEWAL. UNLESS OTHERWISE AGREED OR WHERE PROHIBITED BY APPLICABLE LAW OR REGULATION, UPON EXPIRATION OF THE ABOVE INITIAL TERM, THIS AGREEMENT WILL RENEW FOR A RENEWAL TERM EQUAL TO THE INITIAL TERM AT VECTOR SOLUTIONS' THEN CURRENT FEES, UNLESS NOTICE IS GIVEN BY EITHER PARTY OF ITS INTENT TO TERMINATE THE AGREEMENT AT LEAST SIXTY (60) DAYS PRIOR TO THE SCHEDULED TERMINATION DATE.**

Address for Notices:

4890 W. Kennedy Blvd., Suite 300
Tampa, FL 33609

911 H St
Fresno, CA 93702

VECTOR SOLUTIONS PUBLIC SECTOR SOFTWARE AS A SERVICE AGREEMENT

This Vector Solutions Software as a Service Agreement (the "Agreement"), effective as of the date noted in the attached Schedule A (the "Effective Date"), is by and between **TargetSolutions Learning, LLC, d/b/a Vector Solutions**, ("We/Us") a Delaware limited liability company, and the undersigned customer ("You/Your"), (each a "Party" or "Parties") and governs the purchase and ongoing use of the Services described in this Agreement.

GENERAL TERMS AND CONDITIONS

1. SERVICES. We shall provide the following Software as a Service ("**S**ervices"):

1.1. Access and Use. We grant You a non-exclusive, non-transferable revocable authorization to remotely access and use the software as a service offering identified in Schedule A (the "**S**ervices") and, unless prohibited by law, We will provide access to any persons You designate for use as described in these terms and conditions. For clarification, We authorize access and use on a "one user per one authorization basis" and once granted, You are not allowed to transfer authorizations to other users. Your ability to use the Services may be affected by minimum system requirements or other factors, such as Your Internet connection.

1.2. Availability. We will use commercially reasonable efforts to provide access to and use of the Services twenty-four (24) hours a day, seven (7) days a week, subject to scheduled downtime for routine maintenance, emergency maintenance, system outages, and other outages beyond our control.

1.3. Help Desk. We will assist You as needed on issues relating to usage via e-mail, and a toll-free Help Desk five (5) days per week, at scheduled hours, currently 8:00am to 6:00 pm Eastern Time, Monday-Friday or <https://support.vectorsolutions.com/s/contactsupport>

1.4. Upgrades and Updates. We reserve the right, in our discretion, to make updates or upgrades to the Services that are necessary or useful to: (a) maintain or enhance: (i) the quality or delivery of the Services; (ii) the competitive strength of or market for the Services; or (iii) the Services' cost efficiency or performance; or (b) to comply with applicable law. For no additional charge, You will receive access to any general upgrades and updates to the Services which We make generally available to our other customers. All updates and upgrades to the Services are subject to these terms and conditions.

1.5. Additional Services. From time to time, the Parties may decide in their discretion to add additional Services, subject to the Parties' execution of one or more change forms which shall be substantially in the form of the Schedule A and shall incorporate these terms and conditions by reference. Each individual Schedule A shall have its own service term.

2. YOUR RESPONSIBILITIES AND USE RESTRICTIONS.

2.1. Compliance. You shall be responsible for all Users' compliance with this Agreement and shall use commercially reasonable efforts to prevent unauthorized access to or use of the Services. You shall comply with all applicable laws, standards, and regulations and will not use the Services in a manner not specified or permitted by Us.

2.2. Identify Named Users. A "**N**amed User" is defined as Your employees, consultants, contractors, and agents You authorize to access and use the Services You are purchasing during each contract year ("Term") of the Agreement.

2.2.1 You will be responsible for the following: (a) cause each of Your Named Users to complete a unique profile if not created by Vector Solutions on their behalf; and (b) timely maintain a user database by adding a unique profile for each new Named User. Due to licensing and data retention requirements, Named Users may not be removed from our system unless required by law. You will be responsible for identifying Named Users from time to time during the Term of this Agreement through available system capabilities.

2.3. Future Functionality. You agree that Your purchases are not contingent on Our delivery of any future functionality or features. You are not relying on any comments regarding future functionality or features.

3. FEES AND PAYMENTS.

3.1. Fees and Payment. You will pay for the Services in accordance with the payment terms, frequency, and fee schedule in Schedule A attached to this Agreement. All fees collected by Us under this Agreement are fully earned when due and nonrefundable when paid, except if You terminate this Agreement for cause as described in Section 5.2.

3.2. Due Date. All fees due under this Agreement must be paid in United States Dollars or Canadian Dollars or as specified in Schedule A as applicable to Your location. We will invoice You in advance and all undisputed invoices

are due and payable on the due date specified in Schedule A.

3.3. Suspension of Service. If You do not make an undisputed payment on time, We may suspend Your or Your Named Users' access to the Services without further notice until all overdue payments are paid in full. Our suspension of Your use of the Services or termination of the Agreement for Your violation of the terms of this Agreement will not change Your obligation to pay any and all payments due for the applicable Term.

3.3.1 We may also suspend, terminate, or otherwise deny Your access or any Named User's access to or use of all or any part of the Services, without incurring any liability to You, if: (a) We receive a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Us to do so; or (b) We believe, in good faith and reasonable discretion, that: (i) You or any Named User, have failed to comply with any term of this Agreement, or accessed or used the Services beyond the scope of the rights granted, or for a purpose not authorized under this Agreement; or (ii) Your use of the Services causes a direct or indirect threat to our network function or integrity, or to Our other customers' ability to access and use the Services; or (iii) You or any Named User, are or have been involved in any fraudulent, misleading, or unlawful activities relating to or in connection with any of the Services; or (iv) this Agreement expires or is terminated. This Section 3.3 does not limit any of Our other rights or remedies under this Agreement.

3.4. Taxes. All fees under this Agreement exclude all sales, use, value-added taxes, and other taxes and government charges, whether Federal, State, or foreign, and You will be responsible for payment of all such taxes (other than taxes based on our income), fees, duties, and charges, and any related penalties and interest, arising from the payment of any and all fees under this Agreement including the access to or performance of the Services hereunder. If We have a legal obligation to pay or collect taxes for which You are responsible under the Agreement, then then We will invoice, and You will pay the appropriate amount unless You claim tax exempt status for amounts due under this Agreement and provide Us with a valid tax exemption certificate (authorized by the applicable governmental authority) promptly upon execution of this Agreement. If any taxes shall be required by law to be deducted or withheld from any fee payable hereunder by You to Us, You shall, after making the required deduction or withholding, increase such fee payable as may be necessary to ensure that We shall receive an amount equal to the fee We would have received had no such deduction or withholding been made.

4. INTELLECTUAL PROPERTY RIGHTS.

4.1. We alone (and our licensors, where applicable) shall own all rights, title, and interest in and to our software, website and technology, the course content (if any), and the Services We provide, including all documentation associated with the Services. If You provide any suggestions, ideas, enhancement requests, feedback, recommendations, or other information provided by You (collectively "Feedback"), We may use such Feedback to improve the Services without charge, royalties, or other obligation to You, and Our use of Your Feedback does not give You any property rights to the Services.

The Vector Solutions name and logo are trademarks of Vector Solutions, and no right or license is granted to You to use them. You shall own all rights, title, and interest in and to Your added software, Your content, and information collected from Your content pages ("Your Data"). You shall have no rights in or to any other data collected that is not affiliated with You. Your content, email addresses, and personal information of Your Named Users or Your EHS Active Employees You entered into the database, or any of Your customers or users is Your sole property. We will not, at any time, redistribute, share, or sell any of Your email addresses, email server domain names, customer names, or personal information. Course content that You purchase from third-party course providers and access through our LMS will require the sharing of certain user information with Us in order for Us to properly track and report usage.

4.2. You recognize that We regard the software We have developed to deliver the Services as our proprietary information and as confidential trade secrets of great value. You agree not to provide or to otherwise make available in any form the software or Services, or any portion thereof, to any person other than Your Named Users without our prior written consent. You further agree to treat the Services with at least the same degree of care with which You treat Your own confidential information and in no event with less care than is reasonably required to protect the confidentiality of the Services.

4.2.1 Except as otherwise agreed in writing or to the extent necessary for You to use the Services in accordance with this Agreement, You are not allowed to: (a) copy the course content in whole or in part; (b) display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, transfer or in any way exploit the course content in whole or in part; (c) embed the course content into other products; (d) use any of our trademarks, service marks, domain names, logos, or other identifiers or any of our third party suppliers; (e) reverse engineer, decompile, disassemble, or access the source code of any of our Services or software, (f) use the software or Services for any purpose that is unlawful; (g) alter or tamper with the Services and/or associated documentation in any way; (h) attempt to defeat any security measures that We may take to protect the confidentiality and proprietary nature of the Services; (i) remove,

obscure, conceal, or alter any marking or notice of proprietary rights that may appear on or in the Services and/or associated documentation; or (j) except as permitted by this Agreement, knowingly allow any individual or entity under Your control to access Services without authorization under this Agreement for such access.

4.3. We acknowledge that You alone shall own all rights, title, and interest in and to Your name, trademarks, or logos, and this Agreement does not give Us any rights of ownership to the same. If You do not consent to Our use of Your name or logo, You may withdraw Your consent at any time by notifying Us at logousage@vectorsolutions.com.

5. TERM, TERMINATION, AND NOTICE.

- 5.1. **Term.** The term of this Agreement will start on the Effective Date, and will remain in full force and effect for the initial term (the "Initial Term") indicated in Schedule A. Upon expiration or early termination of this Agreement by either Party as described below in Section 5.2 (Termination for Cause) or for any reason, You shall immediately discontinue all use of the Services and documentation, and You acknowledge that We will terminate Your ability to access the Services. Notwithstanding, access to the Services may remain active for thirty (30) days solely for purpose of our record keeping (the "Expiration Period"). If You continue to access or use the Services following the Expiration Period, then Your continued use will renew the Agreement under the same terms and conditions, subject to any annual price adjustments.
- 5.2. **Termination for Cause.** Either Party may terminate this Agreement, effective upon written notice to the other Party (the "Defaulting Party"), if the Defaulting Party materially breaches this Agreement, and that breach is incapable of cure, or with respect to a material breach capable of cure, and the Defaulting Party does not cure the breach within thirty (30) days after receipt of written notice of the breach. If You terminate this Agreement due to Our material breach, then We will return an amount equal to the pro-rated fees already paid for the balance of the term as of the date of termination as Your only remedy.
- 5.3. **Notice.** All required notices by either Party shall be given by email, personal delivery (including reputable courier service), fees prepaid, or by sending the notice by registered or certified mail return receipt requested, postage prepaid, and addressed as set forth in Schedule A. Such notices shall be deemed to have been given and delivered upon receipt or attempted delivery (if receipt is refused), as the case may be, and the date of receipt identified by the applicable postal service on any return receipt card shall be conclusive evidence of receipt. Notices and other communications sent by e-mail shall be deemed received upon the sender's receipt of an acknowledgment from the recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgment). Either Party, by written notice to the other as described above, may alter its address for written notices.

6. MUTUAL WARRANTIES AND DISCLAIMER.

6.1. **Mutual Representations and Warranties.** Each Party represents and warrants to the other Party that: (a) it is duly organized, validly existing, and in good standing as a corporation or other entity under the Laws of the jurisdiction of its incorporation or other organization; (b) it has the full right, power, and authority to enter into and perform its obligations and grant the rights, licenses, consents, and authorizations it grants or is required to grant under this Agreement; (c) the acceptance of this Agreement has been duly authorized by all necessary corporate or organizational action; and (d) when executed and delivered by both Parties, this Agreement will constitute the legal, valid, and binding obligation of each Party, enforceable against each Party in accordance with its terms.

6.2. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WE DO NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE SERVICES AND ASSOCIATED DOCUMENTATION ARE PROVIDED "AS IS," AND WE PROVIDE NO OTHER EXPRESS, IMPLIED, STATUTORY, OR OTHER WARRANTIES REGARDING THE SERVICES OR ASSOCIATED DOCUMENTATION.

6.3. **Disclaimer of Third-Party Content.** If You upload third-party content to our platform or Services, the third-party content providers are responsible for ensuring their content is accurate and compliant with national and international laws. We are not and shall not be held responsible or liable for any third-party content You provide or Your use of that third-party content. THERE IS NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THIRD PARTY CONTENT ACCESSIBLE THROUGH THE SERVICES.

6.4. None of our employees, marketing partners, resellers, or agents are authorized to make any warranty other than the Warranties stated in this Agreement. The provisions in any specification, brochure, or chart are descriptive only and are not warranties.

7. LIMITATION OF LIABILITY. EXCEPT FOR CLAIMS RELATED TO VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, GROSS NEGLIGENCE, FRAUD, OR WILFULL MISCONDUCT, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ANY AFFILIATE, THIRD-PARTY, OR YOUR USERS, WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOST PROFITS), ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND (B) IF YOU HAVE ANY BASIS FOR RECOVERING DAMAGES (INCLUDING FOR BREACH OF THIS AGREEMENT), YOU AGREE THAT YOUR

EXCLUSIVE REMEDY WILL BE TO RECOVER DIRECT DAMAGES FROM US, UP TO AN AMOUNT EQUAL TO TWO TIMES (2X) THE TOTAL FEES ALREADY PAID TO US FOR THE PRECEDING TWELVE (12) MONTHS.

7.1.1. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, WHATEVER THE LEGAL BASIS FOR THE CLAIM, UNDER NO CIRCUMSTANCES SHALL WE BE LIABLE TO YOU, ANY AFFILIATE, ANY THIRD PARTY OR YOUR USERS FOR ANY CLAIM, CAUSE OF ACTION, DEMAND, LIABILITY, DAMAGES, AWARDS, FINES, OR OTHERWISE, ARISING OUT OF OR RELATING TO PERSONAL INJURY, DEATH, OR OTHER HARM CAUSED FROM USE OF OR RELIANCE ON THE CONTENT OF THE COURSES OR SERVICES. YOU, YOUR AFFILIATES, EMPLOYEES, CONTRACTORS, AGENTS, USERS, AND REPRESENTATIVES RELY ON THE CONTENT OF THE COURSES AND SERVICES AT YOUR OWN RISK.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF DAMAGES SO, SOLELY TO THE EXTENT SUCH LAW APPLIES TO YOU, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

8. OBLIGATIONS OF BOTH PARTIES.

8.1. Our Obligation to You. Subject to limitation of liability, to the furthest extent allowed by law, We shall defend, indemnify and hold harmless You from and against any and all direct and indirect claims, losses, liabilities, damages, costs and expenses (including losses and costs incurred by You and any reasonable attorney's fees and costs) which arise from Our gross negligence or willful misconduct; a breach of Our confidentiality (information not of public record) obligations arising from Our negligence or willful misconduct; or Our Violation of a law applicable to Our performance under the contract. You must notify Us promptly in writing of the claim and give Us control over its defense or settlement with Your approval, reasonable approval will not be withheld. You agree to provide Us with reasonable assistance, cooperation, and information in defending the claim at Our expense. We will defend, indemnify, and hold harmless You from third-party claims that the software and/or documentation infringes an intellectual property.

If We subcontract all or any portion of the services to be performed under this Agreement, We will require each subcontractor to indemnify, hold harmless and defend you and your officers, officials, employees, agents and volunteers in accordance with this paragraph.

Under no circumstance, shall We be required to defend, indemnify and hold harmless You, as required under the provisions herein, for your own negligence, breach of this Agreement, or willful misconduct.

This section shall survive termination or expiration of this Agreement.

8.2. Your Obligation to Us. To the extent not prohibited by applicable law, You shall indemnify and hold Us harmless from any and all claims, damages, losses, and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from any third-party claim that any document, courses, or intellectual property You provide or upload to our platform infringes or violates any intellectual property right of any person.

9. CONFIDENTIALITY.

9.1. Each Party may from time to time disclose to the other Party "Confidential Information" which shall mean and include the Services (including without limitation all courses accessed through the Services), all documentation associated with the Services, software code (include source and object code), marketing plans, technical information, product development plans, research, trade secrets, know-how, ideas, designs, drawings, specifications, techniques, programs, systems, and processes.

9.2. Confidential Information does not include: (a) information generally available to or known to the public through no fault of the receiving Party; (b) information known to the recipient prior to the Effective Date of the Agreement; (c) information independently developed by the recipient outside the scope of this Agreement and without the use of or reliance on the disclosing Party's Confidential Information; or (d) information lawfully disclosed by a third party. The obligations set forth in this Section shall survive termination of this Agreement.

9.3. Each Party agrees that it shall not disclose the Confidential Information of the other to any third party without the express written consent of the other Party, that it shall take reasonable measures to prevent any unauthorized disclosure by its employees, agents, contractors or consultants, that it shall not make use of any such Confidential Information other than for performance of this Agreement, and that it shall use at least the same degree of care to avoid disclosure of Confidential Information as it uses with respect to its own Confidential Information.

9.4. The confidentiality obligations imposed by this Agreement shall not apply to information required to be disclosed by compulsory judicial or administrative process or by law or regulation, provided that the receiving Party shall (if permitted) notify the disclosing Party of the required disclosure, shall use reasonable measures to protect the confidentiality of the Confidential Information disclosed, and shall only disclose as much Confidential Information as is required to be disclosed by the judicial or administrative process, law, or regulation.

10. MISCELLANEOUS.

10.1. Assignment. Neither Party may freely assign or transfer any or all of its rights without the other Party's consent, except to an affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or

substantially all of its assets, provided however You shall not assign this Agreement to our direct competitors.

10.2. Governing Law. This Agreement shall be governed by, and enforced in accordance with, the laws of the state of Florida, except where Customer is a public entity or institution in which case the applicable state, provincial, or tribal law where You are located shall govern, in either case without regard to the state's or local laws conflicts of laws provisions. If You are purchasing goods under this Agreement, the Parties agree that the United Nations Convention on Contracts for the International Sale of Goods and the United Nations Convention on the Limitation Period in the International Sale of Goods shall not apply to this Agreement. EACH PARTY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY ACTION ARISING HEREUNDER.

10.3. Export Regulations. All Content and Services and technical data delivered under this Agreement are subject to applicable US and Canadian laws and may be subject to export and import regulations in other countries. Both Parties agree to comply strictly with all such laws and regulations and You acknowledge that You are responsible for obtaining such licenses to export, re-export, or import as may be required after delivery.

10.4. Force Majeure. In no event will either Party be liable or responsible to the other Party or be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, (except for any obligations to make payments) when and to the extent such failure or delay in performing is due to, or arising out of, any circumstances beyond such Party's control (a "**Force Majeure Event**"), including, without limitation, acts of God, strikes, lockouts, war, riots, lightning, fire, storm, flood, explosion, interruption or delay in power supply, computer virus, governmental laws, regulations, or shutdown, national or regional shortage of adequate power or telecommunications, or other restraints.

10.5. No Waiver. No waiver, amendment or modification of this Agreement shall be effective unless in writing and signed by the Parties.

10.6. Severability. If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect, but the remainder of this Agreement shall continue in full force and effect.

10.7. Survival. All provisions of this Agreement (including without limitation those pertaining to confidential information, intellectual property ownership, and limitations of liability) that would reasonably be expected to survive expiration or early termination of this Agreement will do so.

10.8. No Third-Party Beneficiaries. The Parties do not intend to confer any right or remedy on any third party under this Agreement.

10.9. Purchase Orders. You may issue a purchase order if required by Your company or entity and failure to do so does not cancel any obligation You have to Us. If You do issue a purchase order, it will be for Your convenience only. You agree that the terms and conditions of this Agreement shall control. Any terms or conditions included in a purchase order or similar document You issue that conflict with the terms and conditions of this Agreement will not apply to or govern the transaction resulting from Your purchase order.

10.10. Data Processing Agreement. If applicable, the parties shall negotiate in good faith and enter into any further data processing or transfer agreement, including any standard contractual clauses for transfers of data outside of the country where the personal data originates, as may be required to comply with applicable laws, rules and regulations regarding the collection, storage, transfer, use, retention and other processing of personal data.

10.11. Entire Agreement. This Agreement and Schedule A represent the entire understanding and agreement between the Parties, and supersedes all other negotiations, proposals, understandings, and representations (written or oral) made by and between You and Us. You acknowledge and agree that the terms of this Agreement are incorporated in, and are a part of, each purchase order, change order, or Schedule related to our provision of Services. This Agreement prevails over any additional or conflicting terms or conditions in any Customer purchase orders, online procurement terms, or other non-negotiated forms relating to the Services or this Agreement hereto even if dated later than the effective date of this Agreement.

SPECIAL TERMS AND CONDITIONS

CALIFORNIA CONSUMER PRIVACY ACT

If We will be processing personal information subject to the California Consumer Privacy Act, sections 1798.100 to 1798.199, Cal. Civ. Code (2018) as may be amended as well as all regulations promulgated thereunder from time to time ("CCPA"), on Your behalf in the course of the performance of the Services, then the terms "California consumer," "business purpose," "service provider," "sell" and "personal information" shall carry the meanings set forth in the CCPA.

CCPA Disclosures: To the extent the CCPA applies to our processing of any personal information pursuant to Your instructions in relation to this Agreement, the following also apply: (a) The Parties have read and understand the provisions and requirements of the CCPA and shall comply with them; (b) It is the intent of the Parties that the sharing or transferring of personal information of California consumers from You to Us, during the course of our performance of this Agreement, does not constitute selling of personal information as that term is defined in the CCPA, because You are not sharing or transferring such data to Us for valuable consideration; (c) We will only use personal information for the specific purpose(s) of performing the Services, including any Schedules within the direct business relationship with You.

SERVICE SPECIFIC TERMS AND CONDITIONS

A. Vector EHS Management Services

A. This Section A contains service specific terms and conditions that will apply only if You are purchasing **Vector EHS Management Services** ("EHS Services") in Schedule A. Otherwise, the following terms will not apply to You.

1. An "**EHS Active Employee**" is defined as Your employees, consultants, contractors, and agents who are contained in the Vector EHS employee and contractor table with an active status. An employee may or may not be a Named User. For EHS Services, You are allowed a Named User for each EHS Active Employee.
2. You will be able to activate or disable employees without incurring additional EHS Active Employee fees as long as the total number of EHS Active Employees does not exceed the number of employees included in Scheduled A.
3. EHS Active Employees added after the Effective Date in Schedule A shall be billed at the full per employee fee. Such additional EHS Active Employees shall become part of the Minimum Annual Commitment for subsequent years, on the anniversary date of each contract year or upon renewals under the Agreement.
4. You agree to pay for the number of EHS Active Employees in the EHS Services in a given contract year.
5. Subject to the Minimum Annual Commitment, if any, set forth in Schedule A, annual fees for Your use of the Services will be based upon the actual number of EHS Active Employees in a given contract year. Employees inactivated in a given contract year will not count towards the total number of employees in the year following such inactivation, unless reactivated.
6. You acknowledge that certain transmissions You receive as part of the EHS Services may contain sensitive personal information that You have provided. You understand that We do not control or own the data contained in such transmissions. As such, You will be responsible for ensuring that the information is secured and preventing the transmission and/or disclosure of such information to unauthorized recipient(s). In the event such information is disclosed to an unauthorized recipient(s), You shall be responsible for notifying Your EHS Active Employee(s) whose information may have been disclosed

to the extent required by law. Both Parties further agree to handle such data in compliance with any applicable Federal, State, or local laws or regulations. You shall also be responsible for any threatening, defamatory, obscene, offensive, or illegal content or conduct of any of Your EHS Active Employees when using the Services. To the extent not prohibited by applicable law, You shall indemnify, defend, and hold Us harmless against any claims that may arise as a result of these matters. With respect to Your use of the EHS Services, You acknowledge that We are not a covered entity or business associate under HIPAA.

B. Vector WorkSafe Services and Vector LiveSafe Services

This Section B. contains service specific terms and conditions that will apply only if You are purchasing **Vector WorkSafe Services or Vector LiveSafe Services (collectively "LiveSafe Services")** in Schedule A. Otherwise, the following terms will not apply to You.

1. **Authorized Users.** **Authorized Users** (interchangeably may be referred to as "Named Users" means the employees, contractors and/or consultants under Your control who You authorized to operate the LiveSafe Services .
2. **Your Responsibilities.** You shall: (i) not permit any person or entity, other than designated Authorized Users, to access the LiveSafe Services; (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the LiveSafe Services, (iii) provide prompt written notice of any unauthorized access or use; and (iv) instruct Authorized Users to comply with all applicable terms of this Agreement.
3. **Your Data.** You agree that We may only use data collected, extracted or received through Your use of the Services ("Your Data") in an anonymized and aggregated manner (without specifically identifying You, Your users or Your location(s)) for the sole purpose of reporting LiveSafe Services metrics, training and education about the LiveSafe Services, and improving the LiveSafe Services (except as may be required by law, court order, or as needed to provide the Services to You). Your Data shall not include any information collected, extracted, or received in response to the WorkSafe Integrated Health Survey. Within thirty (30) business days following Your written request, and not more than four (4) times per year or upon termination of this Agreement, We will provide to You a backup copy of Your Data in Our possession.

C. Vector Evaluations+ Services.

This Section C. contains service specific terms and conditions that will apply only if You are purchasing **Vector Evaluations+ Software as a Service** in Schedule A. Otherwise, the following terms will not apply to You.

1. **Access and Use.** We will provide You a nonexclusive, non-transferable, revocable authorization to remotely access and use the Vector Evaluations+ Software as a Service: (i) on Our application server over the Internet, (ii) transmit data related to Your use of the Service over the Internet, and (iii) download and use the Evals + mobile device application software (referred to collectively as "Evals+ Services"). We will provide accounts for Your users on the application server for storage of data and use of the Service. The number of Named Users, start of service, and duration, are as stated in Schedule A.
2. If Your active user accounts exceed the number of Named Users during the term of this Agreement, You agree to pay for the additional Users, based on the per User fees in Schedule A. Adjusted fees will apply beginning on the month the number of Named Users are exceeded and will be prorated for the remainder of the current 12-month period. You agree to pay for the number of Users using or authorized to access the Services in a given contract year.
3. **Your Content.** You will be the owner of all content created and posted by You. You will also be the owner of all content created and posted by Us on Your behalf, including but not limited to evaluation forms added to the system as part of support services We provide.
4. **Third-Party Content.** You are responsible for proper licensing of, and assuming liability for, copyrighted material which You post on Our system, or is posted on the system by Us on Your behalf. This includes but is not limited to copyright protected evaluation forms and other materials from third parties. If You upload third-party content to Our platform, such third-party content providers are responsible for ensuring their content is accurate and compliant with national and international laws.
5. **Effect of Termination.** You will have thirty (30) days after the effective date of termination or expiration of this Agreement to export Your data using the software tools provided, or to request Your data from Us. Form data will be available as exported comma separated variable (CSV) files and as PDF files. Uploaded data files will be available in their original format. After the thirty (30) day period, We have no obligation to maintain or provide data and may thereafter delete or destroy all copies of the Your data, unless legally prohibited.

D. Vector CheckIT™.

Customer Obligations. When purchasing Vector CheckIT™, You will identify stations, vehicles, drug safes, and other service specific details, as may be applicable.

E. Vector LMS and Services which include access to the Shared Resource Feature.

If You choose to participate by uploading Your information to the shared resource sections of our website, You hereby authorizes Us to share any intellectual property you own ("**User Generated Content**") that Your Users upload to the shared resources section of our website with our third-party customers and users that are unrelated to you ("**Our Other Customers**"); provided that We must provide notice to Your users during the upload process that such User Generated Content will be shared with Our Other Customers.

F. Casino Services.

When purchasing Casino Services, in addition to the Responsibilities and Restrictions in Section 2 of the General Terms and Conditions above, the following shall apply to You:

You must request Our written approval for third party access to the Services or content. Your request for third-party access shall include the third party's names, company, and contact information. Upon Our request, You shall execute a written agreement with the third party, securing for Us the rights provided in this Section, Section 4 (Intellectual Property Rights), and Special Section 1 (Confidentiality) prior to providing access to Our Software, Services or Content under this Agreement.

Use Restrictions. You shall not: (a) transmit or share the course content, with any persons other than authorized users (b) provide or otherwise make available the course content in whole or in part, in any form to any person without Our prior written consent; (c) transmit or share identification or password codes to persons other than authorized users (d) permit the identification or password codes to be cached in proxy servers, (e) permit access by individuals who are not authorized under this Agreement, or (f) permit access to the software through a single identification or password code being made available to multiple users on a network.

IN WITNESS WHEREOF, the parties have executed this Agreement at Fresno, California, on the day and year first above written,

CITY OF FRESNO,
A California municipal corporation

TARGETSOLUTIONS, LLC d/b/a VECTOR SOLUTIONS

By: _____
Georgeanne White
City Manager

By: _____
Jonathan Cherins
CEO
(If corporation or LLC., Board Chair, Pres. or Vice Pres.)

APPROVED AS TO FORM:
ANDREW JANZ
City Attorney

By: _____
Scott Patrick
CFO
(If corporation or LLC., CFO, Treasurer, Secretary or Assistant Secretary)

By: _____
Brandon M. Collet
Supervising Deputy City Attorney

Date

ATTEST:
TODD STERMER, CMC
City Clerk

By: _____
Deputy
Date

Addresses:
CITY:
City of Fresno
Attention: Christy Cronin

CONSULTANT:
Vector Solutions
Attention: Jackelin Maguire

Sr. Management Analyst
911 H Street
Fresno, CA 93721
Phone: (559) 621-4009
E-mail: christina.cronin@fresno.gov

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