

TargetSolutions Learning, LLC Agreement Schedule A

Date: Tuesday, August 15, 2023

Client Information

Client Name: City of Delray Beach (FL)	
Address: Human Resources 100 NW 1st Avenue Delray Beach, FL 33444	
Primary Contact Name: Dot Bast	Primary Contact Phone: (561) 243-7127

Agreement Term

Effective Date: 09/21/2023	Initial Term: 60 months
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Invoicing Contact Information (Please fill in missing information)

Billing Contact Name: Dot Bast		
Billing Address: Finance Department 100 NW 1st Avenue Delray Beach, Florida 33444		Billing Phone: (561) 243-7127 Billing Email: bast@mydelraybeach.com
PO#:	Billing Frequency: Annual	Payment Terms: Net 30

Annual Fee(s)

Product Code	Product	Description	Minimum Annual Commitment	Price	Sub Total
TSMINTFEES	Vector LMS, TargetSolutions Edition - Maintenance Fee	Annual maintenance of Vector LMS, TargetSolutions Edition	1	\$395.00	\$395.00
TSDRIVELIB	Fleet & Driving Safety Online Course Catalog	Driver training courses for automobiles, large trucks, and passenger vans for Vector LMS, TargetSolutions Edition	300	\$0.00	\$0.00
TSOLDLELIB	Law Enforcement Catalog	Vector LMS, TargetSolutions Edition catalog for Law Enforcement professionals	300	\$0.00	\$0.00

TSSMART	SmartTeam Professional Development Catalog	SmartTeam (Professional Development) Catalog for Vector LMS, TargetSolutions Editions	900	\$0.00	\$0.00
TSH2OLIB	Water/Wastewater Online Course Catalog	Vector LMS, TargetSolutions Edition course catalog for water and wastewater professionals.	900	\$0.00	\$0.00
TSPREMIER	Vector LMS, TargetSolutions Edition Premier Membership	Training management for public entities and professionals	880	\$49.00	\$43,120.00

Annual Total: \$43,515.00

One-Time Fee(s)

Product Code	Product	Description	Qty	Price	Sub Total
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One-Time Total: \$0.00

Grand Total (including Annual and One-Time): \$43,515.00

Please note this is not an invoice. An invoice will be sent within fourteen (14) business days.

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. Customer agrees 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 Customer's 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 3.0% 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").

Address for Notices:

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

City Manager
100 NW 1st Avenue
Delray Beach, FL 33444

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**, ("Contractor") a Delaware limited liability company, and the undersigned customer ("Customer"), (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.** Contractor shall provide the following Software as a Service ("**Services**"):

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

1.2. d to transfer authorizations to other users. Customer's ability to use the Services may be affected by minimum system requirements or other factors, such as Customer's Internet connection.

1.3. Availability. Contractor will use commercially reasonable efforts to provide access to and use of the Services t

1.4. nty-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 Contractor's control.

1.5. Help Desk. Contractor will assist Customer 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>

1.6. Upgrades and Updates. Contractor reserves the right, in Contractor's 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, Customer will receive access to any general upgrades and updates to the Services which Contractor makes generally available to Contractor's 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. **CUSTOMER'S RESPONSIBILITIES AND USE RESTRICTIONS.**

2.1. Compliance. Customer 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. Customer shall comply with all applicable laws, standards, and regulations and will not use the Services in a manner not specified or permitted by Contractor.

2.2. Identify Named Users. A "**Named User**" is defined as Customer's employees, consultants, contractors, and agents Customer authorizes to access and use the Services Customer is purchasing during each contract year ("Term") of the Agreement.

2.2.1. Customer will be responsible for the following: (a) cause each of Customer's 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 Contractor's system unless required by law. Customer 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. Customer agrees that Customer's purchases are not contingent on Contractor's delivery of any future functionality or features. Customer is not relying on any comments regarding future functionality or features.

3. **FEES AND PAYMENTS.**

3.1. Fees and Payment. Customer 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 Contractor under this Agreement are fully earned when due and nonrefundable when paid, except if Customer terminates this Agreement for convenience or cause as described in Section 5.2 or 5.3.

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 Customer's location. Contractor will invoice Customer in advance and all undisputed invoices are due and payable on the due date specified in Schedule A.

3.3. Suspension of Service. If Customer does not make an undisputed payment on time, Contractor may suspend Customer or Customer's Named Users' access to the Services without further notice until all overdue payments are paid in full. Contractor's

suspension of Customer's use of the Services or termination of the Agreement for Customer's violation of the terms of this Agreement will not change Customer's obligation to pay any and all payments due for the applicable Term.

3.3.1. Contractor may also suspend, terminate, or otherwise deny Customer's access or any Named User's access to or use of all or any part of the Services, without incurring any liability to Customer, if: (a) Contractor receives a judicial or other governmental demand or order, subpoena, or law enforcement request that expressly or by reasonable implication requires Contractor to do so; or (b) Contractor believes, in good faith and reasonable discretion, that: (i) Customer 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) Customer's use of the Services causes a direct or indirect threat to Contractor's network function or integrity, or to Contractor's other customers' ability to access and use the Services; or (iii) Customer 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 Contractor's other rights or remedies under this Agreement.

4. INTELLECTUAL PROPERTY RIGHTS.

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

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

4.2. Customer recognizes that Contractor regards the software Contractor has developed to deliver the Services as Contractor's proprietary information and as confidential trade secrets of great value. Customer agrees not to provide or to otherwise make available in any form the software or Services, or any portion thereof, to any person other than Customer's Named Users without Contractor's prior written consent. Customer further agrees to treat the Services with at least the same degree of care with which Customer treats Customer's 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 Customer to use the Services in accordance with this Agreement, Customer is 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 Contractor's third party suppliers; (e) reverse engineer, decompile, disassemble, or access the source code of any of Contractor's 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 Contractor 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 Customer's control to access Services without authorization under this Agreement for such access.

4.3. Contractor acknowledges that Customer alone shall own all rights, title, and interest in and to Customer's name, trademarks, or logos, and this Agreement does not give Contractor any rights of ownership to the same. Customer hereby authorizes Contractor to use Customer's name, trademarks, or logos in promotional materials, press releases, advertising, or in other publications or websites, whether oral or written. If Customer does not consent to Contractor's use of Customer's name or logo, Customer may withdraw Customer's consent at any time by notifying Contractor 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, Customer shall immediately discontinue all use of the Services and documentation, and Customer acknowledges that Contractor will terminate Customer's ability to access the Services. Notwithstanding, access to the

Services may remain active for thirty (30) days solely for purpose of Contractor's record keeping (the "**Expiration Period**").

5.2 **Termination for Convenience.** The Customer, at its sole discretion, reserves the right to terminate this Agreement without cause upon providing 60 days' advance written notice to Contractor. Upon receipt of such notice, the Contractor shall not incur any additional costs under the Agreement, except for reasonable costs necessary to closing out the account, including but not limited to costs incurred for the protection and return of the Customer's data. The Customer shall also be responsible for reasonable costs incurred by the Contractor prior to the date of notice of termination. Notwithstanding any provision to the contrary herein, the Customer recognizes and agrees that the Contractor's subscriptions for its services are billed annually, are due upon being invoiced, and are non-refundable when paid unless termination is for cause.

5.3 **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 Customer terminates this Agreement due to Contractor's material breach, then Contractor will return an amount equal to the pro-rated fees already paid for the balance of the term as of the date of termination.

5.3. **Notice.** All required notices by either Party shall be given 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. 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. CONTRACTOR DOES NOT WARRANT THAT THE USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE. THE SERVICES AND ASSOCIATED DOCUMENTATION ARE PROVIDED "AS IS," AND CONTRACTOR PROVIDES NO OTHER EXPRESS, IMPLIED, STATUTORY, OR OTHER WARRANTIES REGARDING THE SERVICES OR ASSOCIATED DOCUMENTATION.

6.3. **Disclaimer of Third-Party Content.** If Customer uploads 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. Contractor is not and shall not be held responsible or liable for any third-party content Customer provides or Customer's 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 Contractor's 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 WILLFUL MISCONDUCT, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, ANY AFFILIATE, THIRD-PARTY, OR CUSTOMER'S 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 CUSTOMER HAS ANY BASIS FOR RECOVERING DAMAGES (INCLUDING FOR BREACH OF THIS AGREEMENT), CUSTOMER AGREES THAT CUSTOMER'S EXCLUSIVE REMEDY WILL BE TO RECOVER DIRECT DAMAGES FROM CONTRACTOR, UP TO AN AMOUNT EQUAL TO THE TOTAL FEES ALREADY PAID TO CONTRACTOR 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 CONTRACTOR BE LIABLE TO CUSTOMER, ANY AFFILIATE, ANY THIRD PARTY OR CUSTOMER'S 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. CUSTOMER, CUSTOMER'S AFFILIATES, EMPLOYEES, CONTRACTORS, AGENTS, USERS, AND REPRESENTATIVES RELY ON THE CONTENT OF THE COURSES AND SERVICES AT CUSTOMER'S 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 CUSTOMER, THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

8. OBLIGATIONS OF BOTH PARTIES.

8.1. Contractor's Obligation to Customer. Contractor shall indemnify and hold Customer 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, course, or intellectual property Contractor provides or uploads to Contractor's platform infringes or violates any intellectual property right of any person.

9. **8.2. It shall be considered a material breach of this Agreement if Customer uploads to Contractor's platform any material that violates any intellectual property right of any person. 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 written consent which shall not be unreasonably delayed, or withheld..

10.2. Governing Law. This Agreement shall be construed in accordance with the City of Delray Beach's Code of Ordinances and the laws of the State of Florida. Any dispute relating to this Agreement shall only be filed in a court of competent jurisdiction in Palm Beach County, Florida, and each of the parties to this Agreement submits itself to the jurisdiction of such court. It is hereby understood and agreed that in the event any lawsuit in the judicial system, federal or state, is brought to enforce compliance with this contract or interpret same, or if any administrative proceeding is brought for the same purposes, each party shall pay their own attorney's fees and costs, including appellate fees and costs. 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 Customer acknowledges that Customer is 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, governmental 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. Customer may issue a purchase order if required by Customer's company or entity and failure to do so does not cancel any obligation Customer has to Contractor. If Customer does issue a purchase order, it will be for Customer's convenience only. Customer agrees that the terms and conditions of this Agreement shall control. Any terms or conditions included in a purchase order or similar document Customer issues that conflict with the terms and conditions of this Agreement will not apply to or govern the transaction resulting from Customer's 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 Customer and Contractor. Customer acknowledges and agrees that the terms of this Agreement are incorporated in, and are a part of, each purchase order, change order, or Schedule related to Contractor's 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.

10.12. Inspector General. Contractor is aware that the Inspector General of Palm Beach County has the authority to investigate and audit matters relating to the negotiation and performance of this contract and may demand and obtain records and testimony from Contractor and its subcontractors and lower tier subcontractors. Contractor understands and agrees that in addition to all other remedies and consequences provided by law, the failure of Contractor or its subcontractors and lower tier subcontractors to fully cooperate with the Inspector General when requested may be deemed by Customer to be a material breach of this Agreement justifying its termination.

10.13. Fiscal Funding Out. The continuation of this Agreement beyond the end of any fiscal year shall be subject to both the appropriation and the availability of funds in accordance with Florida law.

10.14. E-Verify. By entering into this Agreement Contractor acknowledges its obligation to comply with the provisions of Section 448.095, Fla. Stat., "Employment Eligibility." Contractor affirms and represents it is registered with the E-Verify system, utilizing same, and will continue to utilize same as required by law. Compliance with this section includes, but is not limited to, utilization of the E-Verify System to verify the work authorization status of all newly hired employees and requiring all subcontractors to provide an affidavit attesting that the subcontractor does not employ, contract with, or subcontract with, an unauthorized alien. Failure to comply with this section will result in the termination of this Agreement, or if Customer's subcontractor knowingly violates the statute, the subcontract must be terminated immediately. Any challenge to termination under this provision must be filed in the Circuit Court no later than 20 calendar days after the date of termination. If terminated for a violation of the statute by Contractor, the Contractor may be prohibited from conducting future business with the Customer or awarded a solicitation or contract for a period of 1 year after the date of termination. All costs incurred to initiate and sustain the aforementioned programs shall be the responsibility of the Contractor.

10.15. Public Records. IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT CITY OF DELRAY BEACH, CITY CLERK, 100 N.W. 1ST AVE., DELRAY BEACH FLORIDA. THE CITY CLERK'S OFFICE MAY BE CONTACTED BY PHONE AT 561-243-7050 OR VIA EMAIL AT CITYCLERK@MYDELRAYBEACH.COM.

a. Contractor shall comply with public records laws, specifically to:

- i. Keep and maintain public records required by Customer to perform the service.
- ii. Upon request from the City's custodian of public records, provide Customer with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Florida Statute or as otherwise provided by law.
- iii. Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the Agreement term and following completion of the Agreement if the Contractor does not transfer the records to the Customer.
- iv. Upon completion of the Agreement, transfer, at no cost, to the Customer all public records in possession of the Contractor or keep and maintain public records required by the Customer to perform the service. If the Contractor transfers all public records to the Customer upon completion of the Agreement, the Contractor shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Contractor keeps and maintains public records upon completion of the Agreement, the Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be

provided to the Customer, upon request from the Customer's custodian of public records, in a format that is compatible with the information technology systems of the Customer.

- v. If the Contractor does not comply with this section, the Customer shall enforce the contract provisions in accordance with the contract and may unilaterally cancel this contract in accordance with state law.

b. Nothing herein shall be deemed to preclude the Contractor from seeking a protective order or other relief to any records request from any Court of competent jurisdiction. If the Contractor exercises its right to seek relief, Contractor shall be responsible for all associated fees and costs.

SPECIAL TERMS AND CONDITIONS

CALIFORNIA CONSUMER PRIVACY ACT

If Contractor 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 Customer's 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 Customer's 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 Customer to Contractor, during the course of Contractor's performance of this Agreement, does not constitute selling of personal information as that term is defined in the CCPA, because Customer is not sharing or transferring such data to Us for valuable consideration; (c) Contractor will only use personal information for the specific purpose(s) of performing the Services, including any Schedules within the direct business relationship with Customer.

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 Customer is purchasing **Vector EHS Management Services ("EHS Services")** in Schedule A. Otherwise, the following terms will not apply to Customer.

1. An "**EHS Active Employee**" is defined as Customer's 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, Customer is allowed a Named User for each EHS Active Employee.
2. Customer 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. Customer agrees 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 Customer's 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. Customer acknowledges that certain transmissions Customer receives as part of the EHS Services may contain sensitive personal information that Customer has provided. Customer understands that Contractor does not control or own the data contained in such transmissions. As such, Customer 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), Customer shall be responsible for notifying Customer's 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. Customer shall also be responsible for any threatening, defamatory, obscene, offensive, or illegal content or conduct of any of Customer's EHS Active Employees when using the Services. With respect to Customer's use of the EHS Services, Customer acknowledges that Contractor is 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 Customer is purchasing **Vector WorkSafe Services or Vector LiveSafe Services (collectively "LiveSafe Services")** in Schedule A. Otherwise, the following terms will not apply to Customer.

1. Authorized Users. **Authorized Users** (interchangeably may be referred to as "Named Users" means the employees, contractors and/or consultants under Customer's control who Customer authorized to operate the LiveSafe Services.
2. Customer's Responsibilities. Customer 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. Customer's Data. Customer agrees that Contractor may only use data collected, extracted or received through Customer's use of the Services ("Customer's Data") in an anonymized and aggregated manner (without specifically identifying Customer, Customer's users or Customer's 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 Customer). Customer's Data shall not include any information collected, extracted, or received in response to the WorkSafe Integrated Health Survey. Within thirty (30) business days following Customer's written request, and not more than four (4) times per year or upon termination of this Agreement, Contractor will provide to Customer a backup copy of Customer's Data in Contractor's possession.

C. Vector Evaluations+ Services.

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

1. Access and Use. Contractor will provide Customer a nonexclusive, non-transferable, revocable authorization to remotely access and use the Vector Evaluations+ Software as a Service: (i) on Contractor's application server over the Internet, (ii) transmit data related to Customer's use of the Service over the Internet, and (iii) download and use the Evals + mobile device application software (referred to collectively as "Evals+ Services"). Contractor will provide accounts for Customer's 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 Customer's active user accounts exceed the number of Named Users during the term of this Agreement, Customer Agrees 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. Customer agrees to pay for the number of Users using or authorized to access the Services in a given contract year.
3. Customer's Content. Customer will be the owner of all content created and posted by Customer. Customer will also be the owner of all content created and posted by Contractor on Customer's behalf, including but not limited to evaluation forms added to the system as part of support services Contractor provides.
4. Third-Party Content. Customer is responsible for proper licensing of, and assuming liability for, copyrighted material which Customer posts on Contractor's system or is posted on the system by Contractor on Customer's behalf. This includes but is not limited to copyright protected evaluation forms and other materials from third parties. If Customer uploads third-party content to Customer's 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. Customer will have thirty (30) days after the effective date of termination or expiration of this Agreement to export Customer's data using the software tools provided, or to request Customer's data from Contractor. 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, Contractor has no obligation to maintain or provide data and may thereafter delete or destroy all copies of the Customer's data, unless legally prohibited except as required under Public Records law of Fla. Stat. 119.

D. Vector CheckIT™.

Customer Obligations. When purchasing Vector CheckIT™, Customer 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 Customer chooses to participate by uploading Customer's information to the shared resource sections of Customer's website, Customer hereby authorizes Contractor to share any intellectual property Customer owns ("**User Generated Content**") that Customer's Users upload to the shared resources section of Contractor's website with Contractor's third-party customers and users that are unrelated to Customer ("**Our Other Customers**"); provided that Contractor must provide notice to Customer's users during the upload process that such User Generated Content will be shared with Contractor's 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 Customer:

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

Use Restrictions. Customer 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 Contractor's 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.

The Parties have executed this Agreement by their authorized representatives as of the last date set forth below.

TargetSolutions, LLC d/b/a Vector Solutions
4890 W. Kennedy Blvd., Suite 300
Tampa, FL 33609

City of Delray Beach (FL)
100 NW 1st Avenue
Delray Beach, FL 33444

By: Brandi Howe

By: _____

Printed Name: Brandi Howe

Printed Name: Shelly Petrolia

Title: Senior Director of Renewal Management

Title: Mayor

Date: 8/15/2023

Date: _____

ATTEST:

Katerri Johnson, City Clerk

Approved as to form and legal sufficiency:

Lynn Gelin, City Attorney

* please see
attached California
certificate of acknowledgment
(loose notary certificate)

8/15/2023

- Karlynn K. Arnold-Andrade,
Notary
Public

CALIFORNIA CERTIFICATE OF ACKNOWLEDGMENT

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)

County of San Diego)

On August 15th, 2023 before me, Karlynn K. Arnold - Andrade, Notary Public
(here insert name and title of the officer)

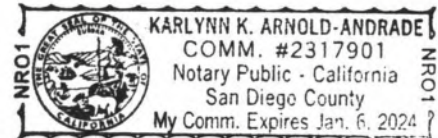
personally appeared Brandi Howe

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is are subscribed to the within instrument and acknowledged to me that he she /they executed the same in his /her /their authorized capacity(ies), and that by his /her /their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Kaf K QQ



(Seal)

Optional Information

Although the information in this section is not required by law, it could prevent fraudulent removal and reattachment of this acknowledgment to an unauthorized document and may prove useful to persons relying on the attached document.

Description of Attached Document

The preceding Certificate of Acknowledgment is attached to a document titled/for the purpose of _____

containing _____ pages, and dated _____

The signer(s) capacity or authority is/are as:

- ☐ Individual(s)
☐ Attorney-in-Fact
☐ Corporate Officer(s) _____
Title(s) _____

- ☐ Guardian/Conservator
☐ Partner - Limited/General
☐ Trustee(s)
☐ Other: _____

representing: _____
Name(s) of Person(s) or Entity(ies) Signer is Representing

Additional Information

Method of Signer Identification

Proved to me on the basis of satisfactory evidence:
☐ form(s) of identification ☐ credible witness(es)

Notarial event is detailed in notary journal on:
Page # _____ Entry # _____

Notary contact: _____

Other

☐ Additional Signer(s) ☐ Signer(s) Thumbprint(s)

☐ _____