

**CITY OF SUGAR LAND STANDARD CONTRACT FOR
GENERAL SERVICES**

Over \$50K
(Rev. 9-5-17)

I. Signatures. By signing below, the parties agree to the terms of this Contract:

CITY OF SUGAR LAND

CONTRACTOR:

By:

By: Phil Coons

Date:

Date: 1/5/18

Title:

Title: Director of Sales

Company: TargetSolutions

APPROVED AS TO FORM:

DAnn Shea Smith

II. General Information and Terms.

Contractor's Name and Address: TargetSolutions Learning, LLC
4890 W Kennedy Blvd., Suite 740
Tampa, FL 33609

Description of Services: Web Based Training

Maximum Contract Amount: \$53,843.00

Effective Date: February 1, 2018

Termination Date: January 31, 2019

Renewal: Unless sooner terminated as provided in this Contract, the initial term of the Contract will begin and end on the dates shown above and thereafter will automatically renew for up to four successive one-year terms, on the same terms and conditions, including prices established hereunder, provided that the City notifies the Contractor, in writing, of the extension at least 30 days' prior to the expiration of the then current term.

Contract Parts: This Contract consists of the following parts:

- I. Signatures
- II. General Information and Terms
- III. Standard Contractual Provisions
- IV. Additional Terms or Conditions
- V. Additional Contract Documents

III. Standard Contractual Provisions.

- A. Contractor's Services. The Contractor will provide to the City the services described in this Contract under the terms and conditions of this Contract.
- B. Billing and Payment. The Contractor will bill the City for the services provided yearly. The City will pay the Contractor for the services provided for in this Contract with current revenues available to the City, but all the City's payments to the Contractor, including the time of payment and the payment of interest on overdue amounts, are subject to the provisions of Chapter 2251 of the Government Code. The City is not liable to the Contractor for any taxes which the City is not liable by law, including state and local sales and use taxes (Section 151.309 and Title 3, Texas Tax Code) and federal excise tax (Subtitle D of the Internal Revenue Code). Accordingly, those taxes may not be added to any bill.
- C. Termination Provisions.
 - (1) Unless terminated earlier as allowed by this Contract, this Contract terminates:
 - (a) On the termination date, if any, specified in the General Information in Part 1, but the obligation of a party to complete a contract requirement pending on the date of termination survives termination; or
 - (b) If there is no termination date specified in the General Information in Part 1, the Contract terminates when both parties have completed all their respective obligations under the Contract.
 - (2) The City's city manager may terminate this Contract during its term at any time for any reason by giving written notice to the Contractor not less than five business days prior to the termination date, but the City will pay the Contractor for all services rendered in compliance with this Contract to the date of termination.
 - (3) If the City's city council does not appropriate funds to make any payment for a fiscal year after the City's fiscal year in which the Contract becomes effective and there are no proceeds available for payment from the sale of bonds or other debt instruments, then the Contract automatically terminates at the beginning of the first day of the successive fiscal year. (Section 5, Article XI, Texas Constitution)

- D. Liability and Indemnity. Any provision of the Contract is void and unenforceable if it: (1) limits or releases either party from liability that would exist by law in the absence of the provision; (2) creates liability for either party that would not exist by law in the absence of the provision; or (3) waives or limits either party's rights, defenses, remedies, or immunities that would exist by law in the absence of the provision. Notwithstanding the foregoing, and only to the extent permitted by law, the Parties explicitly intend that Sections 6.2 (Disclaimer), 7.1 (Limitation of Liability), and Section 7.2 (Indemnification) of the Client Agreement, included as part of TargetSolutions Learning, LLC's Proposal attached hereto as Exhibit A-3 and incorporated herein by reference, shall apply to this Contract.
- E. Assignment. The Contractor may not assign this Contract without the City's prior written consent.
- F. Law Governing and Venue. This Contract is governed by the law of the State of Texas and a lawsuit may only be prosecuted on this Contract in a court of competent jurisdiction located in or having jurisdiction in Fort Bend County, Texas.
- G. Entire Contract. This Contract represents the entire Contract between the City and the Contractor and supersedes all prior negotiations, representations, or contracts, either written or oral. This Contract may be amended only by written instrument signed by both parties.
- H. Independent Contractor. The Contractor will perform the work under this Contract as an independent contractor and not as an employee of the City. The City has no right to supervise, direct, or control the Contractor or Contractor's officers or employees in the means, methods, or details of the work to be performed by Contractor.
- I. Dispute Resolution Procedures. If either party disputes any matter relating to this Contract, the parties agree to try in good faith, before bringing any legal action, to settle the dispute by submitting the matter to mediation before a third party who will be selected by agreement of the parties. The parties will each pay one-half of the mediator's fees.
- J. Attorney's Fees. Should either party to this Contract bring suit against the other party for any matter relating to this Contract, neither party will seek or be entitled to an award of attorney's fees or other costs relating to the suit.
- K. Severability. If a court finds or rules that any part of this Contract is invalid or unlawful, the remainder of the Contract continues to be binding on the parties.
- L. Contractual Limitations Period. Any provision of the Contract that establishes a limitations period that does not run against the City by law or that is shorter than two years is void. (Sections 16.061 and 16.070, Texas Civil Practice and Remedies Code)

- M. Conflicting Provisions. If there is a conflict between a provision in the Contractor's Additional Contract Documents and a provision in the remainder of this Contract, the latter controls except to the extent the Parties explicitly state herein that they intend to modify the conflicting terms.
- N. Copyright. Any original work (the Work), including any picture, video, music, brochure, writing, trademark, logo or other work created by the Contractor for the use of the City under this Contract is a "work made for hire," as defined by federal copyright law. If the Work is not by law a "work made for hire," the Contractor by execution of this Contract assigns to the City all of its rights to the Work, including the copyright. The City, as the author and owner of the copyright to the Work, may alter, reproduce, distribute, or make any other use of the Work as it deems appropriate. Notwithstanding the foregoing, the Parties explicitly intend to modify this provision and the City acknowledges and agrees that the Intellectual Property Rights set forth in Section 4 of the Client Agreement, of the Client Agreement, included as part of TargetSolutions Learning, LLC's Proposal attached hereto as Exhibit A-3 and incorporated herein by reference, shall apply and control.
- O. Standard of Care for Architects and Engineers. Services must be performed with the professional skill and care ordinarily provided by competent licensed engineers or registered architects practicing in the same or similar locality and under the same or similar circumstances and professional license.
- P. Disclosure of Interested Persons for Council-Approved Contracts. Contracts that require City Council approval, such as contracts that exceed \$50,000, are subject to the requirements of Section 2252.908, Tex Gov't Code. Under the provisions of this statute:
- (1) The City may not enter into a contract with a business entity that requires Council approval unless the business entity submits a disclosure of interested persons at the time the business entity submits a signed contract to the City;
 - (2) A disclosure of interested parties must be submitted on a form prescribed by the Texas Ethics Commission (Commission) that includes:
 - (a) A list of each interested party for the contract of which the contractor business entity is aware, an interested party being a person who has a controlling interest in the business entity or who actively participates in facilitating or negotiating the terms of the contract, including a broker, intermediary, adviser, or attorney for the business entity; and
 - (b) The signature of the authorized agent of the contracting business entity, acknowledging that the disclosure is made under oath and under penalty of perjury.

The Commission has approved a Certificate of Interested Persons form, which must be filled out, signed and notarized by the Contractor and submitted to the City at the time of execution of this Contract, along with the certification of filing generated from the Commission's website at <https://www.ethics.state.tx.us/tec/1295-Info.htm> . The Certificate of Interested Persons form is

available on the Commission's website and the Contractor must follow the Commission's filing process adopted pursuant to the statute.

Q. Compliance with Laws. The Contractor must comply with the federal, state, and local laws, rules and regulations applicable to the Project and its services under this Contract.

R. Prohibition on Contracts with Companies Boycotting Israel. Contracts for goods and services are subject to the requirements of Section 2270.002, Tex Gov't Code (H.B. 89). Under the provisions of this statute, the City may not enter into a contract with a company for goods and services unless the contract contains a written verification from the company that it:

(1) does not boycott Israel; and

(2) will not boycott Israel during the term of the contract.

The City has approved a verification form, which must be filled out and signed by the Contractor and submitted to the City at the time of execution of this Contract.

IV. Additional Terms or Conditions. None.

V. Additional Contract Documents. The following documents attached to this Contract are part of this Contract:

Exhibit A. Contractor's Additional Contract Documents:

A-1. Certificate of Interested Persons with Certification of Filing (1 page)

A-2. House Bill 89 Verification (1 page)

A-3. TargetSolutions Learning, LLC's Proposal dated December 21, 2017 (3 pages)

Exhibit B. City's Additional Contract Documents:

B-1. Requirements for all Insurance Documents (2 pages)

EXHIBIT A-1

Certificate of Interested Persons with Certification of Filing

(See Attached)

EXHIBIT A-2

House Bill 89 Verification

(See Attached)

EXHIBIT A-3

TargetSolutions Learning, LLC's Proposal dated December 21, 2017

(See Attached)



TargetSolutions Learning, LLC

4890 W KENNEDY BLVD. SUITE 740
TAMPA, FL 33609
877-944-6372 - TOLL FREE
858-592-6880 - DIRECT / 858-487-8762 - FAX

Account Manager: Amy Albanese

Email: amy.albanese@targetsolutions.com

Phone: 858-376-1616

SCHEDULE A

DATE of SUBMISSION

12/21/2017

Term: 02/01/2018 - 01/31/2019 Term of contract is 12 months and may be cancelled by customer after agreed term of service.
Payment **LICENSE TERMS:** terms are annually in advance. Unless notified, contract will automatically renew annually with 3% increase.

Contract Renewal Proposal Exclusively Created for:

City of Sugar Land, TX

ATTN: Accounts Payable

PO Box 110

Sugar Land, TX 77487-0110

TargetSolutions Online Training Platform License: Enterprise Solution, Administration Tools, Content*, and Applications

DESCRIPTION	UNIT PRICE PER USER	QUANTITY (# of Users)	TOTAL
Premier Membership Platform: City + Dispatch + Police	\$ 68.00	656	\$ 44,608.00
Premier Membership Platform: Fire	\$ 68.00	130	\$ 8,840.00

*Price includes access to all current topics for HR, OSHA, Fleet Program, Fire/EMS, Law Enforcement, Supervisor, and LearnSmart Professional Development.

Annual Maintenance Fee	\$ 395.00	1	\$ 395.00
TOTAL DUE ANNUALLY			\$ 53,843.00

By signing the Client agreement, you are 1) agreeing to the pricing and terms presented in this proposal; 2) agreeing you have read and accept the Client Agreement and License terms and; 3) agreeing you have read the TargetSolutions Platform System Requirements and Platform Solution Description documents listed in detail at the following url:

<http://www.targetsolutions.com/clients/client-resources/>

TargetSolutions, Inc. business proposal pricing is good for 30 days from Date of Submission listed above.



Client Agreement

This Client Agreement (the "Agreement"), effected as of the date noted in the attached Schedule A (the "Effective Date"), is by and between TargetSolutions Learning, LLC. ("TSL"), a Delaware limited liability company, and the undersigned client ("Client"), and governs the purchase and ongoing use of the services described in this Agreement (the "Services").

Schedule A shall be increased by 3% per year both during the term of this Agreement, as well as for any renewal terms.

or (v) reverse engineer, decompile, disassemble, or access the source code of any TSL software.

1. Services. TSL shall provide the following services:

1.1. **Access.** TSL will provide Client a nonexclusive, non-transferable, revocable, limited license to remotely access and use the Services hereunder and, unless prohibited by law, will provide access to any person designated by Client ("Users").

1.2. **Availability.** TSL shall use commercially reasonable efforts to display its content and coursework for access and use by Client's Users 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 TSL's control.

1.3. **Help Desk.** TSL will assist Users as needed on issues relating to usage via e-mail, and a toll free Help Desk five (5) days per week at scheduled hours.

2. Client's Obligations.

2.1. **Compliance.** Client shall be responsible for Users' compliance with this Agreement, and use commercially reasonable efforts to prevent unauthorized access to or use of the Services.

2.2. **Identify Users.** Client shall (i) provide a listing of its designated/enrolled Users; (ii) cause each of its Users to complete a profile; (iii) maintain user database by adding and removing Users as appropriate.

2.3. **Future Functionality.** Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any public comments regarding future functionality or features.

3. Fees and Payments.

3.1. **Fees.** Client will pay for the Services in accordance with the fee schedule in Schedule A attached to this Agreement. Fees listed in

3.2. **Payments.** All fees due under this Agreement must be paid in United States dollars. Such charges will be made in advance, according to the frequency stated in Schedule A. TSL will invoice in advance, and such invoices are due net 30 days from the invoice date. All fees collected under this Agreement are fully earned when due and nonrefundable when paid.

3.3. **Suspension of Service for Overdue Payments.** Any fees unpaid for more than ten (10) days past the due date shall bear interest at 1.5% per month. With fifteen (15) days prior written notice, TSL shall have the right, in addition to all other rights and

remedies to which TSL may be entitled, to suspend Client's Users' access to the Services until all overdue payments are paid in full.

4. Intellectual Property Rights.

4.1 Client acknowledges that TSL alone (and its licensors, where applicable) shall own all rights, title and interest in and to TSL's software, website or technology, the course content, and the Services provided by TSL, as well as any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client, and this Agreement does not convey to Client any rights of ownership to the same. The TSL name and logo are trademarks of TSL, and no right or license is granted to Client to use them.

4.2 Except as otherwise agreed in writing or to the extent necessary for Client to use the Services in accordance with this Agreement, Client shall not: (i) copy the course content in whole or in part; (ii) 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; (iii) embed the course content into other products; (iv) use any trademarks, service marks, domain names, logos, or other identifiers of TSL or any of its third party suppliers;

4.3 Client hereby authorizes TSL to share any intellectual property owned by Client ("User Generated Content") that its Users upload to the Community Resources section of TSL's website with TSL's 3rd party customers and users that are unrelated to Client ("Other TSL Customers"); provided that TSL must provide notice to Client's users during the upload process that such User Generated Content will be shared with such Other TSL Customers.

5. Term.

5.1 The term of this Agreement shall commence on the Effective Date, and will remain in full force and effect for the term indicated in Schedule A ("Term"). Upon expiration of the Initial Term, this agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"), 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.

6. Mutual Warranties and Disclaimer.

6.1 **Mutual Representations & Warranties.** Each party represents and warrants that it has full authority to enter into this Agreement and to fully perform its obligations hereunder.

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.

7. Miscellaneous.

7.1 **Limitation on Liability.** Except as it relates to claims related to Section 4 or Section 7.2 of this Agreement, (a) in no event shall either party be liable to the other, 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) the total liability of either party for any and all damages, including, without limitation, direct damages, shall not exceed the amount of the total fees due to, or already paid to, TSL for the preceding twelve (12) months.

7.2 Indemnification. TSL shall indemnify and hold Client 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 the Services or any component thereof infringes or violates any intellectual property right of any person.

7.3 Assignment. Neither party may assign or delegate its rights or obligations pursuant to this

Agreement without the prior written consent of the other, provided that such consent shall not be unreasonably withheld. Notwithstanding the foregoing, TSL may freely assign or transfer any or all of its rights without Client consent to an affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

7.4 Force Majeure. TSL shall have no liability for any failure or delay in performing any of its obligations pursuant to this Agreement due to, or arising out of, any act not within its control, 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 or regulations.

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

7.6 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.

7.7 Entire Agreement. This Agreement and its exhibits represent the entire understanding and agreement between TSL and Client, and supersedes all other negotiations, proposals, understandings and representations (written or oral) made by and between TSL and Client.


[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

Rev O

IN WITNESS WHEREOF, the parties have executed this Agreement as of the last date set forth below.

TargetSolutions Learning, LLC

Client Name: City of Sugar Land, TX
Address: 2700 Town Center Blvd. North
Sugar Land, TX 77479

By:  _____
Printed Name: Philip Coons _____
Title: Director of Sales _____
Date: 1/5/18 _____

By: _____
Printed Name: _____
Title: _____
Date: _____

EXHIBIT B-1

REQUIREMENTS FOR GENERAL SERVICES CONTRACT

The Contractor shall comply with each and every condition contained herein. The Contractor shall provide and maintain the minimum insurance coverage set forth below during the term of its agreement with the City. Any Subcontractor(s) hired by the Contractor shall maintain insurance coverage equal to that required of the Contractor. It is the responsibility of the Contractor to assure compliance with this provision. The City of Sugar Land accepts no responsibility arising from the conduct, or lack of conduct, of the Subcontractor.

INSTRUCTIONS FOR COMPLETION OF INSURANCE DOCUMENT

With reference to the foregoing insurance requirements, Contractor shall specifically endorse applicable insurance policies as follows:

- A.** The City of Sugar Land shall be named as an additional insured with respect to General Liability and Automobile Liability **on a separate endorsement**
- B.** A waiver of subrogation in favor of The City of Sugar Land shall be contained in the Workers Compensation and all liability policies and must be provided **on a separate endorsement**.
- C.** All insurance policies shall be endorsed to the effect that The City of Sugar Land will receive at least thirty (30) days' written notice prior to cancellation or non-renewal of the insurance.
- D.** All insurance policies, which name The City of Sugar Land as an additional insured, must be endorsed to read as primary and non-contributory coverage regardless of the application of other insurance.
- E.** **Chapter 1811 of the Texas Insurance Code, Senate Bill 425 82(R) of 2011, states that the above endorsements cannot be on the certificate of insurance. Separate endorsements must be provided for each of the above.**
- F.** All insurance policies shall be endorsed to require the insurer to immediately notify The City of Sugar Land of any material change in the insurance coverage.
- G.** All liability policies shall contain no cross liability exclusions or insured versus insured restrictions.
- H.** Required limits may be satisfied by any combination of primary and umbrella liability insurances.
- I.** Contractor may maintain reasonable and customary deductibles, subject to approval by The City of Sugar Land.
- J.** Insurance must be purchased from insurers having a minimum AmBest rating of B+.
- K.** All insurance must be written on forms filed with and approved by the Texas Department of Insurance. (ACORD 25 2010/05) Coverage must be written on an occurrence form.
- L.** Contractual Liability must be maintained covering the Contractors obligations contained in the contract. Certificates of Insurance shall be prepared and executed by the insurance company or its authorized agent and shall contain provisions representing and warranting all endorsements and insurance coverages according to requirements and instructions contained herein.
- M.** Upon request, Contractor shall furnish The City of Sugar Land with certified copies of all insurance policies.
- N.** A valid certificate of insurance verifying each of the coverages required above shall be issued directly to the City of Sugar Land within ten (10) business days after contract award and prior to starting any work by the successful contractor's insurance agent of record or insurance company. Also, prior to the start of any work and at the same time that the Certificate of Insurance is issued and sent to the City of Sugar Land, all required endorsements identified in sections A, B, C and D, above shall be sent to the City of Sugar Land. The certificate of insurance and endorsements shall be sent to:
 - O. City of Sugar Land emailed to: purchasing@sugarlandtx.gov**
Purchasing Office Faxed to: 281 275-2741
P. O. Box 110
Sugar Land, TX 77487-0110

INSURANCE REQUIREMENTS

Items marked "X" are required to be provided if award is made to your firm.

Coverages Required & Limits (Figures Denote Minimums)

X Workers' Compensation Statutory limits, State of TX.

X Employers' Liability \$500,000 per employee per disease / \$500,000 per employee per accident / \$500,000 by disease aggregate

X Commercial General Liability:

	<u> </u> Very High/High Risk	<u>X</u> Medium Risk	<u> </u> Low Risk
Each Occurrence	\$1,000,000	\$500,000	\$300,000
Fire Damage	\$300,000	\$100,000	\$100,000
Personal & ADV Injury	\$1,000,000	\$1,000,000	\$600,000
General Aggregate	\$2,000,000	\$1,000,000	\$600,000
Products/Compl Op	\$2,000,000	\$500,000	\$300,000
XCU	\$2,000,000	\$500,000	\$300,000

X Automobile Liability: (Owned, Non-Owned, Hired and Injury & Property coverage for all)

	<u> </u> Very High/ High Risk	<u> </u> Medium Risk	<u>X</u> Low Risk
Combined Single Limits		Combined Single Limits	Combined Single Limits
\$1,000,000 Bodily		\$500,000 Bodily	\$300,000 Bodily

 Garage Liability for BI & PD

\$1,000,000 each accident for Auto, \$1,000,000 each accident Non-Auto

\$2,000,000 General Aggregate

 Garage Keepers Coverage (for Auto Body & Repair Shops)

\$500,000 any one unit/any loss and \$200,000 for contents

 Umbrella each-occurrence with respect to primary Commercial General Liability, Automobile Liability, and Employers Liability policies at minimum limits as follows:

Contract value less than \$1,000,000: **not required**

Contract value between \$1,000,000 and \$5,000,000: **\$4,000,000 is required**

Contract value between \$5,000,000 and \$10,000,000: **\$9,000,000 is required**

Contract value between \$10,000,000 and \$15,000,000: **\$15,000,000 is required**

Contract value above \$15,000,000: **\$20,000,000 is required**

Excess coverage over \$10,000,000 can be provided on "following form" type to the underlying coverages to the extent of liability coverage as determined by the City.

 Professional Liability, including, but not limited to services for Accountant, Appraiser, Architecture, Consultant, Engineering, Insurance Broker, Legal, Medical, Surveying, construction/renovation contracts for engineers, architects, constructions managers, including design/build Contractors.

Minimum limits of \$1,000,000 per claim/aggregate. This coverage must be maintained for at least two (2) years after the project is completed.

 Builder's Risk (if project entails vertical construction, including but not limited to bridges and tunnels or as determined by the City of Sugar Land) Limit is 100% of insurable value, replacement cost basis

 Pollution Liability for property damage, bodily injury and clean up (if project entails possible contamination of air, soil or ground or as determined by the City of Sugar Land)

\$1,000,000 each occurrence

\$2,000,000 aggregate

 Other Insurance Required: _____

NOTE: The nature/size of a contract/agreement may necessitate higher limits than shown above. These requirements are only meant as a guide, but in any event, should cover most situations. Check with Purchasing & Risk Management if you need assistance or need additional information.