

UCP Subscription Agreement (*Hosted Implementation*)

This **Unified Command Platform ("UCP") Subscription Agreement** (the "**Agreement**"), effective this [REDACTED] day of [REDACTED] 2026 ("**Effective Date**"), is made by and between **ESi Acquisition, Inc. ("ESi")**, a Delaware corporation with its principal place of business located at 211 Perimeter Center Parkway, NE Suite 700 Atlanta GA 30346 and the client ("**Client**"). ESi and Client may individually be referred to as a "**Party**" herein, or the "**Parties**" collectively.

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Agreement. This is a Software-as-a-Service ("SaaS") based subscription agreement and not an agreement for sale. As of the Effective Date of this Agreement, this Agreement covers the UCP™ Software Subscription and services (including Support Services) that Client purchases from ESi as a provider of Hosted/hosting services for the Software governed by this Agreement ("**Services**") pursuant to Exhibits, Orders and Quotes hereto that are executed and/or agreed upon by both parties and expressly references this Agreement. This Agreement and all applicable Exhibits, Orders and Quotes hereto for Services and any attachments hereto and thereto are the complete agreement regarding ESi's Services hereunder and replace any prior oral or written communications between Client and ESi relating to such transactions. Client agrees that purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by ESi regarding future functionality or features.

2. Definitions. Unless otherwise specifically stated in this Agreement or in any Exhibit or Quote hereto, the capitalized terms used in this Agreement shall have the meanings set forth below:

- 2.1** "Administrator" means an employee, officer, director or consultant of Client to whom Client has provided a user account and certain rights to administer the Software on behalf of Client.
- 2.2** "Active User" means a User that has logged in to the Software at any time, for any period of time, within any given calendar month.
- 2.3** "Affiliate" means an entity that controls, is controlled by, or is under common control with a party hereto.
- 2.4** "Client Data" means data input by Client or its authorized Users into the Software.
- 2.5** "Confidential Information" means as set forth in Section 8 to this Agreement.
- 2.6** "Consulting Services" means all the professional services for installation or implementation of Hosted Services or Software, training services, or other non-recurring services as set forth on Exhibit E hereto; Consulting Services do not include Hosted Services or Support Services.
- 2.7** "Derivative Work(s)" means the work based on or derived from or modifications, enhancements or other functional extensions of the Software.
- 2.8** "Documentation" means the user manuals, requirements, specifications, training materials, and any other documents, materials, information or guidance, whether supplied as printed material or in electronic form, provided by ESi in conjunction with the purchase, training, use, technical support or update of the Software and Services provided hereunder.
- 2.9** "Fee" means the amounts due and payable by Client to ESi for the Subscription and Services pursuant to this Agreement; the Fee may be set forth on Exhibit C, as amended from time to time, to this Agreement or Quotes or Orders.
- 2.10** "Hosted Services" means as set forth in Exhibit D to this Agreement.
- 2.11** "Hosted System" means as set forth in Exhibit D to this Agreement.
- 2.12** "Installation" of the Software shall be deemed to be complete on the sooner to occur of (i) the day that the Software is available for production, (ii) the date of Client's first use of the Software in a live production environment, or (iii) 90 days following the date of Client's execution of this Agreement (or if for an amendment, Exhibit or Statement of Work adding Software, Modules, or Services under this Agreement, the Client's execution of such subsequent amendment, Exhibit or Statement of Work).
- 2.13** "Internal Business Purpose" means the primary business purpose of the Client as established by articles of incorporation, operating agreement, enabling statute, agency rule or regulation, or any other documentation that defines Client's primary business purpose; however, such Internal Business Purposes will be construed as narrowly as legally allowed and any overly broad business purposes will require further refining and supplementation in this Agreement.
- 2.14** "Juvare Federal Cloud" means as set forth in Exhibit D to this Agreement.
- 2.15** "Message Credit" means one SMS segment or one 1-minute voice call.
- 2.16** "Module" means a proprietary set of status boards developed by ESi for use with selected UCP Software which are designed to address a common functional need.
- 2.17** "Party" means as defined in the preamble above.
- 2.18** "SMS Segment" Each time a SMS message is sent, it consists of "segments" depending on the number of characters used. Each segment is equal to 160 characters.

- 2.19 “Software,” means, individually and collectively, all of the software granted to Client from ESI via the Subscription as identified on Exhibit A hereto and Software Updates to such software.
- 2.20 “Software Support Plan” means the Support Services plan provided by ESI pursuant to Exhibit C and Quotes to this Agreement.
- 2.21 “Software Updates” means any technical correction, patch, bug fix, enhancement or other software release to the Software that is provided to Client pursuant to the Software Support Plan or the Software Subscription purchased by Client.
- 2.22 “Standard Business Hours” shall mean 9:00 a.m. through 6:00 p.m. U.S. Eastern Time, Monday through Friday, excluding holidays, and are subject to change by ESI.
- 2.23 “Sub-Administrator” shall mean as set forth in Section 6 of this Agreement.
- 2.24 “Subscription” means a SaaS based subscription for Client to use and access the proprietary Software, Software Updates, online and/or hard-copy documentation and user guides as set forth in Section 4 of this Agreement and for the Term set forth in Exhibit A.
- 2.25 “Support Services” means the technical support services provided by ESI pursuant to Section 11, Exhibit B and Exhibit C to this Agreement. May also be referred to as “Software Support Services.”
- 2.26 “Term” means as set forth in Section 5 of this Agreement.
- 2.27 “Travel Expenses” means travel, living and out of pocket expenses (including travel agent service fees and applicable internal per diems) incurred by ESI in connection with the performance of Services hereunder, including, without limitation, charges and fees incurred by ESI resulting from the cancellation/rescheduling of scheduled air travel or similar services based on changes requested by Client to the applicable dates for performance of the relevant Services.
- 2.28 “User” means an authorized employee, contractor or affiliate of Client to whom Client has provided a user account for the Software; User includes Administrators and Sub-Administrators.
3. **Ownership and Licensing Authority.**
- 3.1 Ownership of, and title to, the Software and Documentation shall be held by ESI and its licensor(s) and is protected by United States law and applicable international laws, treaties and conventions regarding intellectual property. ESI and its licensor(s) shall retain all rights, title and ownership not granted herein to all copies of the Software and Documentation provided as part of the Subscription under this Agreement. “UCP” is a trademark of ESI Acquisition, Inc., all rights reserved.
- 3.2 ESI is authorized to redistribute, license and/or provide subscriptions to any third-party software delivered with the Software and Documentation provided under this Agreement. The owner of such third-party software shall have the right to enforce this Agreement to the extent permitted by applicable law.
4. **Subscription.** ESI grants to Client, and Client accepts, subject to the following terms and conditions and payment of the applicable Fees, a limited non-exclusive, non-transferable, and non-sublicensable revocable term Subscription according to the terms stated herein, to use and access the Software and Documentation for the stated Term. Except as expressly authorized in this Agreement, Client shall not rent, lease, loan, sell, sublicense, distribute, transfer, copy, reproduce, display, modify, provide commercial hosting services, time share or dispose of the Software or Documentation or any part thereof, use the Software to provide any services to third parties or otherwise use the Software and Documentation to generate commercial revenue.
5. **Term.** The “Term” of this Agreement shall commence on the Effective Date (as defined on page 1) of this Agreement and shall continue through the sooner to occur of: (i) termination of this Agreement pursuant to the terms hereof, or (ii) expiration of the “Term” of the Subscription to the Software as set forth in Exhibit A (Exhibit A is herein incorporated and made part of this Agreement by this reference).
6. **Permitted Uses.** Client’s, and its User’s, access and use of the Software shall be limited and subject to the following terms and conditions:
- One (1) Instance of the Software on one (1) Machine. As used herein, “Machine” means a single laptop, personal computer or web server, or a combined web and database server or multiple load-balanced web servers, configured to point to a single database and database server that is used operationally or “in production” (“Instance”).
 - Client may use the Software and Documentation solely for Client’s internal business purposes.
 - Client also may make one (1) copy of the Software for back-up or archival purposes.
 - Client also may use the Software to support “non-production” software development cycle activities if a non-production Subscription is purchased, as set forth in Exhibit A hereto.
 - If Client requires or desires operational use of more than one Instance of the Software, an additional Subscription Fees shall be required.
 - The Client’s storage capacity is set to the maximum as set forth on Exhibit A hereto. ESI shall have the right to conduct regular audits of Client compliance with the storage capacity permitted under this Agreement. In the event Client’s storage usage exceeds such capacity, Client will receive a warning

notice (via email being sufficient) from ESI and Client shall promptly remove the excess data from the Hosted System (as defined on Exhibit D) causing the capacity excess or Client shall promptly purchase from ESI additional storage capacity in sufficient quantity at ESI's then current rates for such additional storage; provided, however, if Client does not either remove such data or purchase the additional storage capacity within the time period specified in the warning notice (if no time period is specified in the notice, then thirty (30) calendar days shall apply), then ESI shall be entitled to delete the Client's Data within the Hosted System on a first in-first out approach, without any liability to ESI.

- g. The Subscription is on a named and Active User basis. Each Administrator, Sub-Administrator, and User shall have a unique user account. User accounts, usernames and passwords shall not be shared. There shall be no limitation on how many User accounts that Client may create; however, Client may only provide access to the number of Administrators, Sub-Administrators, and Active Users set forth in Exhibit A to this Agreement. Active User counts are based on the number of unique logins each calendar month. ESI shall have the right to conduct regular audits of Client compliance with the number of Active Users permitted under this Agreement. Client agrees to provide ESI with the information required, if any, for ESI to complete such audits. Such audits shall be conducted at ESI expense. Client shall not have the number of Active Users restricted during the term of Agreement; however, Client shall be in violation of Active User limits if the number of Active Users during any month covered by the audit is greater than the number of Active Users permitted in Exhibit A. Client shall be given reprieve or "forgiveness" for the first Active User limit violation in a contractual year period; however, all additional violations shall incur additional fees. Clients that incur the additional fees for Active User limit violations may elect to either (a) pay the difference in their current user level and the appropriate user level plus a 20% convenience fee for each month in which the Active User limit was exceeded; (b) immediately increase the Active User count to the appropriate level and pay the pro-rata difference between the subscriptions plus a 10% convenience fee within 30 days of the increase; or (c) immediately increase the Active User count to the appropriate level but pay the pro-rata difference between the subscriptions plus a 10% convenience fee, as defined in Paragraph 16 upon subsequent renewal term.
- h. Administrators, Sub-Administrators, and Users shall have different rights to access the Software as follows:
 - i. Administrators may access all features of the Software. Certain features of the Software may only be accessed by named users who are granted status as an Administrator ("Administration Tools"). Administration Tools include, without limitation, the following: creation and administration of user accounts; creation and subsequent editing of incidents; software configuration; use of the UCP BoardBuilder tool; installation and administration of board sets, plug-ins, modules, interfaces and Software Updates; and access to the Software's Application Programming Interface.
 - ii. "Sub-Administrator" is a subset of Administrator Users as set forth in this subsection (ii) and such Sub-Administrators are only active if set forth on Exhibit A to this Agreement and if Client has subscribed to the UCP Enterprise Software. Sub-Administrator rights also shall be available solely to support management of Sub-Organizations. Sub-Administrators may access the following Administration Tools: creation of user accounts; management of user accounts including definition of roles and permissions; and creation and subsequent editing of incidents. Maintenance of Sub-Administrator rights requires the purchase of an annual "Enterprise" Software Support Plan. If Client elects to discontinue the required Software Support Plan, access to Sub-Administrator features and any other benefits of Enterprise which ESI may elect to make available from time to time shall be discontinued.
 - iii. Users may not be granted access to any Administration Tools, except that Administrators may grant designated Users rights to create or edit incidents and to add or edit maps in MapTac™.
- i. Except where otherwise provided in this Agreement, rights to access and use Administrative Tools are given exclusively to the Client and Client may not grant such rights to any third party.
- j. Client may provide its consultant(s) or independent contractor(s) with access to the Software and Documentation, provided that such consultants or independent contractors are using the Software and Documentation exclusively for the benefit of the Client. Client shall be responsible for compliance by its consultants and independent contractors with the terms and conditions of this Agreement.
- k. If Client has subscribed to the UCP Enterprise Software or the UCP Professional Software, then Client may use the UCP BoardBuilder tool and, if subscribed to, the DesignStudio® solution, to copy, modify and create forms and templates ("Status Boards") and Client may distribute, in printed form or as electronic media, the Status Boards to Client's authorized users, provided that such Status Boards are used exclusively for the internal business purposes of Client. Status Boards shall be considered Derivative Work(s) of the Software and Client shall not sell, resell, license or otherwise

transfer for value any Derivative Work(s) created using the UCP BoardBuilder tool or the DesignStudio® solution, and Client shall not distribute such Derivative Work(s) as part of any product or service for value to any third party. Any Derivative Work(s) prepared by Client shall remain subject to the terms of this Agreement and shall clearly display the following copyright notice to properly acknowledge the proprietary rights of ESi and its third-party licensors: "This work includes the intellectual property of ESi Acquisition, Inc. and its licensors and is provided under subscription/license. Copyright © 2002-2022, ESi Acquisition, Inc. and its licensors. All rights reserved."

- l. Client may, at its option and according to the terms of the ESi standard price list, obtain a Disaster Recovery Software Subscription to support replication of an active, source server to one or more redundant ("Target") servers which may be placed in use to support disaster recovery or fail-over activities. A Disaster Recovery Software Subscription is required for each Target server. A Disaster Recovery Software Subscription may be used to operate an "in production" instance of the Software only when the source server is inactive or inoperable; only one Instance of the Software shall be active at any one time. Client is not required to obtain additional subscriptions for Software plug-ins, modules or interfaces installed on a redundant non-production Instance.
- m. Permitted uses of UCP Fusion Software vary from the terms set forth in subsection (a) through (l) of this Section 6; in the event Client has purchased UCP Fusion Software, this subsection 6(m) shall apply: Client may install and place in production one (1) copy of UCP Fusion Software on one (1) source server and one (1) target server. Client may make one (1) copy of the UCP Fusion Software for back-up or archival purposes, or Client may install a second copy of the UCP Fusion Software on a second Machine if only one (1) copy of the UCP Fusion software is in use at any one time. There is no limit to the number of the Subscription Instances of UCP Fusion Software® (or number of UCP Fusion Software clients) which may be connected by a single instance of UCP Fusion Software, provided that (i) only the Client of the UCP Fusion Software has administrative privileges and administrative access to the UCP Fusion Software and (ii) the Client has paid to ESi all applicable connection fees.
- n. A high-speed Internet connection is required for proper transmission of the Client Data into the Hosting Services and Software. Client, at its sole cost and expense, is solely responsible for procuring and maintaining the network connections that connect the Client network to the Hosting Services and Software, including, but not limited to, "browser" software that supports protocols used by ESi, and to follow procedures for accessing services that support such protocols. ESi is not responsible for notifying Client and its Users of any upgrades, fixes, or enhancements to any such software or for any compromise of data, including Client Data, transmitted across computer networks or telecommunications facilities (including but not limited to the Internet) which are not owned, operated, or controlled by ESi. ESi assumes no responsibility for the reliability or performance of any connections as described in this subsection.
- o. Client and its Users agree to not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share, or otherwise commercially exploit or make the Software and Hosting Services available to any third party, other than authorized Users in furtherance of Client's Internal Business Purposes as expressly permitted by this Agreement; (ii) use the Software and Hosting Services to process data on behalf of any third party other than Client; (iii) modify, adapt, or hack the Software and Hosting Services, or otherwise attempt to gain unauthorized access to the Software and Hosting Services or related systems or networks; (iv) falsely imply any sponsorship or association with ESi, (v) use the Software and Hosting Services in any unlawful manner, including but not limited to violation of any person's privacy rights; (vi) use the Software and Hosting Services to send unsolicited or unauthorized junk mail, spam, pyramid schemes, or other forms of duplicative or unsolicited messages; (vii) use the Software and Hosting Services to store or transmit files, materials, data, text, audio, video, images, or other content that infringes on any person's intellectual property rights; (viii) use the Software and Hosting Services in any manner that interferes with or disrupts the integrity or performance of the Software and Hosting Services and its components; (ix) attempt to decipher, decompile, reverse engineer, or otherwise discover the source code of any software making up the Software and Hosting Services; (x) use the Software and Hosting Services to knowingly post, transmit, upload, link to, send, or store any content that is unlawful, racist, hateful, abusive, libelous, obscene, or discriminatory; (xi) use the Software and Hosting Services to store or transmit any "protected health information" as that term is defined in U.S. 45 C.F.R. 160.103 or "personal data" as that term is utilized in the Regulation 2016/679 of the European Parliament and of the Council on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation); (xii) use the Software and Hosting Services to knowingly post transmit, upload, link to, send, or store any viruses, malware, trojan horses, time bombs, or any other similar harmful software; or (xiii) try to use, or use the Software and Hosting Services in violation of this Agreement.

- p. Communication Notifications. Client acknowledges that all content, data, text, messages and other material ("Content") contained in a voice, text, e-mail, Short Message Service ("SMS"), or other telephonic or electronic notification, including prerecorded and artificial voice and autodialed messages (collectively referred to hereinafter as "Communication Notification") sent by Client or its Users through the Services, Software, and Hosted Services are the sole responsibility of Client. Under no circumstances will ESI or any of its providers be responsible for any loss, damage, or liability arising out of the Content of any Communication Notification, including any mistakes contained in the Content or the use or transmission of the Content. Client acknowledges that all Content is the sole responsibility of Client. Client is solely responsible for the integrity and quality of the Content. Client agrees not to use the Services, Software, and Hosted Services to send any unsolicited Communication Notification ("consentless messages"), unless otherwise legally permitted. Client also certifies that it will not use rented or purchased lists, email append lists, "scraped" lists, or any other list that contains email addresses captured in any other method than opt-in. Client will not send any Communication Notification unless (a) the recipient of the message is an employee of Client sending the message, (b) is using a device owned or paid for by Client sending the message, (c) using a personal device and the User has given Client permission to communicate with them via the device, (d) Client has obtained "opt-in" consent from the User or (e) Client is otherwise legally permitted to dispatch consentless messages. Client acknowledges that it is Client's responsibility to obtain prior consent from its Users or obtain other legal authority prior to sending any SMS or voice call. Client represents and warrants that it will send Communication Notifications in accordance with this Agreement; Client has determined that the phone numbers to be called exclude emergency numbers and other numbers that may not be called using an automated system under applicable law; Client agrees to comply with all international, including, but not limited to, the General Data Protection Regulation ("GDPR"), U.S. federal, state and local laws, including but not limited to, the Fair Debt Collection Practices Act, Telephone Consumer Protection Act ("TCPA"), Controlling the Assault of Non-Solicited Pornography And Marketing Act ("CAN-SPAM"), Federal Trade Commission or any other international, U.S. federal or state regulatory authority. Client will not: (a) violate any regulation of the U.S. Securities and Exchange Commission or any stock exchange, infringe one another's rights in intellectual property, is invasive of another's right to privacy, or violate any privacy laws, privacy policies of Client or any other third parties or do anything that would justify a complaint to the Federal Communications Commission; (b) engage or facilitate any illegal, unethical, deceptive or misleading practices in connection with the use of the Services, Software, and Hosted Services, including, but not limited to, creating a false identity or forged email, phone or message header or otherwise attempt to mislead others as to the identity of the sender or the origin of the message; (c) use the Services, Software, and Hosted Services in connection with any junk email, junk phone messages, spamming or any unsolicited messages (commercial or otherwise); (d) provide, or knowingly allow any third parties to provide, Content or other material to be transmitted in connection with or through the Services, Software, and Hosted Services which: is defamatory, libelous, obscene, pornographic or is harmful to minors; promotes violence, discrimination, or illegal activities; transmit any material that contains viruses, worms, cancelbots or any other harmful code or computer programs designed to disrupt the functionality of any computer software or hardware or telecommunications equipment; or (e) violate any law, statute, ordinance or regulation, (including without limitation the laws and regulations governing export control). Client is allowed to send SMS in text format only; no binary SMS messaging is allowed. Violations of any law or condition set forth herein may result in immediate suspension or cancellation of the Services in order to protect ESI's ability to deliver Services, Software, and Hosted Services. ESI may at its sole discretion determine whether a Communication Notification meets acceptable criteria and will be uploaded to the Software. Client hereby acknowledges that ESI merely provides Software for facilitating the sending of Client's Communication Notifications, and that Client shall have sole responsibility and liability for its messages and communications. ESI reserves the right to hold, suspend or terminate Client's account or access to the Services, Software, and Hosted Services for any alleged violation of this Section and/or any unusual or suspicious activity related to Client's account. If Communication Notifications are included in the Fees set forth on Exhibit C, such Fees are for Communication Notifications to U.S. based telephone numbers only; ESI will invoice Client, and Client shall pay such invoice, for any Communication Notifications sent to telephone numbers that are not U.S. based. Additionally, each subscription of UCP Alerts is allocated a defined number of Message Credits that can be used for SMS notifications and voice calls, to be noted on Exhibit A, Exhibit C, and/or other documentation contemporaneously with this Agreement. If Client exceeds the allotment of Message Credits without purchasing an additional Message Credit Bundle, an overage penalty will be charged at the rate of \$0.06 per Message Credit used.

7. **Protection of Software.** Client agrees to take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Software source code represents and embodies trade secrets of ESI and/or its third-party licensors. The Software source code and embodied trade secrets are not licensed to the Client. Client agrees not to disassemble, decompile or otherwise reverse engineer the Software, use reflection or other mechanism to view, interpret, translate or try to understand the structure of the Software, or otherwise attempt to discover the source code and/or the trade secrets contained in the source code, and Client will not allow third parties to do so. Client may not, nor allow third parties to, modify or alter the Software in any way.

8. **Confidentiality.**

8.1 Confidential Information Defined. During the Term of this Agreement and in connection with each party's performance of their respective duties and obligations hereunder and thereunder, each party will disclose to the other ("Discloser") and the other party shall receive ("Recipient") certain Confidential Information of the Discloser. The term "Confidential Information" shall mean any and all information that the Discloser discloses to the Recipient in connection with or related to this Agreement, whether disclosed verbally, electronically, visually, or in a written or other tangible or intangible form, including, but is not limited to, trade secrets, pricing information, terms of this Agreement, customers, customer lists, intellectual property, computer programs, software, documentation, formulas, data, inventions, techniques, financial, marketing or product development plans, personnel, audit results, designs, performance data, as to ESI, the ESI Technology and any other deliverables (including, without limitation, data, information, computer code and reports) provided in connection with the Software, and, as to Client, the Client Data, as well as any other information that the Discloser clearly communicates to the Recipient as confidential.

8.2 Duties with Regard to Confidential Information. The Recipient agrees that it will only use the Discloser's Confidential Information in the performance of its obligations hereunder or as otherwise expressly provided in this Agreement, and that it will only disclose the Discloser's Confidential Information only to those of its directors, officers, employees, consultants, agents, independent contractors, and professional advisers who need to know such information and who are subject to written agreements with the Recipient sufficient to enable the Recipient to require such persons to comply with the Recipient's confidentiality obligations hereunder. The Recipient agrees that it will treat all of the Discloser's Confidential Information with the same degree of care (but no less than reasonable care) as it accords its own confidential information.

Notwithstanding the foregoing or ESI's obligations elsewhere in this Section, Client understands that ESI does not require any information for the performance of Services hereunder, and that ESI cannot guarantee the security of Client Information when added to the Juvare Exchange, stored on Client's applicable equipment and hardware or transmitted or accessible when using the internet or other services providers. ESI shall not be liable or responsible to Client or any other party for any losses, damages, claims, costs or other obligations arising out of or relating to any unauthorized access to, disclosure or use of information stored by Client on the System, including, without limitation, within the Juvare Exchange, or while such information is transmitted or accessible through the Software, the internet, or services providers. Additionally, ESI shall not be responsible for any breach of security or confidentiality caused by Client's failure to maintain the confidentiality and control of its user identification numbers or passwords related to its use of the Software provided hereunder.

8.3 Exclusions from Confidential Information. Confidential Information does not include information that (a) is or becomes generally available to the public other than as a result of an unauthorized disclosure by the Recipient or its personnel; (b) has been or is obtained by the Recipient from an independent source without accompanying obligations of confidentiality; (c) is independently developed by the Recipient without reliance in any way on the Discloser's Confidential Information; or (d) has been approved for unrestricted release by the Discloser in writing. Additionally, the Recipient may disclose the Discloser's Confidential Information where the Recipient is required by law to disclose information that is otherwise Confidential Information, provided (to the extent not prohibited by law) the Recipient has first notified the Discloser in writing as soon as is commercially reasonable of such requirement to disclose the Discloser's otherwise Confidential Information in order to permit the Discloser to seek confidential treatment of such information. With respect to any disclosure made pursuant to this Section, the Recipient (or any of its Representatives) agrees to furnish only that portion of the Confidential Information that it reasonably determines, in consultation with its counsel, is necessary under applicable law. Additionally, Client agrees to reimbursement ESI at its then current hourly rate for such services for the number of hours spent by ESI responding to legal requests for Client Information in ESI possession.

8.4 Protection of Confidential Information. Notwithstanding anything else in this Agreement, the Recipient acknowledges that the Discloser shall have the right to take all reasonable steps to protect the Discloser's confidential and proprietary interests, including, but not limited to, injunctive relief in a court of law or equity and any other remedies as may be available at law or in equity in the event the Recipient does not fulfill its obligations under this Section.

8.5 Survival of Confidentiality Obligations. Each party's obligations of confidentiality pursuant to this Section for all Confidential Information disclosed between the parties during the term of this Agreement shall survive the expiration or termination of this Agreement as follows: (i) for Confidential Information consisting of trade secrets, for so long as such information remains a trade secret of the Discloser or for five (5) years following the expiration or termination of this Agreement, whichever is longer, (ii) for Confidential Information consisting of the Discloser's customer information or ESI's suppliers' information, indefinitely, and (iii) for all other Confidential Information, for five (5) years following the expiration or termination of this Agreement.

8.6 Termination of This Agreement. Upon termination of this Agreement or upon the Discloser's written request, the Recipient agrees to terminate all use of the Discloser's Confidential Information and to either return to the Discloser all copies of the Discloser's Confidential Information in its possession or under its control or to provide the Discloser with a written notice from one of the Recipient's authorized representatives certifying that all copies of the Discloser's Confidential Information in the Recipient's possession or control have been destroyed; provided, however, the Recipient may (at its option, but not its obligation) keep a copy of the Discloser's Confidential Information in its archives, and the provisions of this Section shall continue with respect to such Confidential Information. Notwithstanding the foregoing, in no event shall any Client Confidential Information, including, without limitation, the Client Data, that is entered into or shared in the Juvare Exchange be returned to Client or removed from the Juvare Exchange; Client understands and acknowledges that any Client Confidential Information, including, without limitation, the Client Data, entered into the Juvare Exchange is visible and viewable by other Juvare Exchange users and is not secure or held confidential.

- 9. Proprietary Interests.** The Software and Documentation, and all copies thereof, shall remain the exclusive property of ESI and/or its third-party licensors. All applicable rights to copyrights, trademarks, logos, patents and other intellectual property shall remain vested in ESI and/or its third-party licensors. Client shall not claim, register, alter or modify, any interest in such copyrights, trademarks, patents or other intellectual property, nor shall Client nor attempt to do any of the foregoing. Client shall not translate any of the ESI trademarks into any other language or alphabet. Notwithstanding the foregoing, Client shall always have title to data input and output arising out of the use of the Software, and any computer programs developed by or for Client using output of the Software as input to another source, and which do not include any logic and code of the Software, and such shall remain the exclusive property of the Client. Client acknowledges and agrees that ESI may seek equitable relief at any time to remedy a violation or threatened violation of the restrictions set forth herein regarding the use and protection of the Software and Documentation.
- 10. Copying of Documentation.** Client may make as many copies of the Documentation as necessary for Client's internal purposes, provided the Client shall not modify or alter the content or appearance of the Documentation, modify or alter the appearance of any ESI trademark or logo in the Documentation, or eliminate any references to ESI, UCP or other ESI Software in the Documentation and provided that the Client shall reproduce and distribute the ESI copyright and notices page contained in the Documentation with all such copies and maintain the confidentiality of the copies and destroys or returns such copies in accordance with Section 8 (Confidentiality) above.
- 11. Support Services.** During the Term of this Agreement and provided Client is not in violation of this Agreement (including, without limitation, paying for the Subscription Fees), ESI will provide Support Services (all as further defined in Exhibit B hereto; Exhibit B is herein incorporated and made part of this Agreement by this reference) for the Software during the Standard Business Hours consisting of the following: (i) ESI will use reasonable efforts to maintain the Software to comply with the applicable Documentation in all material respects, and (ii) if and when made generally available through Support Services to ESI's other customers receiving Support Services, providing subsequent releases and versions of the Software for use consistent with ESI's then current policies. All Software Updates received by Client shall be subject to the terms of this Agreement. Support Services shall not include, and ESI shall not be responsible for, failures of the Software to perform consistent with the Documentation, specifications, requirements and other details set forth in Exhibit A or any subsequent amendments or quotes hereto in all material respects resulting from or caused by Client, Client's hardware and equipment, Client's connection to the Software, third party service providers, including, without limitation, communications services providers, or otherwise disclaimed elsewhere in this Agreement.
- 12. Hosted Services.** During the Term of this Agreement and provided Client is not in violation of this Agreement, ESI will provide Hosted Services, as set forth in Exhibit D hereto, for the Software during the Standard Business Hours. Exhibit D is herein incorporated and made part of this Agreement by this reference.
- 13. Consulting Services.** ESI will perform the Consulting Services set forth in any Exhibit or Statement of Work between the Parties in accordance with the terms within the applicable Exhibit and/or Statement of Work, for the Fees for such professional services as set forth in such Exhibit or Statement of Work. Each attachment

for Consulting Services will include details that: (A) best utilizes the Consulting Services purchased and/or (B) identifies the date of achievement of mutually agreed to milestones tied to the deployment of the Subscription(s) and/or Service(s).

14. Warranty.

14.1 Warranty by ESI. For new Software provided pursuant to the Subscription purchased by Client pursuant to this Agreement (for instance, merely adding additional Users to the Subscription for use with the Software would not be considered new Software), ESI warrants that, for a period of sixty (60) days from the Installation (the "Software Warranty Period"), the Software, when used in accordance with the applicable Documentation and this Agreement, will perform in compliance with the specifications for such Software as set forth in the Documentation in all material respects. In the event the Software fails to perform as warranted herein during such Software Warranty Period, and ESI receives written notice of such failure from Client following the first occurrence of such failure (and in all events prior to the expiration of the Software Warranty Period):

- a. ESI shall use all reasonable efforts to correct any reproducible error condition reported to ESI in such written notice during the Software Warranty Period as soon as reasonably possible (not to exceed 45 days) following receipt of such written notice;
- b. if ESI is unable to resolve such failure to comply with the warranty as provided above through either a correction or reasonable work around, Client may terminate the applicable order only (in its entirety) without penalty or liability for any amounts payable (other than charges and fees incurred prior to the effective date of such termination) on written notice to ESI that is received by ESI within 3 business days of the expiration of the 45 day "cure period" for any failure to comply with the warranty, and ESI shall, within thirty (30) days following the effective date such termination, refund to Client the pre-paid unused amounts paid by Client pursuant to the terminated order during the 60 day period prior to the effective date of such termination. Additionally, to the extent not already waived or expired as provided above, all rights of termination by Client pursuant to this Section shall expire to the extent ESI has not received a written notice of termination pursuant to this Section prior to the expiration of the Software Warranty Period;
- c. In the event of termination of an order as provided in this Section, Client shall not be obligated to pay any additional charges or fees payable pursuant to such terminated order for the period after the effective date of such termination; and
- d. The limited warranty provided hereunder (including ESI's obligations to restore Software and provide corrections and Client's rights of termination pursuant to this Section) shall not apply to Software to the extent it has been modified by other than ESI (or its contractors or agents), modified at Client's request, or not used in accordance with the requirements of this Agreement, the Documentation, specifications, and the Quotes or order forms. ESI does not warrant that the Software will operate uninterrupted or error free, that all errors can be corrected, or that it will satisfy Client's requirements.

This Section sets forth Client's sole and exclusive remedy, and ESI's entire liability, for the failure of the Software to satisfy the warranty described in this Section. Any refunds pursuant to this Section shall be applied against any limitations of liability set forth in this Agreement.

ESI shall have no obligations pursuant to this Section for claims under this Section for which Client does not provide ESI written notice prior to the expiration of the Software Warranty Period.

In addition to the terms above, any termination of an initial Quote or Order pursuant to this Section shall also terminate this Agreement.

14.2 Warranty by Client. Client represents and warrants that (a) the performance of its obligations and use of the Software by Client and its Users, including, without limitation, any Administrators or Sub-Administrators, if any, will not violate any applicable laws or regulations, ESI's rules and regulations or cause a breach of any agreements with any third parties; (b) it will not interfere with ESI's systems or the use of any services or systems by other ESI's clients; (c) it will not provide or enter any Client Information or Client Data into the Software or Systems that may or does contain protected health information under Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); (d) it will not provide or enter any Client Information or Client Data into the Software or Systems that may or does contain personal data as regulated by the General Data Protection Regulation 2016/679 (the "GDPR"); and (e) it will not send any notifications, be it SMS, email, text, pager alerts, phone calls, using the Software or Systems without obtaining the consent of any User or recipient as required by applicable laws, statutes, or regulations. In the event of any breach of any of the foregoing Client warranties, in addition to any other remedies available at law or in equity, ESI will have the right, in its sole reasonable discretion, to terminate or suspend immediately any related Software if deemed reasonably necessary by ESI to prevent any harm to ESI, its Clients and/or its business. ESI will provide to Client notice (email being sufficient) of such termination or suspension of the Software and, in ESI's sole

discretion if an opportunity to cure the breach if practicable depending on the nature of the breach, ESI may provide the Client with an opportunity to cure such breach and if cured, in ESI's full satisfaction, ESI may restore the Software or access to the Software.

15. Disclaimers.

15.1 ESI DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SOFTWARE AND/OR ACCOMPANYING DOCUMENTATION. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY ESI OR ANY OF ITS AGENTS, EMPLOYEES OR CONTRACTORS SHALL CREATE A WARRANTY, AND CLIENT IS NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION. ESI EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR FREE OF ERRORS.

15.2 THE SOFTWARE AND ANY SERVICES THERETO ARE NOT COMPLIANT WITH THE REQUIREMENTS OF THE HIPAA.

15.3 The Software is an information management application. The software is not fault-tolerant and is not designed, manufactured, or intended for use or resale in hazardous environments that require fail-safe performance such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, emergency response, terrorism prevention or response, life support or weapons systems (collectively "High Risk Activities"), the failure of which could lead to death, personal injury, or severe physical or environmental damage. ESI EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

16. Fees and Payment Terms.

16.1 Payment; Late Payment. All amounts are due and payable by Client to ESI as set forth in Exhibit C hereto (unless alternative payment terms are mutually agreed up on by the parties). Exhibit C is herein incorporated and made part of this Agreement by this reference. Any payments not received by ESI within thirty (30) days after the date of the applicable invoice (or as otherwise due under the applicable Exhibit C or Quote) will be considered past due.

16.2 Travel Expenses and Additional Charges. To the extent that the Software and services provided hereunder may require ESI to travel, Client shall pay Travel Expenses reasonably incurred by ESI in connection with such travel. ESI shall invoice Client for Travel Expenses on a monthly basis as incurred. Travel Expenses are in addition to any charges set forth in this Agreement or any Quote hereto. Other additional charges may be required should Client elect to: (a) use the Software on more than one (1) Instance; (b) increase the number of named users who may access the Software; (c) increase the number of non-production instances of the Software; (d) additional Software; (e) upon renewal; (f) increase storage capacity; or (g) as otherwise required by the Agreement.

16.3 Renewal Charges. At least sixty (60) days prior to the expiration of the Initial Period (as defined in Exhibit A) or a then current Renewal Period, ESI may notify Client of the current fees for Software and Support Services, and invoice Client for such fees for the Renewal Period so that such amount is due and payable prior to the commencement of such Renewal Period. ESI shall be entitled, in its sole discretion, to increase the fees for the Software and Support Services.

16.4 Suspension of the Software, Services and Support Services. Without limitation as to any other rights or remedies of ESI under this Agreement, ESI reserves the right to immediately suspend Client's access to and use of the Software and the Services (including, without limitation Support Services), without notice to Client, if any charges or fees payable to ESI are past due and not paid within the time frame set forth in Section 16.1 or elsewhere in this Agreement or an Exhibit, Statement of Work or Quote hereto, as applicable. Client agrees that ESI shall have no liability to Client, and Client waives any claim or action against ESI in the event of suspension or termination of access to or use of the Software and the Services for Client's failure to timely pay charges. Client's payment obligations shall continue during any period of suspension pursuant to this Section.

16.5 Taxes. All amounts charged by ESI are exclusive of, do not include, and Client shall be solely responsible for payment of, all sales, excise, use, value added, withholding, import or other taxes, tariffs and duties which are imposed to the Software and Services by or under the authority of any government or any political subdivision thereof, except for any taxes based upon ESI's net income, assets or worth. ESI shall invoice Client for amounts it is obligated to collect or is allowed to recover as such taxes, tariffs and duties. Client's obligations for the payment of taxes, tariffs and duties payable hereunder shall survive the expiration or termination of this Agreement. If the transaction or the Client is exempt from taxes, ESI will not charge tax provided that Client timely provides ESI with a valid exemption certificate or other evidence of such exemption in a form reasonably acceptable to ESI. To the extent permitted under applicable laws and regulations, ESI will not charge tax on transactions for the electronic delivery of the Software and Services. All payments due from Client shall be made without any deduction or withholding on account of any Taxes, charge or penalty, except required by law, in which case the sum payable by Client from which such deduction or withholding is

to be made shall be increased to the extent necessary to ensure that, after making such deduction or withholding, ESI receives and retains (free from any liability with respect thereof) a net sum equal to the sum it would have received but for such deduction or withholding being required.

17. **Limitations of Liability.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR ANY EXHIBITS OR ATTACHMENTS HERETO AND TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, ESI (INCLUDING ITS AFFILIATES) SHALL NOT BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY EXHIBIT, QUOTES OR ORDERS HEREUNDER (HOWEVER ARISING, UNDER ANY THEORY INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, CONTRACT OR STRICT LIABILITY), INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR INTERRUPTED COMMUNICATIONS, LOST DATA, LOST REVENUE, LOST PROFITS, LOSS OF TECHNOLOGY, LOSS OF RIGHTS OR SOFTWARE OR SERVICES AND/OR DAMAGES THAT RESULT FROM INCONVENIENCE, DELAY OR LOSS OF USE OF ANY INFORMATION OR DATA OR OF THE SOFTWARE OR SERVICES, EVEN IF ESI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY HEREIN. SUBJECT TO THE FOREGOING AND TO THE GREATEST EXTENT PERMISSIBLE UNDER APPLICABLE LAW, FOR THIS AGREEMENT AND EACH QUOTE FOR SOFTWARE OR SERVICES HEREUNDER, IN NO CASE SHALL ESI'S (INCLUDING ITS AFFILIATES) MAXIMUM AGGREGATE LIABILITY DURING ANY TWELVE (12) MONTH PERIOD DURING THE TERM OF THIS AGREEMENT (THE FIRST OF WHICH SHALL COMMENCE ON THE EFFECTIVE DATE OF THIS AGREEMENT) UNDER ANY CIRCUMSTANCES EXCEED THE AMOUNTS ACTUALLY PAID TO ESI BY CLIENT PURSUANT TO THIS AGREEMENT DURING SUCH TWELVE (12) MONTH PERIOD (EXCLUDING TRAVEL EXPENSES). THE PARTIES UNDERSTAND AND AGREE THAT THE LIMITATION OF LIABILITY SET FORTH IN THIS AGREEMENT REPRESENTS A REASONABLE ALLOCATION OF RISKS, AND EACH PARTY EXPRESSLY CONSENTS TO SUCH ALLOCATION. ESI SHALL HAVE NO LIABILITY OF ANY KIND IN THE EVENT CLIENT'S RECORDS OR OTHER DATA SUBMITTED FOR PROCESSING ARE LOST OR DAMAGED.

18. **Termination.**

18.1 **Termination for Cause.** This Agreement or any Exhibit or Quotes hereto may be terminated as follows:

- a. by ESI upon the breach by Client of any of its payment obligations under this Agreement or any Quote or Exhibit hereto, which breach has not been cured within five (5) days after Client has received written notice thereof,
- b. by one party upon the breach by the other party of any of such other party's material obligations under this Agreement or any Quote or Statement of Work hereto that has not been cured within thirty (30) days after the breaching party has received written notice thereof (*provided, however*, that there shall be no cure period in the event of a breach by Client of its obligations related to ESI's intellectual property), or
- c. by ESI if all or a substantial portion of the assets of Client are transferred to an assignee for the benefit of creditors or Client files or has filed against it a petition for liquidation under bankruptcy or similar laws and such proceeding is not dismissed within sixty (60) days.

If the basis for termination for cause applies only to a specific Quote or Statement of Work, the non-breaching party may elect to terminate only the affected Quote and associated Statement of Work, in which case this Agreement and other Quotes will remain in full force and effect. A breach of the terms of this Agreement or a Quote by a User shall be deemed to be a breach of the terms of this Agreement by Client.

18.2 **Effective Date of Termination for Cause.** Termination for cause based upon 18.1(a) above shall be effective on the 6th day after Client received the original written notice of breach if cure is not made or if some interim arrangement has not been reached between the parties (and agreed in writing) during the five (5) day cure period. Termination for cause based upon 18.1(b) above shall be effective on the 31st day after the breaching party received the original written notice of breach if cure is not made or if some interim arrangement has not been reached between the parties (and agreed in writing) during the thirty (30) day cure period; *provided, however*, if a breach under 18.1(b) is not subject to cure (e.g., disclosure of a party's Confidential Information), termination for cause is effective immediately upon the party providing written notice of termination to the breaching party consistent with the notices provision of this Agreement. Termination for cause based upon 18.1(c) above shall be effective immediately after the assignment for benefit of creditors has been made or the filing of a petition for liquidation under bankruptcy or other insolvency laws and such have not been dismissed, dissolved or the petition lifted or stayed.

18.3 **Effects of Termination.** Termination of this Agreement shall result in the termination of all outstanding Quotes, Statements of Work and Exhibits, and termination of all outstanding Quotes, Statements of Work and Exhibits shall result in the termination of this Agreement. Upon termination of this Agreement and/or any Quotes, Statements of Work and Exhibits for any reason, any amounts owed to ESI under this Agreement or

any Quotes, Statements of Work and Exhibits, regardless of whether not yet due and payable, will be accelerated and deemed immediately due and payable (including, without limitation, the remaining balance of unpaid fees for professional services and Travel Expenses). All Subscriptions, including, without limitation, Services and all Software use and access, granted under this Agreement and all Quotes, Statements of Work and Exhibits hereto shall immediately terminate upon termination of this Agreement. All Subscriptions, including, without limitation, Services and all Software use and access, granted pursuant to an applicable Quotes, Statements of Work and Exhibits shall terminate upon the expiration or termination of the applicable Quotes, Statements of Work and Exhibits. Upon termination of this Agreement, ESI will immediately cease performing all Services and terminate Client's and its User access to the Software. ESI shall have no obligation for retaining or maintaining a copy of any such Client's Information or data from the Software following the date of expiration or termination of the Quotes, Statements of Work and Exhibits governing such information or (if sooner) the expiration or termination of this Agreement. ESI shall be entitled, without further liability, to destroy all such Client's Information or data from the Software following the date of expiration or termination of the Quotes, Statements of Work and Exhibits governing such information or (if sooner) the expiration or termination of this Agreement. Notwithstanding the foregoing, in no event shall any Client Confidential Information, including, without limitation, the Client Data, that is entered into or shared in the Juvare Exchange be returned to Client or removed from the Juvare Exchange; Client understands and acknowledges that any Client Confidential Information, including, without limitation, the Client Data, entered into the Juvare Exchange is visible and viewable by other Juvare Exchange users and is not secure or held confidential. If Client receives Hosted Services from ESI, the following termination provisions also apply upon termination of this Agreement for any reason:

- a. Client's access to the Hosted Services (including, without limitation, all access to the hosted environments and data) shall be suspended;
- b. Client shall immediately surrender to ESI any Internet protocol numbers, addresses or ESI-owned domain names assigned to Client in connection with the Hosted Services delivered hereunder;
- c. Unless other arrangements are requested by Client within five (5) days of the effective date of termination and provided Client has paid all outstanding amounts due to ESI under this Agreement, for the five (5) day period following the effective date of termination of this Agreement ESI shall provide Client with access to its data or information within the Hosted Services for Client to download the Client Data or information; and
- d. Any and all Client Data shall be overwritten, erased, encrypted or otherwise rendered unrecognizable upon the sooner to occur of (i) Client's confirmation that it has downloaded the Client Data or information, or (ii) expiration of the period of access as set forth in subsection (c) above, or (ii) thirty (30) days from the effective date of termination of this Agreement.

18.4 Other Termination/Suspension of Services. In addition to all other remedies to which it may be entitled hereunder, ESI shall have the right, without notice to Client, to immediately suspend the provision of any and all Software and Services hereunder, including, without limitation, access to the Software and Support Services, in the event of (i) any breach or threatened breach of this Agreement or any Quotes, Statements of Work and Exhibits hereto by Client or its Users or contractors, (ii) any requirement or direction by any legal or regulatory body having jurisdiction over Client, ESI or its suppliers or third party service providers, or (iii) any change in law that renders ESI provision of the Software unlawful or otherwise non-compliant with applicable law. Client's payment obligations shall continue during any period of suspension pursuant to this Section. Client agrees that ESI shall have no liability to Client, and Client waives any claim or action against ESI, in the event of termination of access to the Software as provided in this Agreement. ESI shall make reasonable efforts to restart such access upon Client's cure or correction of the event of default or breach unless it has already terminated this Agreement or any Quotes, Statements of Work and Exhibits as provided hereunder. Client shall reimburse and pay to ESI all charges, expenses and fees incurred by ESI or payable by ESI to third parties as a result of such suspension of Software or reconnection/restart of such access to such Software.

18.5 Collection Costs. ESI shall be entitled to recover from Client any and all of ESI's attorneys' charges and expenses, including, without limitation, court costs, incurred by ESI in connection with any attempts to pursue collection of amounts owed by Client hereunder or otherwise incurred by ESI in enforcing of the terms and conditions of this Agreement or any Quotes, Statements of Work and Exhibits hereto.

18.6 Survival. The provisions of this Agreement that, by sense and context of the provision, are intended to survive performance by either or both parties shall also survive the completion, expiration, termination or cancellation of this Agreement.

18.7 The termination of this Agreement shall not relieve the Client of its obligation to pay any Charges and Fees incurred hereunder prior to the effective date of such termination or expiration or that result or arise from the termination of this Agreement (as provided in herein).

19. Indemnification.

19.1 By ESI. ESI shall, at ESI's sole cost and expense, defend Client against a third party claim that the Software provided hereunder by ESI infringes such third party's U.S. patent or copyright (or other jurisdiction as agreed to in writing by both parties), and ESI shall pay damages that a court finally awards to such third party to the extent based on such claims or is agreed to by ESI in settlement of such claims, provided that (i) Client provides ESI prompt written notice of such claims, (ii) ESI controls the defense and settlement of such claims, and (iii) Client, at ESI's expense, reasonably cooperates with ESI in the defense and settlement of such claims. ESI's obligation hereunder shall not extend to a claim to the extent such claim is based on any alleged infringement arising from any (a) infringement or contributory infringement to the extent caused in whole or in part by Client, its Users, agents, representatives, employees or by third parties under Client's direction or control; (b) additions, changes or modifications to the Software by or on behalf of Client except for any additions, changes or modifications made by ESI or its Suppliers on ESI's behalf; (c) incorporation of the Software or any component thereof into any other product or process; or (d) use of the Software other than as permitted by this Agreement or the applicable Quote or Order. Should the Software become, or in ESI's opinion, be likely to become the subject of any such suit or action for infringement for which ESI is responsible under this Section, or if Client is enjoined from using the Software, ESI shall, at ESI's sole option and expense, (x) procure the right to continue providing the Software; (y) replace or modify such Software so that they become non-infringing and functionally equivalent; or (z) may terminate that portion of the allegedly infringing Software on written notice to Client. This Section states ESI's entire liability for infringement claims relating to the Services, Software, or Support Services.

19.2 By Client. ***Intentionally Omitted.***

20. Export Controls. Client acknowledges that the Software and Documentation are subject to United States export laws. Client shall not, nor shall Client authorize or permit its directors, employees, consultants, independent contractors or other persons, to export, re-export, disclose or otherwise provide the Software and/or Documentation to any country unless an appropriate license, exemption or authorization has been obtained from the U.S. Government. Client expressly agrees that Client shall not export, re-export, barter, or otherwise provide or disclose the Software and Documentation, in whole or in part, to: (a) any country covered by any United States trade embargo; (b) any person listed on the United States Department of Treasury's list of Specially Designated Nationals; (3) any person or entity listed on the United States Department of Commerce Denied Persons List; (4) any person or entity listed on the United States Department of Commerce Unverified or Entity Lists; (5) any person or entity listed on the United States Department of State Debarred List; or (6) any person or entity where such export, re-export, barter, disclosure or provision violates United State export control law or regulation. Client represents and warrants that neither it nor its directors, employees, consultants, nor any other persons or entities who may gain access to the Software and Documentation through the Client, are persons or entities subject to such U.S. export controls.

21. U.S. Government Rights.

- a. If Client is an agency, department, or other entity of the United States Government ("Government"), or funded by the United States Government, Client's use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Documentation, technical specifications, or any related materials of any kind, including technical data, is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies, Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies and the equivalent regulations for the Department of Energy. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.
- b. The Software and Documentation are commercial computer software and commercial computer software documentation. Client shall ensure that each copy used or possessed by or for the Government is labeled with the following: "Manufacturer is ESI Acquisition, Inc., 235 Peachtree Street NE, Suite 2300, Atlanta, GA 30303. ALL RIGHTS RESERVED. PROPRIETARY PRODUCTS." For the purpose of any federal, state or local law, Client agrees that the Software and Documentation are trade secrets and proprietary commercial products of ESI and/or its third-party licensors and are not subject to disclosure.

22. General Terms and Conditions.

- a. Entire Agreement; Waiver. This Agreement (including any attachments and schedules) and Exhibits, Statements of Work or Quotes set forth the entire understanding and agreement of the parties and supersede any and all oral or written agreements or understandings between the parties, as to the subject matter of this Agreement or the applicable Exhibit, Statement of Work or Quote. Any provisions, terms or conditions on Client's purchase orders which are, in any way, inconsistent with or in addition to the terms and conditions of this Agreement shall not be binding upon ESI and shall have no applicability hereunder. The waiver of a breach of any provision of this Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.
- b. Governing Law. ***Intentionally Omitted.***

- c. Dispute Resolution. ***Intentionally Omitted.***
- d. Assignment. Client may not assign or otherwise transfer, in whole or in part, or in any other manner, any rights, obligations, or any interest in or under this Agreement without the prior written consent of ESI and any purported attempt to do so will be null and void. A merger or other acquisition by a third party will be treated as an assignment. ESI may at any time and without Client's consent assign all or a portion of its rights and duties under this Agreement to a company or companies wholly owning, owned by, or in common ownership with ESI. This Agreement shall be binding on each party's successors and permitted assigns. Additionally, ESI may delegate the performance of certain Services to its Affiliates and third-party providers, provided ESI remains responsible to Client for the delivery of such Services and the compliance of such Affiliates and third-party providers with this Agreement.
- e. Change in Subcontractors. ESI has the right to change, modify and otherwise convert services providers and subcontractors (including, without limitation, its affiliates) used to provide the Services and terms under which the Services are offered, provided that the basic functionality and quality of the Services will not be materially adversely affected.
- f. Interpretation. In the event of a conflict between this Agreement and the terms of any Exhibit, Statement of Work or Quote attached hereto, the terms of the Exhibit, Statement of Work or Quote shall prevail and control the interpretation of this Agreement. The Exhibits, Statement of Work or Quote, attachments, and schedules together with this Agreement shall be interpreted as a single document.
- g. Force Majeure. No breach of any obligation of ESI in this Agreement or an Exhibit, Statement of Work or Quote shall constitute an event of default or breach to the extent it arises out of a cause, existing or future, that is beyond the reasonable control of ESI, including without limitation, "acts of god" (such as earthquake, natural disaster, or flood), war, terrorists' acts, riot, theft, labor disputes, government regulations, curtailment of transportation, or a cause making ESI's performance impossible or commercially impracticable or the like.
- h. Limitations Period. Client agrees not to bring a legal action against ESI more than two years after the later of the date on which the cause of action accrues or the date on which the party discovered or with reasonable investigation should have discovered the cause of action.
- i. Prevailing Party. ***Intentionally Omitted.***
- j. Independent Contractors. The parties are independent contractors, and no agency, partnership, franchise, joint venture or employment relationship is intended or created by this Agreement. Neither party shall make any statement, representation, warranty or other commitment on behalf of the other party.
- k. No Licenses. There are no licenses to the Software, express or implied, granted or provided under this Agreement. Neither party shall exceed the scope of the Subscription granted hereunder. ESI reserves all rights not specifically granted to Client.
- l. Notice. All notices shall be in writing and sent by certified mail (return receipt requested), overnight courier, or delivered personally to the addresses indicated on the first page of this Agreement for the applicable intended recipient, or such other address as either party may indicate by at least ten (10) days prior written notice to the other party. All notices to ESI shall be directed to the attention of the President/CEO of ESI, with a copy of all such notices also sent to ESI to the attention of ESI's General Counsel at the same address as ESI. Notice will be effective on the date shown on the delivery receipt or, in the case of personal delivery, actual receipt. All notices required pursuant to this Agreement shall be provided in strict compliance with this Section.
- m. Severability. If any provision herein is held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.
- n. No Third-Party Beneficiaries. ESI and Client agree that, except as otherwise expressly provided in this Agreement, there shall be no third-party beneficiaries to this Agreement.
- o. Headings. The headings used in this Agreement, Exhibits, Quotes and Statements of Work are solely for convenience and shall not be considered in its interpretation.
- p. Authorized Signer. Each party represents that the person signing this Agreement and any Exhibit, Statement of Work or Quotes hereto has been properly authorized and empowered to execute and deliver this Agreement and any Exhibit, Statement of Work or Quotes hereto on behalf of such party. This Agreement becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by ESI.
- q. Incorporation by Reference. Any Attachments to this Agreement and any Exhibit, Statement of Work or Quote now existing and hereafter executed or issued that are made pursuant to this Agreement shall be deemed to be part of this Agreement and are incorporated into this Agreement by reference.
- r. Amendments. Except as otherwise provided herein or in an applicable Exhibit, Statement of Work or Quote, this Agreement and any Exhibit, Statement of Work or Quote may be changed or modified only in a written document signed by duly authorized representatives of both parties.

- s. Counterparts/Duplicate Originals. This Agreement and any Exhibit, Statement of Work or Quote may be executed by the parties in one or more counterparts or duplicate originals, and each of which when so executed shall be an original, but all such counterparts shall constitute one and the same document.
- t. Publicity/Use of Trademarks. ESI and Client herein agree to permit the occasional use of each other's name and logo as well as reference to this Agreement and the Services in their respective promotional advertising, press releases and public relations efforts. All such use will be only in a manner that reflects positively upon the other party. ESI may, without obtaining Client's prior written consent, place Client's name on a list of ESI's customers.
- u. Non-Solicitation. Client shall not, without ESI's prior written consent, directly or indirectly, solicit for employment or hire any Restricted Employee (as defined herein) while such person is employed by ESI and for the 12-month period starting on the earlier of: (i) termination of such Restricted Employee's employment with ESI, or (ii) termination or expiration of this Agreement. "Restricted Employee" means any former or current employee of ESI or its Affiliates that provided services on behalf of ESI hereunder or that Client became aware of or came into contact with during ESI's performance of its obligations under this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in duplicate originals by their duly authorized representatives as of the day and year set forth above. This Agreement becomes null and void if the time between the earlier dated signature and the later dated signature exceeds sixty (60) days, unless waived by ESI.

ESI Acquisition, Inc.**Client"**

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

/End of the Agreement; Exhibits follow

EXHIBIT A TO UCP SUBSCRIPTION AGREEMENT

1. **Term of Hosted Services Subscription**

The Subscription to the Hosted Services for the Software identified forth on this Exhibit A shall commence on the Agreement Effective Date set forth above and continue thereafter for an initial period of **years** (the "Initial Period"). Thereafter, the Subscription to the Hosted Services for the Software shall automatically renew for successive additional 12-month periods (each a "Renewal Period"), provided that either party may non-renew the Subscription to the Hosted Services for the Software as of the end of the Initial Period or any subsequent Renewal Period, on not less than 60 days' prior written notice of non-renewal to other party. "Term" means the Initial Period and any Renewal Period of the Subscription to the Hosted Services for the Software as set forth herein. Any such non-renewal shall be effective as of the end of the Initial Period or subsequent Renewal Period, as applicable, following the expiration of such 60-day notice period.

2. **Subscription Software**

The Subscription includes the following Software:

Number of Instance	Software
<u> </u> #	ESi UCP® Software <u> </u> <i>Latest version at time of Agreement</i> Juvare Exchange DesignStudio® Software <u>Basic/Pro Bundle</u>

The Subscription includes the following purchased "non-production" Instances for the identified purpose:

Number of Instance	Purpose
<u> </u> #	Development/testing of Software Updates prior to placing in production (internal use only)
<u> </u> #	Training (internal use only)
<u> </u> #	Disaster Recovery

3. **Authorized Number of Users for UCP**

Client may provide access to the following number of Administrators, Sub-Administrators, and Active Users, all authorized on a named and active user basis; does not include DesignStudio® User counts.

User Type	Qty of Users
Administrators	<u> </u> (Up to the Number of Authorized Active Users)
Sub-Administrators	<u> </u> 0
Active Users	<u> </u> # (inclusive of Administrators and Sub-Administrators)

4. **DesignStudio®**

User Type	Qty of Users
Users	<u> </u> 3/5

5. **Client Storage Capacity: 50 GB**

6. **Emergency Response Program**

Emergency Response Program has been purchased for Term:

☐ Yes ☐ No

/End of Exhibit A

EXHIBIT B TO UCP SUBSCRIPTION AGREEMENT

DESCRIPTION OF SUPPORT SERVICES FOR THE SOFTWARE

Support Services for the Software shall include the following (in addition to what is stated in the Agreement):

- 1) **Telephone Assistance:** Client's "Support Contact" (as defined below) may contact the ESI's Support Center for telephone assistance to seek advice relating to the use of Hosted Services and/or to identify and work to provide a "workaround" for Software problems, if available. Telephone assistance for non-Emergency Support Services shall be available during Standard Business Hours.
- 2) **Problem Assistance:** Client may submit problem assistance requests for Software assistance via the published ESI's support escalation procedures. ESI will notify Client if any request is beyond the scope of this Agreement and is, therefore, subject to additional charges. Requests for problem assistance for non-Emergency Support Services shall be available during Standard Business Hours.
- 3) **Software Updates:** ESI will update the Software as such updates and future versions of the applicable Software are made generally available to other ESI clients receiving Support Services at no additional charge. Any training required by Client related to such Software Updates and subsequent versions of the Software are provided for an additional charge. ESI shall provide Client with Software Updates to the Software, except for modules, as such Software Updates become available. Software Updates may include correction releases (i.e. patches provided to correct software anomalies), point releases (i.e. modifications to current generation of software including enhancement and improvements), and level releases (i.e. new releases or new generation of software), but shall not include new products, modules or plug-ins released commercially by ESI as independently priced items. For Modules, ESI shall provide Client any Software Updates released by ESI to correct errors affecting the operation of the Module, whether such error is caused by the Module itself or by an error in the Software, and any Software Updates required to maintain compatibility with the Software. ESI shall not provide for any enhancements to the Module.

Process to Obtain Support Services. To obtain Support Services or telephone or problem assistance, Client's designated Support Contact (an assigned Administrator that has completed the Administrator training and is listed as the Support Contact for Client) may contact ESI's Support Center as pursuant to ESI's published support procedures. Such support procedures include contacting ESI's Support Center via telephone, email and, when required, remote session support during Standard Business Hours and during Non-Standard Business Hours.

"Routine" Support Services includes assistance with the use and configuration of the software; assistance with identification and resolution of errors or defects assistance with application and use of new releases; general support for Board Builder and boards built by ESI or an ESI-certified technician; and access to UCP best practices, community-use status boards, "help" resources and other content made available through <https://www.juvare.com/customers/technical-support>, a "client only" web forum. Support Services may be accessed by Client by calling the Support Center via (877) 771-0911 or by electronic mail at support@juvare.com (subject to updates and changes by ESI).

"Emergency" Support Services shall be available 24 hours per day, 365 days per year. Emergency telephone support includes any assistance needed by Client while Software is in use operationally, whether for actual incidents or exercises excluding assistance with GIS interfaces, mapping or products, which is licensed by a third-party vendor is available only during Standard Business Hours. Emergency Support Services may be accessed by calling the Support Center via (877) 771-0911 (subject to updates and changes by ESI).

Client may request performance of additional services by ESI. Such services shall be invoiced separately by ESI at ESI's then current rate for such services and Travel Expenses, if applicable.

Limitations on Support Services. ESI will provide Support Services for only the current version of any Software. Client is obligated to promptly implement all Software Updates, work arounds and error corrections provided by ESI.

Problems or Issues Not Covered by Support Services. The following issues/problems, and all issues or problems caused by the following, are not covered by Support Services:

1. Alterations to the Software not authorized by ESI;
2. Unless otherwise agreed in an Exhibit or Statement of Work hereto, customizations to the Software from consulting or professional services provided by ESI, including applications design or recommendations by Client;
3. Software problems created by Client negligence or fault or failure to comply with any specifications, policies, procedures or requirements for use of the Software, including, without limitation, those set forth in ESI's [Terms & Conditions](#);
4. Software problems caused by or related to a change in Client's service provider or internet access provider. Without limiting the generality of the foregoing, no reconfiguration of the Software due to a change in a service provider is covered under Support Services. Client should notify ESI prior to changing its service provider to enable ESI to provide configuration specifications to the new service provider. Any programming and configuration changes will be charged to Client at the then-current ESI's daily/hourly rates for such reconfiguration services;
5. Software problems that do not significantly impair or affect the operation of the Software;
6. Assistance with third party products; Training; Installation of plug-ins, boards or modules; API support; Board building; and
7. Client's failure to allow for the prompt implementation of Error corrections, Software updates, or any work-around provided or made available by ESI (including, without limitation and applicable at all times, implementation of more recently released, generally available versions or releases of the Software made available through Support Services that contain corrections to the relevant Error or where such Error does not occur when using such more recently released version or release of the Software).

Client Responsibilities. Client agrees to limit its requests for Support Services after Standard Business Hours to occasions when the problem related to the Software is critical to Client's operation and cannot wait to be addressed until Standard Business Hours on the next succeeding Contractor business day.

/End of Exhibit B

EXHIBIT C TO UCP SUBSCRIPTION AGREEMENT
FEEES AND PAYMENT SCHEDULE

Intentionally omitted

/End of Exhibit C

EXHIBIT D TO UCP SUBSCRIPTION AGREEMENT
HOSTED SERVICES

1. Definitions. For the purposes of this Exhibit, the following words have the meaning set forth below:
 - a. **"Hosted Services"** means the installation and management of specified software applications in the Juvare Federal Cloud shared environment on behalf of a ESI customer and exclusively for the benefit of permitted users of the Software.
 - b. **"Hosted System"** means the combination of hardware, software and networking components used by the application service provider to deliver the Hosted Services.
 - c. **"Juvare Federal Cloud"** means the shared hardware environment for the purpose of hosting and maintaining software and data on behalf of ESI's customers; may also be referred to as the application service provider or the "ASP."All other capitalized terms in this Exhibit D shall have the same meaning set forth in the Agreement, except where otherwise stated in this Exhibit.
2. Scope of Services. ESI shall provide the following services to address the Software hosting needs:
 - a. ESI shall provide Hosted Services to Client according to the provisions set forth in the Agreement and this Exhibit. ESI shall notify Client promptly upon creation of Hosted Services account and provide Client with all information required to access such account. ESI, at its sole discretion, may provide and maintain such Hosted System and/or deliver such Hosted Services internally or through a qualified subcontractor.
 - b. ESI shall provide and maintain the facilities, hardware, and networking components as it sees fit to provide access to the Juvare Federal Cloud for the benefit of Client.
 - c. ESI shall perform, at its convenience and after notice to Client, scheduled updates of the Juvare Federal Cloud as ESI or its hosting subcontractor sees fit. Such updates shall be scheduled to enable the simultaneous update to all of ESI-hosted customers.
 - d. ESI or its hosting subcontractors shall be entitled to perform, as needed, emergency security updates to the Hosted System to protect the Juvare Federal Cloud or the subcontractor's hosted environment from newly identified and widespread threats to the internet or internet-based services posed by worms, viruses and Trojans, or to address other vulnerabilities, with little or no notice to Client.
 - e. ESI shall provide and maintain a redundant shared environment of the Juvare Federal Cloud at a location that is geographically separated from its primary ASP Environment to ensure continuity of Software access and operation in the event of any unforeseen outage, disaster or other event that may interrupt service at the primary location of the Juvare Federal Cloud. Failover to the redundant shared environment of the Juvare Federal Cloud is a manual process and service will be activated by ESI immediately upon notification of malfunction, unavailability or failure of primary shared environment of the Juvare Federal Cloud.
 - f. ESI will notify (via ESI's Support Center) the Client of any planned service outages, i.e., for the purpose of performing Software updates or testing, or other inability to perform the services outlined in this Agreement.
 - g. ESI shall schedule, perform and maintain a duplicate ("backup") record of Client's data within the Juvare Federal Cloud.
 - h. In addition to the Support Services pursuant to the Agreement and Exhibit B, ESI shall provide Client with Support Services for the Hosted Services which include assistance with problems related to the Juvare Federal Cloud, data access, Hosted System access, or similar problems. Such Support Services for the Hosted Services may be accessible to Client via the same contact information provided to Client for Support Services; provided, however, services to be provided by ESI under this Exhibit and the Agreement do not include assistance with third party products; training; installation of plug-ins, boards or modules; API support; or board building; or repair or correction of errors, defects or other operational or performance defects caused by Software configuration, modification, enhancement or programming provided by any party other than ESI or an ESI-certified technician. Any professional services described in this Section 2(h), or services required to repair or correct the errors and defects described in this Section 2(h), shall be provided on a fee-for-services basis at rates consistent with the ESI published price list in effect at the time services are rendered.
 - i. Client may request performance of additional services by ESI. Such services shall be invoiced separately by ESI at the current published rate for labor and actual costs for materials and travel, if applicable.
3. Client Obligations
 - a. The Client shall maintain, at Client's expense, a secure high-speed internet connection through which to access its hosted Software.
 - b. The Client shall appoint a designated point of contact and two alternate points of contact for its interactions with ESI. Client shall provide ESI with the name, job title, physical address, telephone number, facsimile

- number and electronic mail address for each of the contact persons. Client shall keep such contact information up-to-date and promptly notify ESI, in writing via electronic mail, of any changes.
- c. The Client shall use reasonable security precautions in connection with the use of Services provided under this Agreement.
 - d. The Client is responsible for any and all use and access to the Hosted System and Hosted Services by its employees, agents, contractors and permitted users of the Software and Hosted Services.
 - e. The Client shall make best efforts to notify ESI in writing, via electronic mail or facsimile, of any planned non-emergency use of its Software, such as the occurrence of training sessions, drills and exercises, to aid ESI with the planning of any scheduled outages.
 - f. The Client shall promptly notify ESI Support Center of any identified Hosted Services outage that impairs Client's access to the Software so that ESI may manually activate the redundant shared environment of the Juvare Federal Cloud and immediately commence work to restore service to the primary shared environment of the Juvare Federal Cloud.
 - b. The Client shall not conduct any load testing, performance testing or any other test of the Hosted System which may degrade performance or limit or adversely impact availability of the Juvare Federal Cloud for other customers.
4. Limitations on Use of Hosted Services.
- a. Client's usage of the Hosted Services in the Juvare Federal Cloud is subject to capacity and performance constraints. Monthly active users do not equal maximum concurrent users. Concurrent user capacity will be variable based on Juvare Federal Cloud load.
 - b. Access to the Hosted System may not be rented, leased, sold, sub-leased, assigned or otherwise transferred for value or for no value by Client to any third party.
 - c. Hosted System and Hosted Services are provided to support the Software which is an information management tool. Hosted Services are not guaranteed to be fault-tolerant or to provide fail-safe performance. Hosted Services are not appropriate for use in ultra-hazardous environments where failure of the Hosted System or the Juvare Federal Cloud may lead to bodily injury, death or destruction of property.
 - d. Installation of Software applications in the Juvare Federal Cloud is limited to the Software included in the Subscription to Client by ESI and Software supplied by ESI either as a component of the Hosted System or to support delivery of Hosted Services.
 - e. ESI shall only be responsible for performance of components of the Hosted System and Services under its control. ESI shall not be responsible for performance deficiencies caused by processes, hardware and software beyond its control including, but not limited to, information transmission delays due to excessive internet traffic, internet outages, or failure of Client to perform its obligations under this Agreement.
 - f. The warranties set forth in the Agreement shall be void if any breach of this warranty or failure of the hosting environment or Software is caused by unauthorized use, improper use or modification to Software made by Client or its authorized users.

/End of Exhibit D

EXHIBIT E TO UCP SUBSCRIPTION AGREEMENT

STATEMENT OF WORK - No. [REDACTED]

(intentionally blank - follows immediately hereinafter)