

EBIX Insurance No. *S200005100

AGREEMENT FOR SERVICES

BETWEEN THE CITY OF SANTA CLARA, CALIFORNIA, AND HSI WORKPLACE COMPLIANCE SOLUTIONS, INC.

PREAMBLE

This Agreement is entered into between the City of Santa Clara, California, a chartered California municipal corporation (City) and HSI Workplace Compliance Solutions, Inc, a Washington corporation, (Contractor). City and Contractor may be referred to individually as a "Party" or collectively as the "Parties."

RECITALS

- A. City desires to secure the services ("Services") more fully described in this Agreement, in Exhibit A, entitled "Scope of Services";
- B. Contractor represents that it, and its subcontractors, if any, have the professional qualifications, expertise, necessary licenses and desire to provide certain goods and/or required services of the quality and type which meet objectives and requirements of City; and,
- C. The Parties have specified herein the terms and conditions under which such services will be provided and paid for.

The Parties agree as follows:

AGREEMENT TERMS AND CONDITIONS

1. AGREEMENT DOCUMENTS

The documents forming the entire Agreement between City and Contractor shall consist of these Terms and Conditions of this Agreement and the following Exhibits, which are hereby incorporated into this Agreement by this reference:

Exhibit A – Scope of Services

Exhibit B – Schedule of Fees and Payment Provisions

Exhibit C – Insurance Requirements

Exhibit D – Focus Learning Corporation End User Licensing Agreement (End User Agreement)

This Agreement, including the Exhibits set forth above, contains all the agreements,

representations and understandings of the Parties, and supersedes and replaces any previous agreements, representations and understandings, whether oral or written. In the event of any inconsistency between the provisions of any of the Exhibits and the Terms and Conditions of this Agreement, the Terms and Conditions shall govern and control. Except as expressly stated in this Agreement, the Parties agree that the End User Agreement among Contractor, City, and Focus Learning Corporation shall have no force and effect with respect to this Agreement, including, but not limited to, Contractor's obligations herein. The End User Agreement solely governs the licensing of the SAT Advantage tool.

2. TERM OF AGREEMENT

- A. Unless otherwise set forth in this Agreement or unless this paragraph is subsequently modified by a written amendment to this Agreement, the term of this Agreement shall begin on May 1, 2024 and terminate on April 30, 2029 ("Term").
- B. After the Initial Term, City reserves the right, at its sole discretion, to extend the term of this Agreement for up to two (2) additional years through April 30, 2031 ("Option Periods") in such increments as determined by City. Such extensions of term shall be authorized through an Amendment to this Agreement executed by the Parties. The Initial Term and Option Periods shall collectively be referred to as "Term".

3. SCOPE OF SERVICES & PERFORMANCE SCHEDULE

Contractor shall perform those Services specified in Exhibit A within the time stated in Exhibit A. Time is of the essence.

4. WARRANTY

Contractor expressly warrants that all Services and materials covered by this Agreement shall be fit for the purpose intended, shall be free from defect and shall conform to the specifications, requirements and instructions applicable to this Agreement. Contractor agrees to promptly replace or correct any incomplete, inaccurate or defective Services or materials at no further cost to City when defects are due to the negligence, errors or omissions of Contractor. If Contractor fails to promptly correct or replace Services or materials, City may make corrections or replace Services or materials and charge Contractor for the cost incurred by City.

5. QUALIFICATIONS OF CONTRACTOR - STANDARD OF CARE

Contractor represents and maintains that it has the expertise in the professional calling necessary to perform the Services, and its duties and obligations, expressed and implied, contained herein, and City expressly relies upon Contractor's representations regarding its skills and knowledge. Contractor shall perform such Services and duties in conformance to and consistent with the professional standards of a specialist in the same discipline in the State of California.

6. COMPENSATION AND PAYMENT

In consideration for Contractor's complete performance of Services, City shall pay Contractor for all materials provided and Services rendered by Contractor in accordance with Exhibit B, entitled "SCHEDULE OF FEES AND PAYMENT PROVISIONS." The maximum compensation of this Agreement is one million five hundred thousand dollars (\$1,500,000), subject to budget appropriations, which includes all payments that may be authorized for Services and for expenses, supplies, materials and equipment required to perform the Services including any taxes. All Services performed or supplies, material, or equipment provided in excess of the maximum compensation shall be at Contractor's expense. Contractor shall not be entitled to any payment above the maximum compensation under any circumstance.

7. TERMINATION

- A. Termination for Convenience. City shall have the right to terminate this Agreement, without cause or penalty, by giving not less than Thirty (30) days' prior written notice to Contractor. In such event, Contractor shall be paid for all Services adequately rendered prior to such termination. Any paid license fees associated with the SAT Advantage tool are nonrefundable. Further, if the effective date of the termination is within thirty days of the annual anniversary of the Effective Date, the City shall also pay for the upcoming annual license fee for the SAT Advantage tool.
- B. Termination for Default. If Contractor fails to perform any of its material obligations under this Agreement, in addition to all other remedies provided by law, City may terminate this Agreement immediately upon written notice to Contractor. In the event of termination for default, the City will only pay Contractor for those Services which City determines are satisfactorily performed in accordance with the Agreement.
- C. Upon termination, each Party shall assist the other in arranging an orderly transfer and close-out of services. As soon as possible following the notice of termination, but no later than ten (10) days after the notice of termination, Contractor will deliver to City all City information or material that Contractor has in its possession.

8. ASSIGNMENT AND SUBCONTRACTING

City and Contractor bind themselves, their successors and assigns to all covenants of this Agreement. This Agreement shall not be assigned or transferred without the prior written approval of City. Contractor shall not hire subcontractors without express written permission from City.

Contractor shall be as fully responsible to City for the acts and omissions of its subcontractors, and of persons either directly or indirectly employed by them, as Contractor is for the acts and omissions of persons directly employed by it.

9. NO THIRD PARTY BENEFICIARY

This Agreement shall not be construed to be an agreement for the benefit of any third party or parties and no third party or parties shall have any claim or right of action under this Agreement for any cause whatsoever.

10. INDEPENDENT CONTRACTOR

Contractor and all person(s) employed by or contracted with Contractor to furnish labor and/or materials under this Agreement are independent contractors and do not act as agent(s) or employee(s) of City. Contractor has full rights to manage its employees in their performance of Services under this Agreement.

11. CONFIDENTIALITY OF MATERIAL

All ideas, memoranda, specifications, plans, manufacturing procedures, data, drawings, descriptions, documents, discussions or other information developed or received by or for Contractor and all other written information submitted to Contractor in connection with the performance of this Agreement shall be held confidential by Contractor and shall not, without the prior written consent of City, be used for any purposes other than the performance of the Services nor be disclosed to an entity not connected with performance of the Services. Nothing furnished to Contractor which is otherwise known to Contractor or becomes generally known to the related industry shall be deemed confidential.

12. OWNERSHIP OF MATERIAL

- A. Except as specifically set forth in this Agreement, nothing contained in this Agreement shall by express grant, implication, estoppel, or otherwise, create in City any right, title, interest, or license in or to the inventions, patents, trade secrets, technical data, logos, graphics, icons and images, videos, other content, computer software, or software documentation of Contractor.
- B. Except as set forth above, all material, which shall include, but not be limited to, data, sketches, tracings, drawings, plans, diagrams, quantities, estimates, specifications, proposals, tests, maps, calculations, photographs, reports, designs, technology, programming, works of authorship and other material developed, collected, prepared or caused to be prepared under this Agreement shall be the property of City but Contractor may retain and use copies thereof. City shall not be limited in any way or at any time in its use of said material. However, Contractor shall not be responsible for damages resulting from the use of said material for non-Service related work, including, but not limited to, the release of this material to third parties.

13. RIGHT OF CITY TO INSPECT RECORDS OF CONTRACTOR

City, through its authorized employees, representatives or agents shall have the right during the Term and for four (4) years from the date of final payment for Services or

goods provided under this Agreement, to audit the books and records of Contractor for the purpose of verifying any and all charges made by Contractor in connection with Contractor compensation under this Agreement, including termination of Contractor. Contractor agrees to maintain sufficient books and records in accordance with generally accepted accounting principles to establish the correctness of all charges submitted to City. Any expenses not so recorded shall be disallowed by City. Contractor shall bear the cost of the audit if the audit determines that there has been a substantial billing deviation in excess of five (5) percent adverse to the City.

Contractor shall submit to City any and all reports concerning its performance under this Agreement that may be requested by City in writing. Contractor agrees to assist City in meeting City's reporting requirements to the State and other agencies with respect to Contractor's Services hereunder.

14. HOLD HARMLESS/INDEMNIFICATION

- A. To the extent permitted by law, Contractor agrees to protect, defend, hold harmless and indemnify City, its City Council, commissions, officers, employees, volunteers and agents from and against any claim, injury, liability, loss, cost, and/or expense or damage, including all costs and attorney's fees in providing a defense to any such claim or other action, and whether sounding in law, contract, tort, or equity, in any manner arising from, or alleged to arise in whole or in part from, or in any way connected with the Services performed by Contractor pursuant to this Agreement – including claims of any kind by Contractor's employees or persons contracting with Contractor to perform any portion of the Services – and shall expressly include passive or active negligence by City connected with the Services. However, the obligation to indemnify shall not apply if such liability is ultimately adjudicated to have arisen through the sole active negligence or sole willful misconduct of City; the obligation to defend is not similarly limited.
- B. Contractor's obligation to protect, defend, indemnify, and hold harmless in full City and City's employees, shall specifically extend to any and all employment-related claims of any type brought by employees, contractors, subcontractors or other agents of Contractor, against City (either alone, or jointly with Contractor), regardless of venue/jurisdiction in which the claim is brought and the manner of relief sought.
- C. To the extent Contractor is obligated to provide health insurance coverage to its employees pursuant to the Affordable Care Act ("Act") and/or any other similar federal or state law, Contractor warrants that it is meeting its obligations under the Act and will fully indemnify and hold harmless City for any penalties, fines, adverse rulings, or tax payments associated with Contractor's responsibilities under the Act.

15. INSURANCE REQUIREMENTS

During the Term, and for any time period set forth in Exhibit C, Contractor shall provide and maintain in full force and effect, at no cost to City, insurance policies as set forth in Exhibit C.

16. WAIVER

Contractor agrees that waiver by City of any one or more of the conditions of performance under this Agreement shall not be construed as waiver(s) of any other condition of performance under this Agreement. Neither City's review, acceptance nor payments for any of the Services required under this Agreement shall be constructed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.

17. NOTICES

All notices to the Parties shall, unless otherwise requested in writing, be sent to City addressed as follows:

City of Santa Clara
Attention: Silicon Valley Power
1500 Warburton Avenue Santa Clara, CA 95050
and by e-mail at svpcontracts@santaclaraca.gov and manager@santaclaraca.gov

And to Contractor addressed as follows:

HSI Workplace Compliance Solutions, Inc.
6136 Frisco Square Blvd. Ste 285
Frisco, TX 75034
and by e-mail at kcross@hsi.com

The workday the e-mail was sent shall control the date notice was deemed given. An e-mail transmitted after 1:00 p.m. on a Friday shall be deemed to have been transmitted on the following business day.

18. COMPLIANCE WITH LAWS

Contractor shall comply with all applicable laws and regulations of the federal, state and local government, including but not limited to "The Code of the City of Santa Clara, California" ("SCCC"). In particular, Contractor's attention is called to the regulations regarding Campaign Contributions (SCCC Chapter 2.130), Lobbying (SCCC Chapter 2.155), Minimum Wage (SCCC Chapter 3.20), Business Tax Certificate (SCCC section 3.40.060), and Food and Beverage Service Worker Retention (SCCC Chapter 9.60), as such Chapters or Sections may be amended from time to time or renumbered. Additionally Contractor has read and agrees to comply with City's Ethical Standards

(<http://santaclaraca.gov/home/showdocument?id=58299>).

19. CONFLICTS OF INTEREST

Contractor certifies that to the best of its knowledge, no City officer, employee or authorized representative has any financial interest in the business of Contractor and that no person associated with Contractor has any interest, direct or indirect, which could conflict with the faithful performance of this Agreement. Contractor is familiar with the provisions of California Government Code section 87100 and following, and certifies that it does not know of any facts which would violate these code provisions. Contractor will advise City if a conflict arises.

20. FAIR EMPLOYMENT

Contractor shall not discriminate against any employee or applicant for employment because of race, sex, color, religion, religious creed, national origin ancestry, age, gender, marital status, physical disability, mental disability, medical condition, genetic information, sexual orientation, gender expression, gender identity, military and veteran status, or ethnic background, in violation of federal, state or local law.

21. NO USE OF CITY NAME OR EMBLEM

Contractor shall not use City's name, insignia, or emblem, or distribute any information related to Services under this Agreement in any magazine, trade paper, newspaper or other medium without express written consent of City.

22. GOVERNING LAW AND VENUE

This Agreement shall be governed and construed in accordance with the statutes and laws of the State of California. The venue of any suit filed by either Party shall be vested in the state courts of the County of Santa Clara, or if appropriate, in the United States District Court, Northern District of California, San Jose, California.

23. SEVERABILITY CLAUSE

In case any one or more of the provisions in this Agreement shall, for any reason, be held invalid, illegal or unenforceable in any respect, it shall not affect the validity of the other provisions, which shall remain in full force and effect.

24. AMENDMENTS

This Agreement may only be modified by a written amendment duly authorized and executed by the Parties.

25. COUNTERPARTS

This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but both of which shall constitute one and the same instrument.

[SIGNATURES ON FOLLOWING PAGE]

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives.

CITY OF SANTA CLARA, CALIFORNIA
a chartered California municipal corporation

Approved as to Form:

Dated: _____

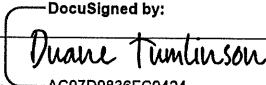
GLEN R. GOOGINS
City Attorney

JOVAN D. GROGAN
City Manager
1500 Warburton Avenue
Santa Clara, CA 95050
Telephone: (408) 615-2210
Fax: (408) 241-6771

"CITY"

HSI WORKPLACE COMPLIANCE SOLUTIONS, INC.
a Washington corporation

Dated: 4/17/2024

By (Signature):  DocuSigned by:
Name: Duane Tumlinson AC07D0836FC0424...

Title: VP - Sales operations

Principal Place of Business Address: _____

Email Address: dtumlinson@hsi.com

Telephone: () _____

Fax: () _____

"CONTRACTOR"

EXHIBIT A SCOPE OF SERVICES

1. The City of Santa Clara Electric Department, Silicon Valley Power (SVP) is registered as a Distribution Provider (DP), Generation Owner (GO), Generation Operator (GOP), Transmission Owner (TO) and Transmission Operator (TOP). SVP's North American Electric Reliability Corporation (NERC) ID number is NCR05392.
 - 1.1. Under this Agreement, Contractor shall provide Managed Training Services (MTS) training programs.
 - 1.2. To the extent not inconsistent with the Agreement and this Exhibit, the City's Request for Proposal RFP 22-23-09 (including subsequent updates) and Contractor's proposal response dated September 12, 2022 are hereby incorporated by reference herein, and shall supplement the Scope of Services and be subject to the terms and conditions of the Agreement. In the event of a conflict between the terms of the Proposal and this Agreement and its Exhibits, the Agreement and Exhibits shall control.
2. Contractor is a qualified training firm that has the capacity and expertise to develop and deliver a Managed Training Services (MTS) programs, with subject matter expertise in System Operations, Transmission, Distribution, Substations and Generation focused on compliance with NERC and WECC Reliability, and OSHA 1910.269 Standards.
3. Contractor shall provide MTS services that meet and remain in compliance with North American Electric Reliability Corporation (NERC) and Western Electricity Coordinating Council (WECC) Reliability Standards, and to provide on-going Electric Utility Operational training for Divisions within the SVP Utility Operations group.
4. The MTS shall ensure that operating personnel in the SVP System Operation Division, Substation, Generation, Transmission & Distribution, and Metering Divisions maintain and develop their skill sets for employee qualification related to the reliability of the SVP Bulk Electric System (BES).
5. Additionally, the Contractor must have the capacity and expertise to ensure that the System Operator training follows NERC and WECC regulations. The overall objective being to further the professional development of SVP staff members.
6. The Required Services are described below:
 - 6.1. Training Program Methods:**
 - 6.1.1. Contractor shall provide online training for personnel within the SVP Utility Operations Group.
 - 6.1.2. Contractor shall have a cafeteria of training methods that offer workforce professional development training via internet-based synchronous, asynchronous, and traditional classroom style format. Contractor shall also provide simulation training, if offered. The training content must be capable of encompassing SVP's workforce policies and procedures and where appropriate, incorporate best practices use in both the public and private sectors.

- 6.1.2.1. Synchronous - geographically dispersed registrations accessing a unique link to specific training events. Instructor will lead training through either Zoom, Microsoft Teams, conference call phone access or computer audio. Presentations will include access to PowerPoint and other instructional material during live training with download capability as well as the option to have sessions recorded for later review through system archives. Registrants must have access via audio or real time chat box functions to interact with the instructor and fellow students.
- 6.1.2.2. Asynchronous - on-demand training registrants can access at any time via a unique link. The proposal should describe training format as facilitated or self-paced and include information outlining how assignments and potential group and instructor interaction will be facilitated.
- 6.1.2.3. Classroom – offered in various hours traditional training format, in various locations around the City of Santa Clara Campus.
- 6.1.2.4. E-learning – the use of electronic means to disperse training using electronic technologies such as computer and Internet-based courseware, local and wide area networks.
- 6.1.2.5. Blended learning - combining face-to-face classroom methods with e-learning activities to form an integrated instructional approach.
- 6.1.2.6. Simulator- a true to life learning environment that mirrors real-life work and scenarios.
- 6.1.3. Training delivery must accommodate a wide variance in hardware/software available within the SVP's facilities.
- 6.1.4. Training Courses: Must be designed to enhance the skills and abilities of SVP staff representing all levels of service in Substation, Generation, Transmission & Distribution, and Metering divisions.
- 6.1.5. Capacity: Contractor must have the capacity to quickly modify its course offerings to address changes to laws that may occur.
- 6.1.6. MTS shall include training notifications/invitations as described in Contractor's proposal; including training materials that offer features such as pre and post testing options, embedded videos or other multi-media, audio instructions and guided tutorials along with downloadable hard copies. Synchronous descriptions should describe archiving capabilities to create future asynchronous trainings.

6.2. Course Requirements:

- 6.2.1. Training courses shall be short courses (i.e. one hour, half day, full day, 2-4-day half day sessions etc.) with no more than two instructor-led courses per subject matter course.

- 6.2.2. Specific simulator training that is NERC Independent Learning Activity (ILA) approved, must also be provided to SVP transmission operators in order for them to maintain their NERC Certifications.
- 6.2.3. The courses can be standard "off-the-shelf" courses but must be customized to SVP, if needed.
- 6.2.4. Contractor shall provide training during regular business hours (M-TH 7:00A.m.-3:00P.M.).
- 6.2.5. Contractor shall provide all training materials for all courses. This includes preparing all participants materials (guides, handouts, exercises, books, job aides, etc.) and insure the following:
 - 6.2.5.1. Provide key content related to the course topics that are current, relevant and geared towards working public sector professionals. If applicable, include a Resource page where participants can obtain additional information on the topic (websites, books, professional associations, blogs, etc.)
 - 6.2.5.2. Make certain that no copyright permissions are violated.
 - 6.2.5.3. Make use of appropriate audio/visual equipment.
 - 6.2.5.4. Contractor shall provide attendees with an immediate survey for feedback and records to SVP staff of course completion.
- 6.2.6. Class Cancellations:
 - 6.2.6.1. If enrollment is low (below the minimum three (3) participants requirement) SVP will notify the Contractor of cancellation at least ten (10) days prior to the course date with no penalty.
 - 6.2.6.2. For classes that fail to happen as scheduled, with less than 3 business days' notice, Contractor shall be charged a penalty of 50% of the cost of the session. Notice given after 5:00 p.m. on any business day or on a weekend will be considered given at 8:00 a.m. on the next business day. Penalties, if any, will be deducted from amounts owed to the Contractor.

6.3. Training Approach:

- 6.3.1. On-line training courses must include at a minimum the following topics. (Simulator based training would be considered).
 - 6.3.1.1. NERC certification and continuing education.
 - 6.3.1.2. Power generating systems and operation.
 - 6.3.1.3. Electric distribution systems and operation.

- 6.3.1.4. OSHA Standards for Electric Utilities.
- 6.3.1.5. Protective relays and continuing education for relay technicians.
- 6.3.2. The MTS shall include and be focused on power system operation that include: Compliance with NERC and WECC Reliability Standards including NERC Personnel Performance Training and Qualifications (PER) Standards such as, but not limited to PER-005.
- 6.3.3. Contractor shall perform on-going training maintenance and compliance support based on a systematic approach to training that meets the needs of utility organizations and course development efforts to produce consistent results.
- 6.3.4. Contractor shall add value through monitoring of changes to requirements and industry trends, along with on-going collaboration with SVP with the goal to:
 - 6.3.4.1. Assist SVP to build expertise and improve job performance within a compliance framework for utility organizations.
 - 6.3.4.2. Integrate technical training programs and capability to perform tasks with the other elements that enable staff to perform required tasks and bridge the gap between task performance and job performance.
 - 6.3.4.3. Identify and quantify the value of training and job performance, creating an alignment between training and performance, and business unit and organizational goals.
 - 6.3.4.4. Provide a strategic focus on system operations and planning to ensure compliant, safe, reliable and economic operation of SVP assets.
 - 6.3.4.5. Create and manage a reliable and successful training program equal to or better than what would be expected from having additional training and compliance professionals on staff.
- 6.3.5. Contractor shall manage on-going compliance-focused training services based on current and future NERC and WECC compliance requirements including:
 - 6.3.5.1. Monitor and assist with evaluating changes to NERC and WECC requirements to meet compliance, reduce the risk of non-compliance, and align with industry trends.
 - 6.3.5.2. Training coordination including support and assist in document modifications and development as needed for compliance program administration, internal controls, and evidence.
- 6.3.6. Contractor shall evaluate training program for real time operations at least annually including:
 - 6.3.6.1. Review of SVP's existing Training Plan, Training Program Governance Document and Task list, Task Assessments, and Qualification cards.

- 6.3.6.2. Training system analysis.
- 6.3.6.3. Training program gap analysis.
- 6.3.6.4. Training needs analysis and program evaluation and develop training program curriculum for the following year as well as any interim training needs.
- 6.3.6.5. Recommendations for training to meet Continued Education Hours (CEH) maintenance requirements.
- 6.3.6.6. Develop and refine Initial Operator Training metrics for placement.
- 6.3.6.7. Review and formalize continuing training using information from the Daily Information List.
- 6.3.6.8. Planning cross-functional training to increase system reliability, system monitoring quality, and safety through shared communication training and workshops.
- 6.3.6.9. Evaluating current business processes and recommend updates including associated training.

6.3.7. Training Design and Development including:

- 6.3.7.1. Ongoing development, implementation, and evaluation including enhancements of training programs.
- 6.3.7.2. Technical training and simulations including how to best incorporate simulations into a training program.
- 6.3.7.3. Abnormal and emergency operations.
- 6.3.7.4. Topics including, but not limited to: power plant operations and maintenance training, Bulk Electric System (BES), and real-time studies.
- 6.3.7.5. Maintenance of NERC approved Independent Learning Activities (ILA's) for SVP Reliability Related Tasks (RRT's) in accordance with the NERC Credential Maintenance Program Administrative Manual.
- 6.3.7.6. Support of a structured approach to analyzing needs, designing a program and courses, developing course content and materials, delivering instruction, and evaluating the results so that training courses meet the real needs of the target audience and learning objectives are aligned with SVP's goals and regulatory requirements using tools such as, but not limited to:
 - 6.3.7.6.1. Job task analysis
 - 6.3.7.6.2. Job competency modeling

6.3.7.6.3. 360° feedback

- 6.3.8. Produce and demonstrate improvements in job performance for participants and a return on investment in training.

6.4. SAT Advantage

- 6.4.1. Contractor shall provide up to 20 concurrent SAT Advantage annual licenses (as defined in Exhibit D) from Focus Learning Corporation in accordance with the End User Agreement.
- 6.4.2. Contractor will provide 144 hours advisory services/Vision support per year to continuously improve the program.
- 6.4.3. Contractor will serve as Service Agent as defined in the End User Agreement.
7. Standard of Conduct: Contractor and its employees will abide by the Federal Energy Regulatory Commission (FERC) Standards of Conduct throughout and beyond this project.
8. Experience and Qualifications: Contractor shall ensure staff assigned to this project will have experience and certifications in the power industry including experience especially related to:
- 8.1. Service and training as Certified System Operators
- 8.2. Professional Engineers (PEs) licenses including electrical and mechanical.
- 8.3. Expertise with distribution dispatch, transmission, and generation as well as the NERC functional model
9. Key Personnel
- 9.1. Contractor's key personnel listed below shall not be removed or reassigned without prior written approval of City, which will not be unreasonably withheld. Contractor shall fill a vacated position within ninety (90) calendar days. City shall have the right to direct the removal of any of Contractor's personnel for reasonable cause and by written notice. The Contractor shall be solely responsible for any additional costs caused by the replacement of personnel. In no event shall any substitution of personnel result in an increase in compensation from City.
- 9.2. City reserves the right to request specific staff for instructor-led trainings and Contractor agrees to reasonably accommodate such requests.

Name	Position	Title
Guillermo Sabatier	Training Advisor	Training Advisor
Chad Johnson	Training Advisor and Instructor	Manager, Training Advisory Services
Andy Burch	Training Advisor and Instructor	Manager, Training Services
Roger Kirkpatrick	Training Advisor and Instructor	Training Specialist
Carla Fitzpatrick	Training Advisor	Training Specialist

Name	Position	Title
Rueben Moore	Training Advisor	Lead Training Specialist
Terry Bilke	Training Advisor	Compliance Specialist
James Stanton	NERC Compliance Advisor	Director, Compliance Advisory Services
Linda Perez	NERC Compliance Advisor	Manager, Compliance Advisory Services
Trellis Manning	NERC Compliance Advisor	Manager, Training Development
Stacey Robinson	Instructional Designer	Sr. Instructional Designer
Joshua Grant	Instructional Designer	Training Specialist

EXHIBIT B - SCHEDULE OF FEES AND PAYMENT PROVISIONS

SECTION 1. MAXIMUM COMPENSATION

The maximum compensation payable to Contractor under this Agreement shall not exceed the amount in Section 6 (Compensation and Payment) of this Agreement.

SECTION 2. RATES

- 2.1 Rates. Contractor shall quote and invoice all services at the rates listed in Appendix B1 (Rate Sheet) attached and incorporated by reference._
- 2.2 Rates listed in Appendix B1 are fully burdened and, except as specified in Exhibit B1, will remain fixed for the Term.
- 2.3 Rate Increase. Contractor shall notify the City ninety (90) days in advance of any proposed rate increase. Rates may be negotiated no more than once annually. After year two, any rate increases are subject to approval by the City and must be substantiated by the Contractor to the satisfaction of the City. All rate adjustments must be approved by the City through an amendment to this Agreement. References to alternate rates in quotes that have not been separately authorized pursuant to this section are not approved.

SECTION 3. PAYMENT PROVISIONS

- 3.1 Contractor shall provide an invoice to the City on a monthly basis for services completed in the immediately preceding month. The invoice must include the following information:
 - 3.1.1 Invoice Number, Purchase Order Number (if applicable), and Invoice Period.
 - 3.1.2 Current amount due with either:
 - 3.1.2.1 A time and materials breakdown: titles, hours, and hourly rates or
 - 3.1.2.2 List of students enrolled in online training based on when students are registered; or
 - 3.1.2.3 Reimbursable expenses including travel expenses or software costs including receipts, invoices, or other supporting documentation demonstrating that such reimbursable costs were incurred
 - 3.1.3 Each invoice shall provide sufficient detail for City to verify that the rates in Appendix B1 are charged.
 - 3.1.4 Pre-Payment. City shall not be required to pay a deposit or any other form of pre-payment prior to Contractor beginning work.

- 3.2 Payment Limited to Satisfactory Work. Contractor is not entitled to any payments until the City concludes that the services and/or any furnished deliverables have been satisfactorily performed.
- 3.3 Recalculation. The City may recalculate and pay invoices based on the rates established in this Agreement.
- 3.4 Disputed Invoices. If the City in good faith disputes any portion of an invoice, the City shall pay the undisputed portion of the invoice and submit written notice to Contractor regarding the disputed amount. The notice shall include documentation supporting the disputed amount.
- 3.5 Payment. If there are no discrepancies or deficiencies in the submitted, City shall process the invoice for payment. City will make payments to Contractor within thirty (30) days after the date of approval of each invoice

APPENDIX B1 TO EXHIBIT B

RATE SHEET

1. Service Rates:

Service	Hourly Rates (excludes travel)
Advisory Service	\$175
Instructor-Led Training	\$ 3,500 (daily)
*Custom Training Development	\$125

*Custom Training Development shall be billed at the fully burdened rate above, not to exceed the quoted amount on each work authorization.

2. Unless approved in writing (e-mail acceptable) in advance, meals, lodging, and related per diem shall not exceed the rates outlined by United States General Services Administration (GSA). <https://www.gsa.gov/travel-resources>. Airfare or rental car, where applicable shall be at economy rates.

3. Additional Cost – SAT Advantage (Prepaid)

Services and Training	Cost/Year	Total Cost (5 years)
SAT Advantage - Up to 20 concurrent users Invoiced annually, in advance, not refundable	\$40,000	\$200,000

4. Ad Hoc HSI Online Training Programs (all online programs include HSI LMS)

HSI LMS - Contractor will integrate all training (both internal SVP and HSI training) for tracking purposes – No charge when purchasing training and advisory services Contractor agrees to provide to City access to all other related online training classes available in its course catalog.

Online Training Programs	Cost Per User
70 NERC CEH Bundle	\$1,800
Distribution Operations Complete Program	\$1,500
Industrial Skills complete catalog (includes: relay tech and qualified electrical worker training)	\$500
NERC Certification Exam Prep Online	\$1,800
NERC Certification Exam Prep Instructor Led Training	\$1,400
OSHA 10	\$40
OSHA 30	\$150
HSI LMS	\$0
Additional Catalog Classes – Discount off list price	30%

EXHIBIT C INSURANCE REQUIREMENTS

Without limiting the Contractor's indemnification of the City, and prior to commencing any of the Services required under this Agreement, the Contractor shall provide and maintain in full force and effect throughout the Term and for twenty-four (24) months after the end of the Term, at its sole cost and expense, the following insurance policies from insurance companies authorized to business in the State of California. These policies shall be primary insurance as to the City of Santa Clara so that any other coverage held by the City shall not contribute to any loss under Contractor's insurance. The minimum coverages, provisions and endorsements are as follows:

A. COMMERCIAL GENERAL LIABILITY INSURANCE

1. Commercial General Liability Insurance policy which provides coverage at least as broad as Insurance Services Office form CG 00 01. Policy limits are subject to review, but shall in no event be less than, the following:

\$1,000,000 Each Occurrence
\$2,000,000 General Aggregate
\$2,000,000 Products/Completed Operations Aggregate
\$1,000,000 Personal Injury
2. Exact structure and layering of the coverage shall be left to the discretion of Contractor; however, any excess or umbrella policies used to meet the required limits shall be at least as broad as the underlying coverage and shall otherwise follow form.
3. The following provisions shall apply to the Commercial Liability policy as well as any umbrella policy maintained by the Contractor to comply with the insurance requirements of this Agreement:
 - a. Coverage shall be on a "pay on behalf" basis with defense costs payable in addition to policy limits;
 - b. There shall be no cross liability exclusion which precludes coverage for claims or suits by one insured against another;
 - c. Coverage shall be written on an occurrence form; and
 - d. Coverage shall apply separately to each insured against whom a claim is made or a suit is brought, except with respect to the limits of liability.

B. BUSINESS AUTOMOBILE LIABILITY INSURANCE

Business automobile liability insurance policy which provides coverage at least as broad as ISO form CA 00 01 with policy limits a minimum limit of not less than one million dollars (\$1,000,000) each accident using, or providing coverage at least as broad as, Insurance Services Office form CA 00 01. Liability coverage shall apply to

all owned, non-owned and hired autos. Coverage shall be written on an occurrence form.

C. WORKERS' COMPENSATION

1. Workers' Compensation Insurance Policy as required by statute and employer's liability with limits of at least one million dollars (\$1,000,000) policy limit Bodily Injury by disease, one million dollars (\$1,000,000) each accident/Bodily Injury and one million dollars (\$1,000,000) each employee Bodily Injury by disease.
2. The indemnification and hold harmless obligations of Contractor included in this Agreement shall not be limited in any way by any limitation on the amount or type of damage, compensation or benefit payable by or for Contractor or any subcontractor under any Workers' Compensation Act(s), Disability Benefits Act(s) or other employee benefits act(s).
3. This policy must include a Waiver of Subrogation in favor of the City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents.

D. PROFESSIONAL LIABILITY

Professional Liability or Errors and Omissions Insurance as appropriate shall be written on a policy form coverage specifically designed to protect against negligent acts, errors or omissions of the Contractor. Covered services as designated in the policy must specifically include work performed under this agreement. Coverage shall be in an amount of not less than one million dollars (\$1,000,000) per claim or two million dollars (\$2,000,000) aggregate. Any coverage containing a deductible or self-retention must first be approved in writing by the City Attorney's Office.

E. COMPLIANCE WITH REQUIREMENTS

All of the following clauses and/or endorsements, or similar provisions, must be part of each commercial general liability policy, and each umbrella or excess policy.

1. Additional Insureds. City of Santa Clara, its City Council, commissions, officers, employees, volunteers and agents are hereby added as additional insureds in respect to liability arising out of Contractor's work for City, under a blanket endorsement using Insurance Services Office (ISO) Endorsement CG 20 10 11 85 or the combination of CG 20 10 03 97 and CG 20 37 10 01, or its equivalent.
2. Primary and non-contributing. Each insurance policy provided by Contractor shall contain language or be endorsed to contain wording making it primary insurance as respects to, and not requiring contribution from, any other insurance which the Indemnities may possess, including any self-insurance or self-insured retention they may have. Any other insurance Indemnities may possess shall be considered excess insurance only and shall not be called

upon to contribute with Contractor's insurance.

3. Cancellation.

- a. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided due to non-payment of premiums shall be effective until written notice has been given to City at least ten (10) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least ten (10) days prior to the effective date of non-renewal.
- b. Each insurance policy shall contain language or be endorsed to reflect that no cancellation or modification of the coverage provided for any cause save and except non-payment of premiums shall be effective until written notice has been given to City at least thirty (30) days prior to the effective date of such modification or cancellation. In the event of non-renewal, written notice shall be given at least thirty (30) days prior to the effective date of non-renewal.

4. Other Endorsements. Other endorsements may be required for policies other than the commercial general liability policy if specified in the description of required insurance set forth in Sections A through E of this Exhibit C, above.

F. ADDITIONAL INSURANCE RELATED PROVISIONS

Contractor and City agree as follows:

1. Contractor agrees to ensure that subcontractors, and any other party involved with the Services who is brought onto or involved in the performance of the Services by Contractor, provide the same minimum insurance coverage required of Contractor, except as with respect to limits. Contractor agrees to monitor and review all such coverage and assumes all responsibility for ensuring that such coverage is provided in conformity with the requirements of this Agreement. Contractor agrees that upon request by City, all agreements with, and insurance compliance documents provided by, such subcontractors and others engaged in the project will be submitted to City for review.
2. Contractor agrees to be responsible for ensuring that no contract used by any party involved in any way with the project reserves the right to charge City or Contractor for the cost of additional insurance coverage required by this Agreement. Any such provisions are to be deleted with reference to City. It is not the intent of City to reimburse any third party for the cost of complying with these requirements. There shall be no recourse against City for payment of premiums or other amounts with respect thereto.
3. The City reserves the right to withhold payments from the Contractor in the event of material noncompliance with the insurance requirements set forth in this Agreement.

G. EVIDENCE OF COVERAGE

Prior to commencement of any Services under this Agreement, Contractor, and each and every subcontractor (of every tier) shall, at its sole cost and expense, provide and maintain not less than the minimum insurance coverage with the endorsements and deductibles indicated in this Agreement. Such insurance coverage shall be maintained with insurers, and under forms of policies, satisfactory to City and as described in this Agreement. Contractor shall file with the City all certificates and endorsements for the required insurance policies for City's approval as to adequacy of the insurance protection.

H. EVIDENCE OF COMPLIANCE

Contractor or its insurance broker shall provide the required proof of insurance compliance, consisting of Insurance Services Office (ISO) endorsement forms or their equivalent and the ACORD form 25-S certificate of insurance (or its equivalent), evidencing all required coverage shall be delivered to City, or its representative as set forth below, at or prior to execution of this Agreement. Upon City's request, Contractor shall submit to City copies of the actual insurance policies or renewals or replacements. Unless otherwise required by the terms of this Agreement, all certificates, endorsements, coverage verifications and other items required to be delivered to City pursuant to this Agreement shall be mailed to:

EBIX Inc.

City of Santa Clara [*insert City department name here]

P.O. Box 100085 – S2

or

1 Ebix Way

Duluth, GA 30096

John's Creek, GA 30097

Telephone number: 951-766-2280

Fax number: 770-325-0409

Email address: ctsantaclara@ebix.com

I. QUALIFYING INSURERS

All of the insurance companies providing insurance for Contractor shall have, and provide written proof of, an A. M. Best rating of at least A minus 6 (A- VI) or shall be an insurance company of equal financial stability that is approved by the City or its insurance compliance representatives.



1880 Santa Barbara Street, Suite 120
San Luis Obispo, CA 93401
(805) 543-4895
Fax (805) 543-4897

EXHIBIT D
FOCUS LEARNING CORPORATION
END-USER LICENSING AGREEMENT

This End-User Licensing Agreement ("End User Agreement") is made this _____ day of _____, 2024 between Focus Learning Corporation (Focus), a California corporation, herein referred to as "Licensor", HSI Workplace Compliance Solutions, Inc, a Washington company herein referred to as "HSI" or "Service Agent" (as defined in section 1.14 below), and the City of Santa Clara, herein referred to as "Licensee" as part of the SAT Advantage program (as defined in section 1.13 below).

ARTICLE 1. DEFINITIONS

1.01. "VISION" – a short term for the software, data and database product called the "VISION Learning and Performance Support System" which is a subject of this End User Agreement. It consists of a set of Modules and a Database Schema. VISION requires an appropriate license to Oracle database software or Microsoft SQL (referred to herein as the database) in order to operate, neither of which are included in VISION.

1.02. "Module" – an interrelated component of VISION. Each module operates with one or more other related modules to perform a prescribed set of functions.

1.03. "Database Schema" – an interrelated component of VISION defining the organization of data in the database including the specification of the types of data that may enter the database including the tables, fields, relationships, views, indexes, packages, procedures, functions, queues, triggers, types, sequences, materialized views, synonyms, database links, directories, XML schemas, clusters, snapshots, and other elements.

1.04. "VISION Database" – data organized in accordance with the Database Schema by the database.

1.05. "Developer Module" – an instructional systems development (ISD/SAT) process management platform. The Developer Module is used by instructional designers, course developers, instructors and others to carry out the analysis, design and development activities that underlie a performance-based approach to training and qualification. Such activities are core to the Systematic Approach to Training (SAT) process and standards prescribed by INPO (Institute of Nuclear Power Operators), NERC (North American Electric Reliability Corporation), the Federal Aviation Administration (FAA), the Pipeline and Hazardous Materials Safety Administration (PHMSA) and others where training design integrity is critical for safe and efficient operations.

1.06. "Learning Station Module" – The Learning Station Module is a web application included as a Module of VISION. The Learning Station generates and delivers lessons, exams and qualification cards and other online learning materials, which are compiled directly from VISION, and tracks learner training status. The Developer Module is required in order to use the Learning Station Module.

1.07. "Source Code" - the set of program instructions that software engineers or programmers produce in order to dictate how the Developer Module and Learning Station Module look, interact with user commands, and process information.

1.08. "Object Code" - the program code which is installed on a server or on one or more workstations enabling users to operate the Developer Module and the Learning Station Module.

1.09. "Server" - a computer and associated software that allows multiple users to access and use VISION through a network and an internet/intranet.

1.10. "Manual" - a set of written documentation designed to explain how to operate the Developer Module and the Learning Station Module and to create customized exams, reports, and other materials. "Manual" also refers to VISION's embedded instructional advisor, which helps users perform instructional design functions and make key instructional decisions. Manuals may be in hard copy form or reside only in the Developer Module and the Learning Station Module and be printable by a user.

1.11. "Hardware" - Computers with Microsoft Windows operating system which act as a server for VISION. The hardware shall include TCP/IP and Internet Explorer for Client Browsers.

1.12. "Hosted" – refers to the approach wherein the installation, use and maintenance of the program is done through a server outside the Licensee firewall and provided by Licensor. A hosted solution is one where the Licensor provides the server, installs and services the software and provides a means for Licensee users to connect from Licensee location.

1.13. "SAT Advantage" – refers to an HSI program wherein HSI provides SAT services to electric and gas utilities who store their SAT program materials in a VISION Database.

1.14. "Service Agent" – refers to HSI, who will perform the following roles for the Licensor and the Licensee associated with the SAT Advantage program. Service Agent does not warrant or have responsibility for the VISION application. Service Agent will perform the following:

1.14.01 Annual invoicing for Licensee's use of SAT Advantage and the VISION application in accordance with the payment terms of the separate Agreement for Services Between the City of Santa Clara and HSI Workplace Compliance Solutions, Inc. ("Services Agreement"). Upon Licensee's payment of any applicable license fees set forth in the Services Agreement, Service Agent will make payment to Licensor for the Licensee's use of VISION during the course of the Services Agreement. If Service Agent fails to make payment as required in the preceding sentence, Service Agent shall be in breach of the Services Agreement.

1.14.02 Act as the customer service liaison between the Licensee and Licensor to help facilitate Licensee's use of VISION in connection with the SAT Advantage program. Licensee will inform Service Agent of issues with the ability to use VISION or VISION Learning Station and Service Agent will work with Licensee and Licensor to resolve the issues.

1.14.03 Coordinate and track any issues received from Licensee that may require the Licensor to make modification to the VISION or VISION Learning Station applications, provided that only the Licensor can consent to the making of any modifications to VISION. This may include tracking suggestions for improvements and enhancements to the applications to support the Licensee.

ARTICLE 2. LICENSE GRANT AND LIMITATIONS

2.01. Licensor hereby grants, and Licensee hereby accepts, a non-exclusive license to use the Developer Module and Learning Station Module, subject to the conditions specified herein. Licensor will provide Licensee with the Developer Module and Learning Station Module as a Hosted system. Source Code will not be provided. This license is for a period beginning the date of execution and ending when terminated pursuant to the terms in Section 5 of this End User Agreement.

2.02. The Database Schema is intellectual property of Licensor and Licensor hereby grants, and Licensee hereby accepts, a non-exclusive license to use the Database Schema solely to interoperate with the Developer Module and Learning Station Module, as necessary to enjoy the license rights granted hereunder. Connection to the VISION Database may only be established by the Developer Module and Learning Station Module, as necessary to enjoy the license rights granted hereunder. The Database Schema may not be modified by the Licensee.

2.03. Licensee shall use the Developer Module from a server hosted and maintained by Licensor with one (1) named user, provided that all users are associated with the Licensee.

2.03.01. Licensee's use will be limited to one Licensee-specific project created by Service Agent for Licensee within the VISION Database.

2.03.02. Licensee understands and agrees that personnel from Service Agent and Licensor will have access to Licensee's training material in the VISION Database to administer the SAT Advantage program and maintain the VISION software.

2.04. Licensee may also use the Learning Station module(s) subject to the following.

2.04.01. Licensee use of the VISION Learning Station Module shall be for one Licensee Site Administrator and 20 named licenses initially. If the Licensee purchases additional Site Administrator and/or named licenses from the Service Agent, this total will be communicated to the Licensor. The Licensor will ultimately bill the Service Agent for any additional licenses pursuant to Section 1.14.01. The addition of Licensee Site Administrator and named licenses will be reflected in the Services Agreement and will not require an amendment to this End User Agreement.

2.04.02 Licensee use of the VISION Learning Station Module shall be limited to Licensee's- organization.

2.05. Licensee shall not use or permit the use of the Developer Module, or Learning Station Module to create, manipulate or maintain programs for any other purpose other than as described in sections 2.03 and 2.04.

2.06. Licensee may use the Manuals, including the on-line help and "advisors", for Licensee's internal use only. All copies of the Developer Module and Learning Station Module, and the Manual(s) shall contain Licensor's proprietary notices to the extent the same are included in the Developer Module and Learning Station Module originally delivered to Licensee.

ARTICLE 3. PROPERTY RIGHTS

3.01. Licensee agrees and acknowledges that Licensor is and shall remain the sole owner of the Developer Module and Learning Station Module and shall be the owner of all copies thereof made by Licensee.

3.02. Licensee agrees not to sell, rent, license, sub-license, distribute or transfer the Developer Module and Learning Station Module or any part thereof to any other person or party. Licensee agrees not to modify the Developer Module and Learning Station Module. Licensee agrees to use all reasonable care and diligence in preventing any part of the Developer Module

and Learning Station Module, including but not limited to the Object Code, from being (a) copied into any medium for use anywhere other than the above described site, or (b) used in any way by personnel not authorized under the terms hereof. Disclosure of the fact that Licensee is using the Developer Module and Learning Station Module shall not be a violation of this provision.

3.03. Licensee agrees to keep VISION under access and use restrictions designed to prevent access by unauthorized persons.

3.04. Licensee agrees not to remove, deface or destroy any copyright, patent notice, trademark, service mark or other proprietary markings or confidential legends placed on or within the program software or documentation.

ARTICLE 4. WARRANTY, WARRANTY SERVICE AND LIMITATION OF LIABILITY

4.01. Licensor shall verify and correct errors in the Developer Module and Learning Station Module, without charge for labor, for a period of ninety (90) days after acceptance of the Developer Module and Learning Station Module by Licensee. The Developer Module and Learning Station Module shall be deemed to be accepted by Licensee upon completion of installation and on-site training as set forth above. If Licensee notifies Licensor of any program errors or if Licensor believes that program errors may exist, Licensor will correct such errors within twenty (20) days after notification. If an error cannot be corrected within said twenty (20) day period, Licensor will provide a minimum of five (5) man-hours per day to correcting such program errors until the program error is corrected. Error corrections will be in machine readable form which can correct the program error immediately. If the error is not in the Developer Module and Learning Station Module, Licensor may quote Licensee for any labor costs in correction of the error. Any further program maintenance shall be the subject of a separate maintenance agreement or purchase order issued by the City. Licensee agrees that Licensee's sole and exclusive remedy for warranty claims shall be limited to this corrective action.

4.02. Licensee agrees that Licensor's sole liability to Licensee for any errors in the Developer Module and Learning Station Module shall be limited to damage to the VISION Database produced as a result of the use of the Developer Module and Learning Station Module with the VISION Database, and Licensor's liability shall further be limited to a maximum of three (3) full working days (i.e., eight (8) hours) of data entry services at Licensor's sole cost and expense to the extent necessary to restore the VISION Database to a working condition.

4.03. Licensor, at its own expense, shall defend Licensee against any claim that the Developer Module and Learning Station Module infringe or misappropriates any patent, copyright, trade secret or other proprietary right enforceable in the United States, and shall indemnify and hold harmless Licensee from and against any loss, liability, damages, cost, and expense (including reasonable attorney fees) incurred by Licensee as a result thereof.

4.04. Licensor warrants and represents that it has good title to the Developer Module and Learning Station Module and the right to license its use to Licensee free of any proprietary rights of any other party.

4.05 Licensor warrants that the Developer Module and Learning Station Module do not and shall not contain any lock, clock, timer, counter, copy protection feature, replication device or defect ("virus" or "worm" as such terms are commonly used in the computer industry), CPU serial number reference, or other device which: (i) might lock, disable or erase the software; (ii) prevent Licensee from fully using the Developer Module and Learning Station Module in accordance with this End User Agreement; or (iii) require action or intervention by Licensor or any other person or entity to allow Licensee to use the Developer Module and Learning Station Module on the hosted system. In no event shall Licensor insert, activate or operate, nor attempt to insert, activate or operate, any such device.

4.06 THE EXPRESS WARRANTIES SET FORTH ABOVE ARE IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. Under no circumstances shall either party be liable to the other, or any other person or entity, for indirect, special, incidental or consequential damages, loss of goodwill or business profits even if they have been notified of the possibility of such damages.

ARTICLE 5. TERMINATION

5.01. Licensor may terminate this End User Agreement in the event of a material breach by Licensee of Licensee's payment or nondisclosure obligations under this End User Agreement.

5.02. Licensee may terminate this End User Agreement by giving written notice thereof to Licensor. Licensor shall allow City the ability to cancel and not renew the SAT Advantage tool service by providing written notice no less than 30 days prior to the annual billing date.

5.03. Upon termination of this End User Agreement for any reason, Licensee shall immediately return all copies of the Developer Module and Learning Station Module to Licensor and certify under penalty of perjury that all copies have been returned. Upon termination of this End User Agreement, Licensor's obligations hereunder shall terminate.

5.04 This End User Agreement shall terminate upon the termination of the Services Agreement.

ARTICLE 6. MISCELLANEOUS

6.01. Should any litigation or other proceeding be commenced between the parties to this license, the party prevailing in such litigation or proceeding shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorney's fees in such litigation or proceeding.

6.02. Any notice required or permitted by this End User Agreement to be given to either party shall be deemed to have been given if in writing and delivered personally or mailed by first-class registered or certified mail, postage prepaid and addressed to the party at the following addresses:

Licensee:

Licensor:

The City of Santa Clara, California, acting by and through Silicon Valley Power (SVP) Attn: City Manager 1500 Warburton Ave Santa Clara, CA 95050 svpcontracts@santaclaraca.gov and manager@santaclaraca.gov	Focus Learning Corporation Attn: Jay Steele P.O. Box 1771 1880 Santa Barbara San Luis Obispo, CA 93401
	And to HSI: Health and Safety Institute Attn: Mark Striefel or Scott Jensen 6136 Frisco Square Blvd Suite 285 Frisco, TX 75034

6.03 No Assignment. Subject to the following exceptions and provisions, neither party shall assign, delegate, sell, sublicense, or otherwise transfer its rights or obligations (by contract, operation of law, or otherwise) under this End User Agreement without the prior written consent of the other party.

6.04 Change in Ownership. Either party may transfer, assign and delegate all of its rights and obligations under this End User Agreement including all associated software license and maintenance rights and documentation, without the other party's consent and without payment of additional fees or charge, to:

- (i) a purchaser of all or substantially all of the assigning party's voting stock or capital assets;
- (ii) an entity with which the assigning party consolidates or merges;
- (iii) any wholly-owned subsidiary of the assigning party; or
- (iv) any new entity that acquires one or more business units or divisions or facilities of the assigning party, including all rights and obligations under this End User Agreement, if such purchaser, entity or subsidiary agrees in writing to be bound by these terms and conditions.

6.04. Lessor and Licensee agree that no failure to exercise, and no delay in exercising any right, power or privilege hereunder on the part of either party shall operate as a waiver of that right, power or privilege.

6.05. Licensee and Lessor acknowledge and agree that this End User Agreement is the complete and exclusive statement of the mutual understanding of the Licensee and Lessor relating to the subject matter of this End User Agreement and that it supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this End User Agreement. The Licensee and Lessor further agree that any modification or addition to this End User Agreement can only be made through a written agreement signed by both Lessor and Licensee. Notwithstanding anything to the contrary in the End User Agreement, this End User Agreement shall not apply to the "Services" set forth in Services Agreement.

6.06. This End User Agreement shall be deemed to have been made in, and shall be construed pursuant to the laws of the State of California. If any provision of the End User Agreement shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that the End User Agreement shall otherwise remain in full force and effect and enforceable.

6.07. In the case of Force Majeure preventing or hindering either party from performing its obligations under this End User Agreement, such Force Majeure shall not constitute a breach or default under this End User Agreement provided that: (i) the party prevented or hindered from performing (the "Affected Party") shall give written notice to the other party (the "Non-Affected Party"), as soon as practically possible, containing reasonable particulars of the Force Majeure in question and the effect of such Force Majeure as it relates to the obligations of the Affected Party; and (ii) the Affected Party works diligently to correct the reason for such delay, excuses performance by the Non-Affected Party during the period of such delay.

[SIGNATURES ON FOLLOWING PAGE]

Executed on the day and date first above written.

LICENSOR:

FOCUS LEARNING CORPORATION
a California corporation

by: _____
Jay Steele, CEO

HSI:

HSI Workplace Compliance Solutions, Inc,
by: _____
A Washington corporation

by: _____
Duane Tumlinson
Title Vice President, Sales Operations

LICENSEE:

City of Santa Clara, California
a chartered California municipal corporation

by : _____
Jovan Grogan
City Manager

Approved as to Form:

by : _____
Glen R. Googins
City Attorney