

## Client Agreement

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

### 1. Services. TSL shall provide the following services:

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

1.2. Availability. TSL shall use commercially reasonable efforts to display its content and coursework for access and use by Client's Users twenty-four (24) hours a day, seven (7) days a week, subject to scheduled downtime for routine maintenance, emergency maintenance, system outages and other outages beyond TSL's control.

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

### 2. Client's Obligations.

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

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

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

### 3. Fees and Payments.

3.1. Fees. Client will pay for the Services in accordance with the fee schedule in Schedule A attached to this Agreement. Fees listed in Schedule A shall be increased by 2.5% per year both during the term of this Agreement, as well as for any renewal terms.

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

3.3. Suspension of Service for Overdue Payments. Any fees unpaid for more than ten (10) days past the due date shall bear interest at 1.5% per month. With fifteen (15) days prior written notice, TSL shall have the right, in addition to all other rights and remedies to which TSL may be entitled, to suspend Client's Users' access to the Services until all overdue payments are paid in full.

### 4. Intellectual Property Rights.

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

4.2. Except as otherwise agreed in writing or to the extent necessary for Client to use the Services in accordance with this Agreement, Client shall not: (i) copy the course content in whole or in part; (ii) display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, transfer or in any way exploit the course content in whole or in part; (iii) embed the course content into other products; (iv) use any trademarks, service marks, domain names, logos, or other identifiers of TSL or any of its third party suppliers; or (v) reverse engineer, decompile, disassemble, or access the source code of any TSL software.

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

### 5. Term.

The term of this Agreement shall commence on the Effective Date, and will remain in full force and effect for the term indicated in Schedule A ("Term"). Upon expiration of the Initial Term, this agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"), unless notice is given by either party of its intent to terminate the Agreement, at least sixty (60) days prior to the scheduled termination date.

### 6. Mutual Warranties and Disclaimer.

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

6.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO

THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

### 7. Miscellaneous.

7.1. Limitation on Liability. Except as it relates to claims related to Section 4 or Section 7.2 of this Agreement, (a) in no event shall either party be liable to the other, whether in contract, warranty, tort (including negligence) or otherwise, for special, incidental, indirect or consequential damages (including lost profits) arising out of or in connection with this Agreement; and (b) the total liability of either party for any and all damages, including, without limitation, direct damages, shall not exceed the amount of the total fees due to, or already paid to, TSL for the preceding twelve (12) months.

7.2. Indemnification. TSL shall indemnify and hold Client harmless from any and all claims, damages, losses and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from any third party claim that the Services or any component thereof infringes or violates any intellectual property right of any person.

7.3. Assignment. Neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other, provided that such consent shall not be unreasonably withheld. Notwithstanding the foregoing, TSL may freely assign or transfer any or all of its rights without Client consent to an affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

7.4. Force Majeure. TSL shall have no liability for any failure or delay in performing any of its obligations pursuant to this Agreement due to, or arising out of, any act not within its control, including, without limitation, acts of God, strikes, lockouts, war, riots, lightning, fire, storm, flood, explosion, interruption or delay in power supply, computer virus, governmental laws or regulations.

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

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

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

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

TargetSolutions Learning, LLC  
10805 Rancho Bernardo Rd, Ste. 200  
San Diego, CA 92127

Fountain Hills Fire Department  
16426 E. Palisades Blvd.  
Fountain Hills, AZ 85268

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

1613



**SCHEDULE A**

**TargetSolutions Learning, LLC.**

10805 RANCHO BERNARDO ROAD, SUITE 200  
 SAN DIEGO, CA 92127-5703  
 877-944-6372 - TOLL FREE  
 858-592-6880 - DIRECT / 858-487-8762 - FAX

**Regional Sales Manager: Kegan Konrady**

**Email: kegan.konrady@targetsolutions.com**

**Phone: 858-376-1634**

<b>DATE of SUBMISSION</b>	
5/3/2017	
<b>LICENSE TERMS:</b>	6.30.17-6.29.20

**Business Proposal Exclusively Developed for:**  
**Fountain Hills Fire Department**  
 ATTN: Dave Ott  
 16426 E. Palisades Blvd.  
 Fountain Hills, AZ 85268  
 480-837-9820

**TargetSolutions Online Training Platform License Customized Website, Administration Tools, and Applications**

DESCRIPTION	UNIT PRICE PER USER	QUANTITY (# of Users)	TOTAL
TargetSolutions Platform: Firefighters	\$ 89.00	26	\$ 2,314.00
Annual Maintenance Fee	\$ 395.00	1	\$ 395.00
Subject to Section 3.1 of Client Agreement			
One Time Set Up	\$750	1	\$ 750.00
<b>TOTAL INITIAL INVESTMENT</b>			<b>\$ 3,459.00</b>

**NOTES:**

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

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

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

**ADDENDUM TO  
CLIENT AGREEMENT  
BETWEEN  
TARGETSOLUTIONS LEARNING, LLC  
AND  
THE TOWN OF FOUNTAIN HILLS**

This ADDENDUM (“Addendum”) dated May 17, 2017, modifies the Client Agreement dated May 3, 2017 (the “Original Agreement”), entered into between TargetSolutions Learning, LLC, a Delaware limited liability company (“TSL”) and the Town of Fountain Hills, an Arizona municipal corporation (“Client”). All of the capitalized terms not otherwise defined in this Addendum have the same meanings as contained in the Original Agreement. The following provisions modify or replace sections of the Original Agreement and add additional sections to the Original Agreement. The sections of the Original Agreement that are not expressly modified or replaced by this Addendum shall remain in effect pursuant to their terms. The Original Agreement and this Addendum are collectively referred to herein as the “Agreement.”

AGREEMENT

1. **The introductory paragraph to the Original Agreement is hereby deleted in its entirety and replaced with a new introductory paragraph to read as follows:**

This Client Agreement (the “Agreement”), effected as of the date noted in Section 5 (Term) below, is by and between TargetSolutions Learning, LLC (“TSL”), a Delaware limited liability company, and the undersigned client (“Client”), and governs the purchase and ongoing use of the services described in this Agreement (the “Services”).

2. **Section 5 of the Original Agreement is hereby deleted in its entirety and replaced with a new Section 5 to read as follows:**

5. Term.

This Agreement shall be effective as of June 30, 2017 (the “Effective Date”), and shall remain in full force and effect until June 29, 2018 (the “Initial Term”), unless terminated as otherwise provided in this Agreement. After the expiration of the Initial Term, this Agreement may be renewed for up to two successive one-year terms (each, a “Renewal Term”) if (i) it is deemed in the best interests of the Town, subject to availability and appropriation of funds for renewal in each subsequent year, (ii) at least 30 days prior to the end of the then-current term of this Agreement, TSL requests, in writing, to extend this Agreement for an additional one-year term and (iii) the Town approves the additional one-year term in writing (including any price adjustments approved as part of this Agreement), as evidenced by the Town Manager’s signature thereon, which approval may be withheld by the Client for any reason. TSL’s failure to seek a renewal of this Agreement shall cause this Agreement to terminate at the end of the then-current term of this Agreement; provided, however, that the Client may, at its discretion and with the agreement of TSL, elect to waive this requirement and renew this Agreement. The Initial Term and any Renewal Term(s) are collectively referred to herein as the “Term.” Upon

renewal, the terms and conditions of this Agreement shall remain in full force and effect.

3. **Subsection 7.7 of the Original Agreement is hereby deleted in its entirety and replaced with a new Subsection 7.7 to read as follows:**

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

4. **A new Subsection 7.8, Conflict of Interest, is hereby added to the Original Agreement to read as follows:**

7.8 Conflict of Interest. This Agreement is subject to the provisions of ARIZ. REV. STAT. § 38-511. Client may cancel this Agreement without penalty or further obligations by the Client or any of its departments or agencies if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of the Client or any of its departments or agencies is, at any time while this Agreement or any extension of this Agreement is in effect, an employee or agent of any other party to this Agreement in any capacity or a consultant to any other party of this Agreement with respect to the subject matter of this Agreement.

5. **A new Subsection 7.9, E-Verify Requirements, is hereby added to the Original Agreement to read as follows:**

7.9 E-Verify Requirements. To the extent applicable under ARIZ. REV. STAT. § 41-4401, TSL and its subcontractors warrant compliance with all federal immigration laws and regulations that relate to their employees and their compliance with the E-verify requirements under ARIZ. REV. STAT. § 23-214(A). TSL's or its subcontractor's breach of the above-mentioned warranty shall be deemed a material breach of this Agreement and may result in the termination of this Agreement by the Client. The Client retains the legal right to randomly inspect the papers and records of TSL and its subcontractors who work on this Agreement to ensure that TSL and its subcontractors are complying with the above-mentioned warranty.

6. **A new Subsection 7.10, Israel, is hereby added to the Original Agreement to read as follows:**

7.10 Israel. TSL certifies that it is not currently engaged in, and agrees for the duration of this Agreement that it will not engage in a "boycott," as that term is defined in Ariz. Rev. Stat. § 35-393, of Israel.

7. **A new Subsection 7.11, Agreement Subject to Appropriation, is hereby added to the Original Agreement to read as follows:**

7.11 Agreement Subject to Appropriation. The Client is obligated only to pay its obligations set forth in this Agreement as may lawfully be made from funds appropriated

and budgeted for that purpose during the Client's then current fiscal year. The Client's obligations under this Agreement are current expenses subject to the "budget law" and the unfettered legislative discretion of the Client concerning budgeted purposes and appropriation of funds. Should the Client elect not to appropriate and budget funds to pay its Agreement obligations, this Agreement shall be deemed terminated at the end of the then-current fiscal year term for which such funds were appropriated and budgeted for such purpose and the Client shall be relieved of any subsequent obligation under this Agreement. The parties agree that the Client has no obligation or duty of good faith to budget or appropriate the payment of the Client's obligations set forth in this Agreement in any budget in any fiscal year other than the fiscal year in which this Agreement is executed and delivered. The Client shall be the sole judge and authority in determining the availability of funds for its obligations under this Agreement. The Client shall keep TSL informed as to the availability of funds for this Agreement and shall notify TSL in the event funds are not appropriated and budgeted in any fiscal year for payments due under this agreement. The obligation of the Client to make any payment pursuant to this Agreement is not a general obligation or indebtedness of the Client. TSL hereby waives any and all rights to bring any claim against the Client from or relating in any way to the Client's termination of this Agreement pursuant to this section.

**8. A new Subsection 7.12, Conflicting Terms, is hereby added to the Original Agreement to read as follows:**

7.12 Conflicting Terms. In the event of any inconsistency, conflict or ambiguity between this Addendum and the Original Agreement, the Addendum shall govern.

**9. A new Subsection 7.13, Counterparts, is hereby added to the Original Agreement to read as follows:**

7.13 Counterparts. This Agreement may be executed in any number of counterparts, all such counterparts shall be deemed to constitute one and the same instrument, and each of said counterparts shall be deemed original hereof.

[SIGNATURES ON FOLLOWING PAGES]



## ACKNOWLEDGMENT

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

State of California  
County of SAN DIEGO )

On MAY 24, 2017 before me, Rachel Sinclair - Notary  
(insert name and title of the officer)

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

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

WITNESS my hand and official seal.



Signature Rachel Sinclair (Seal)

“Client”

TOWN OF FOUNTAIN HILLS,  
an Arizona municipal corporation

CR 6/13/17

Grady E. Miller  
Grady E. Miller, Town Manager

ATTEST:

Bevelyn J. Bender  
Bevelyn J. Bender, Town Clerk

(ACKNOWLEDGMENT)

STATE OF ARIZONA        )  
  ) ss.  
COUNTY OF MARICOPA    )

On June 14, 2017, before me personally appeared Grady E. Miller, the Town Manager of the TOWN OF FOUNTAIN HILLS, an Arizona municipal corporation, whose identity was proven to me on the basis of satisfactory evidence to be the person who he claims to be, and acknowledged that he signed the above document, on behalf of the Town of Fountain Hills.

Patricia Jo Toal  
Notary Public

(Affix notary seal here)

