

ELEMENT K CANADA MASTER AGREEMENT

SPECIFIC TERMS SUBSCRIPTION

CUSTOMER: Legal Aid Ontario ("Customer" or "LOA")
Division(s) or Location(s): 375 University Avenue Suite 404
Toronto, ON M5G 2G1
Canada

Effective Date: November 18, 2010

The terms, conditions and length of agreement with respect to each Content Service and/or Professional Service covered hereby are provided below and in the applicable Exhibits attached hereto. For the purpose of clarity, Exhibit A (General Terms and Conditions) shall apply to every agreement; regardless of the service being provided, Exhibit B (Content Service Terms and Conditions) shall apply to each agreement where a Content Service is being provided and Exhibit C (Professional Services Terms and Conditions) shall apply to each agreement where a Professional Service is being provided.

CONTENT SERVICES

Licensed Content to be delivered by means indicated below:

X KnowledgeHub: KnowledgeHub e-Learning Edition is a web delivered, Software as a Service accessed through standard web-browsing programs. You will receive password protected access to the specific libraries and/or features noted under the "# of User IDs, Libraries and Other Services" section below. You will also receive password-protected access to the Element K Administration web site with functionality to administer training to Authorized End Users.

User IDs, Courses/Collections and Other Services:

Name	Qty.
Element K Business Complete Library, Silver Level	535
Harvard Manage Mentor 10 ver1.03	150
Displaced Worker Program – Included with the above Content Service purchase and further described in Exhibit D attached hereto ("Additional Service Description").	685
Real World Subscription Program (as described below)	
Learning Delivery	
KnowledgeHub E-Learning Edition, 685 seats	

Real World Subscription Program:

Real World Subscriptions is the training industry's first fully blended learning curriculum available through on-demand subscriptions. Customer will get access to libraries of on-demand Element K-authored e-learning courses and, solely during the Term of the Agreement, a license to internally print corresponding instructor guides and student workbooks for internal use only. In accordance with the license grant and restrictions, whereby Customer shall be permitted during the Term to download a pdf of the Licensed Content and either self-print such files or order printed books of such through Element K's courseware store at a 40% discount. This offer is included in Customer's purchase of Services herein.

During the initial subscription period, Customer may purchase additional IDs, via a mutually executed addendum, for access to the Licensed Content at the same per year pricing as provided herein, and such IDs shall expire one year from purchase.

Term: The Content Service identified herein shall have a term of 3 years from the service start date. Upon completion of the initial term, the applicable Content Service may be renewed or extended as mutually agreed in writing.

Fees: CAD \$55,857.00, per year for a total commitment of CAD \$167,571.00 plus all applicable taxes.

TOTAL FEES FOR SERVICES IDENTIFIED ABOVE

Total commitment of CAD \$187,571.00, subject to increase for additional orders by CUSTOMER as provided herein.

Purchase Order Does CUSTOMER require a Purchase Order? no yes
Requirements: (if yes, a physical copy of the Purchase Order must be attached to this Agreement.)
Credit Card Is CUSTOMER paying by credit card? no yes
Purchase: (if yes, credit card number and authorization must be provided.)

INVOICING/PAYMENT: CUSTOMER is responsible for all service fees, plus all sales, value-added or other transaction taxes, shipping and duties, payable in CAD to Element K at the address specified under "Payment Remittance" below. The transaction(s) between EK and Customer hereunder are taking place, and all payments shall be made in Canada. Payment in full is due within 60 days of invoice. Invoices will be sent by Element K upon execution hereof, on any renewal date, as may be set forth herein, and as agreed in any applicable Statement of Work.

PAYMENT REMITTANCE: Payments should be remitted to: Element K Canada, PO Box 8749, Postal Station A, Toronto, Ontario, M5W 3C2, Canada.

BY SIGNING IN THE SPACE PROVIDED BELOW, CUSTOMER HEREBY AGREES TO THE SPECIFIC TERMS SET FORTH ABOVE AS WELL AS THE TERMS AND CONDITIONS SET FORTH IN ALL EXHIBITS APPLICABLE HERETO. THIS AGREEMENT SHALL BE EFFECTIVE UPON THE EFFECTIVE DATE STATED ABOVE, PROVIDED ORIGINALS OR FACSIMILES IN COUNTERPARTS OR OTHERWISE ARE EXECUTED BY THE PARTIES.

CUSTOMER'S Authorized Representative
Authorized Signature or Initials
Signature: ROBERT W. WHARD
Name (please print): President, CEO Date: Dec 9/10
Title: _____ Date: _____

Element K Canada Inc.'s Authorized Representative
Authorized Signature or Initials
Signature: Janeta M. Tojau
Name (please print): Manager - Capital KA Date: 12-14-10
Title: _____ Date: _____

EXHIBIT A GENERAL TERMS AND CONDITIONS

1. **DEFINITION OF AGREEMENT.** The first page of this agreement (the "Specific Terms"), these General Terms and Conditions, all other Exhibits applicable hereto, any statements of work for Professional Services ("SOW") which may be entered into hereunder, any third party end user license terms and conditions that may be applicable, a certain Consent License hereunder (together, this "Agreement") constitute the entire agreement between CUSTOMER and Element K Canada Inc. ("Element K" or "EK") regarding the Consent Services and/or Professional Services identified in the Specific Terms (each, individually, a "Service" and, collectively, the "Services"). The term of Agreement and fees associated with any Service governed by this Agreement shall be as set forth in the Specific Terms. This Agreement covers all past, present, communications, agreements and understandings, oral or written, between CUSTOMER and EK regarding the subject matter of this Agreement, and may only be amended in a writing signed by both parties. No provision in addition to or in conflict with this Agreement contained in any CUSTOMER purchase order or other document shall be binding on EK.

2. **TERM.** This Agreement shall commence upon the Effective Date set forth in the Specific Terms, and continue in effect as long as any Service covered by this Agreement has an effective term. The following sections of these General Terms & Conditions shall survive termination of this Agreement for any reason: Copyright, Export, Governing Law, Nullness, Independent Contractor, No Waiver, Severability.

3. **COPYRIGHT.** Nothing in this Agreement constitutes a waiver of the rights of EK or any of its third party suppliers under the U.S. Copyright Act or any other Federal or State law or international treaty.

4. **EXPORT.** CUSTOMER shall comply with all applicable international and national laws that apply to any content or other products provided under this Agreement, including the U.S. Export Administration Regulations, as well as end-user, end-use and country destination restrictions issued by U.S. and other governments.

5. **NO ASSIGNMENT.** CUSTOMER may not assign this Agreement without the prior written consent of EK and its third party licensors, if applicable, except to a purchaser of all or substantially all of CUSTOMER's assets (including by means of a merger or similar transaction).

6. **GOVERNING LAW.** This Agreement shall be governed by the laws of the Province of Ontario, without regard to conflicts of law.

7. **NOTICES.** Notices and other communications hereunder shall be deemed given only when in writing, signed by or on behalf of the person giving the same, and either (i) personally delivered (with receipt acknowledged), (ii) sent by registered or certified mail, return receipt requested, postage prepaid, or (iii) sent by overnight next business day courier, as follows: If to EK, to 500 Canal View Boulevard, Fort Belknap, New York 14625, Attention: Legal Department; If to CUSTOMER, to the address set forth on the Specific Terms, or to either party at such other address as such party has specified by notice to the other party hereto. All such notices and communications shall be effective (i) when received or receipt refused if delivered by personal delivery or overnight courier, or (ii) upon three days following deposit in the mail if given by certified or registered mail, when delivered to the above address.

8. **INDEPENDENT CONTRACTOR.** The relationship of CUSTOMER and EK established by this Agreement is that of independent contractors, and this Agreement does not give either party the power to direct or control the day-to-day activities of the other, constitute the parties as partners, joint venturers, co-owners, principal-agent, franchisor-franchisee, or otherwise participants in a joint or common undertaking, or

allow either party to create or assume any obligation on behalf of the other party for any purpose whatsoever.

9. **NO WAIVER.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing signed by the waiving party to be effective. Failure, neglect or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

10. **SEVERABILITY.** If any term, condition or provision in this Agreement is found to be invalid, unlawful or unenforceable in any extent, the parties shall endeavor in good faith to agree to such amendments that will preserve, as far as possible, the intentions expressed in this Agreement. If the parties fail to agree on such an amendment, such invalid term, condition or provision will be severed from the remaining terms, conditions and provisions, which will continue to be valid and enforceable to the fullest extent permitted by law.

EXHIBIT B CONTENT SERVICE TERMS & CONDITIONS

1. **SCOPE.** These Content Service Terms and Conditions form a part of the Agreement to which they are appended, and, together with the Specific Terms and General Terms and Conditions, apply to CUSTOMER's use of the Content Service identified in the Specific Terms.

2. **LICENSE GRANT.** EK hereby grants CUSTOMER a non-exclusive, non-transferable, non-assignable license to use the content made available to CUSTOMER through the applicable Content Service ("Content") only in connection with the training of authorized CUSTOMER employees or students, as applicable, who have received a valid ID ("Authorized End-Users"), as specified in the Specific Terms. In the case of access to KnowledgeHub, CUSTOMER may only access the CONTENT via standard web browser. In the case of ContentHub or Content Licensing (as described in the Specific Terms), CUSTOMER may only access the Content via a secure website or server system controlled by CUSTOMER that is accessible only to CUSTOMER employees, contractors, or other persons granted access to CUSTOMER's internal networks in the furtherance of CUSTOMER's normal course of business, and which tracks all access to the Content, including, without limitation, each time an Authorized End-User launches a course. CUSTOMER shall use reasonable efforts consistent with industry standards to block access to the Content except to Authorized End-Users. Any information, data or files relating to Content that may reside in a World Wide Web browser cache as the result of an Authorized End-User gaining access to the Content may not be used for any purpose other than for training of such person.

3. **LICENSE RESTRICTIONS.** CUSTOMER shall not: (a) use the Content Service for a service bureau, facilities management, time-sharing arrangement or other similar arrangement, or rent, lease, assign, resell, distribute or sublicense the Content Service or any software used in connection with the Content Service ("Software") to any third party; (b) modify, disassemble, translate, abridge, or otherwise create derivative work based on, decompile, reverse engineer or otherwise determine or attempt to determine or have or attempt to obtain access to, the source code or internal design of the Content Service, Software, or Content or any other text, multimedia images (graphics, audio and video), data and other information provided by EK in connection with the Content Service (collectively, the "Licensed Materials"); (c) remove, alter or otherwise modify any copyright or other legal notices contained in the Licensed Materials; (d) knowingly transmit or distribute the Licensed Materials, nor permit the Licensed Materials to be downloaded for use other than as specified herein; (e) allow unsecured access to the Licensed Materials; (f) grant or permit access to the Content Service by anyone other than an Authorized End-User; or (g) permit the sharing of Authorized End-User IDs by multiple end-users except in the case of termination of employment (for corporate and similar business customers) or student status other than as a result of graduation (for education customers); in which case, upon prior written notice to Element K, a Authorized End-User ID and any Content Services associated with that ID may be reassigned to another Authorized End-User.

4. **CHANGES TO ONLINE LIBRARIES.** Notwithstanding anything to the contrary in this Agreement, EK reserves the right in its sole and absolute discretion to change the courses available in any online Element Library without notice to CUSTOMER, provided that if any such changes materially and adversely affect CUSTOMER's Content Services hereunder, CUSTOMER shall be entitled to terminate this Agreement with respect to such Content Service, and receive a refund of all amounts paid by CUSTOMER attributable to such Content Service for the period of time after termination.

5. **ONLINE SERVICE PERFORMANCE GUARANTEE.** CUSTOMER shall have the right to terminate the KnowledgeHub service or the ContentHub service (but not the Content Licensing service) if in good faith the performance of such Content Service is not reasonably satisfactory to CUSTOMER. For purposes of this Section, "performance" refers to issues under EK's control such as service uptime, customer support, technical support and integration support and does not include issues under the CUSTOMER's control. In order to terminate under this Section, CUSTOMER must provide EK with a detailed written explanation for its dissatisfaction with the performance of the applicable Content Service. EK will then have 30 days to remedy CUSTOMER's dissatisfaction. If EK is unable to remedy such dissatisfaction, this Agreement may be terminated with respect to such Content Service at CUSTOMER's option and EK will refund to CUSTOMER all amounts paid by CUSTOMER attributable to the affected Content Service for the period of time after termination.

6. **RECORDS & AUDIT RIGHTS.** CUSTOMER shall keep accurate and complete records of all access to the Content as required in this Agreement. Upon request, CUSTOMER shall provide EK with a report detailing all access to the Content, in a format and containing such information as EK may reasonably request. Until the date that is twelve months from the termination date of this Agreement, EK shall have the right to audit those portions of CUSTOMER's books and records that relate to CUSTOMER's compliance herewith, no more than once per calendar year, upon reasonable prior notice and during normal business hours. Notwithstanding the foregoing, EK may exercise its audit rights at any time if EK reasonably believes that CUSTOMER has made an error in compliance herewith and CUSTOMER has not responded within ten (10) business days of initial notice to rectify such error. Any underpayment shall promptly be remitted to EK upon notice. The cost of any such audit shall initially be borne by EK, however, if such audit reveals underpayment of five percent (5%) or more of the amount that should have been paid for the period audited, then CUSTOMER shall bear the expense of the audit, and shall promptly remit such expenses in addition to all underpayments due to EK.

7. **Term & Termination.** The term of this Agreement with respect to Content Services shall commence on the date set forth in the Specific Terms, and continue in force as provided in the Specific Terms. Either party may terminate this Agreement with respect to any Content Services upon 30 days' written notice to the other party for material breach by the other party if such breach is not cured within such 30 day period. Notwithstanding the foregoing, all Content Services then in effect will automatically terminate immediately upon either party becoming the subject of any bankruptcy, liquidation, receivership or similar proceedings, making an assignment for the benefit of its creditors, or becoming unable to pay its debts as they become due, provided such event is not cured within thirty (30) days of the date the other party first became aware of any of the conditions listed. In the event of a termination by CUSTOMER as a result of a material breach by EK, EK shall refund any amount previously paid by CUSTOMER attributable to the affected Content Service for the period following termination. In addition to the foregoing, if CUSTOMER fails to make any scheduled Content Service payment in full and fails to cure such payment default within 30 days after notice by EK, all scheduled payments for such Content Service shall automatically become immediately due and payable. No expiration or termination due to CUSTOMER's breach of this Agreement shall affect CUSTOMER's obligation to pay to EK the total Content Service fee commitment set forth in this Agreement. Upon termination, CUSTOMER shall not retain any rights in or to the Licensed Materials, shall immediately cease all use of the Content Services and related Content (including the Licensed Materials and the Software) and delete any Licensed Materials or Software in its possession or control. The following sections of these Content Service Terms & Conditions shall survive termination of this Agreement for any reason: License Restrictions, Records & Audit Rights, Reciprocity Rights, Indemnity, Confidentiality.

8. **PROPRIETARY RIGHTS.** Notwithstanding anything to the contrary contained in this Agreement, the Licensed Materials, Software, and the Content Services and the process by which EK creates the Content Services, User Knowledge, Elements and the Element Pages are trademarks of Element K. Except as expressly stated herein, EK does not grant CUSTOMER any intellectual property or other rights in the Licensed Materials, the Software or the Content Services. Any proprietary materials of CUSTOMER uploaded to EK's e-learning platform (KnowledgeHub) or created using an Element K authoring tool ("Customer Learning Object") is the property of CUSTOMER, and CUSTOMER does not grant EK any rights therein except as necessary to enable CUSTOMER'S access to and use of such Customer Learning Object. EK will use industry standard security password measures to prevent unauthorized disclosure of any Customer Learning Object to third parties.

9. **REPRESENTATIONS AND WARRANTIES.** EK represents and warrants that it possesses all rights necessary to grant the rights granted to CUSTOMER by this Agreement, and the Licensed Materials do not and will not infringe any patent, trademark, copyright, privacy rights, publicity rights or other proprietary right of any third party. CUSTOMER represents and warrants that it will use best efforts to ensure that EK's rights in the Content Services and the Licensed Materials are protected and respected; it will exercise due diligence to obtain all necessary rights in the software or other products which are the subject matter of any Content or other Licensed Materials; and that the upload and use of any CUSTOMER-provided materials will not violate the copyright or other legal rights of any person or entity.

10. **DISCLAIMER OF WARRANTIES; LIMITATION OF LIABILITY AND REMEDY.**

a. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE CONTENT SERVICES, THE SOFTWARE AND THE LICENSED MATERIALS ARE PROVIDED TO CUSTOMER "AS IS" WITHOUT WARRANTY OF ANY KIND. EK AND ITS THIRD PARTY CONTENT SUPPLIERS EXPRESSLY DISCLAIM ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, PERFORMANCE, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. EK DOES NOT WARRANT THAT THE CONTENT IS OR WILL BE ACCURATE OR ERROR-FREE OR MEETS OR WILL MEET CUSTOMER'S OR ANY USER'S REQUIREMENTS.

b. IN NO EVENT WILL EK OR ANY OF ITS THIRD PARTY CONTENT SUPPLIERS BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER ECONOMIC LOSS), ARISING OUT OF THE USE OR INABILITY TO USE THE CONTENT SERVICES, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. IN NO EVENT SHALL THE LIABILITY OF EK OR ANY OF ITS THIRD PARTY SUPPLIERS EXCEED THE AMOUNT OF THE CONTENT SERVICE FEES PAID HEREUNDER.

c. If all or any part of the Content becomes, or in EK's opinion is likely to become, the subject of a claim of intellectual property infringement, EK shall have the right, at its option, either (a) to procure for CUSTOMER the right to continue using the Content, or (b) replace or modify the Content so that it becomes non-infringing or (c) if, after good faith efforts to achieve (a) and (b) above, such remedies are not reasonably available, terminate CUSTOMER's license with respect to infringing materials, and promptly give CUSTOMER a pro rata refund of the funds paid for the affected portion of the Content.

11. **INDEMNITY.** Each party shall indemnify, defend and hold the other, its affiliates and each of their officers, directors, employees, and agents harmless from, or at its option settle and/or pay, any and all actions, claims, damages, expenses (including reasonable attorneys' fees and other legal costs) and liabilities that arise from or relate to any third party claim arising out of any breach of a representation or warranty herein. Indemnification obligations hereunder shall be subject to the party seeking

indemnification: (a) promptly notifying the indemnifying party of a claim or threatened claim covered by such indemnification, (b) tendering sole control of the defense and settlement of such claim to the indemnifying party (provided that the indemnifying party shall not enter into any settlement agreement that adversely affects the indemnified party without the indemnified party's prior written consent) and (c) cooperating fully with such defense and/or settlement at the indemnifying party's expense.

12.

12.1 LAO may, in its sole discretion, publicly disclose the provisions of this Agreement.

12.2 Any publicity or publications relating to this Agreement or the Services shall be arranged by LAO. LAO may, at its sole discretion, acknowledge the Services of the Consultant in any such publicity or publication. The Consultant shall not make use of its association with LAO without the prior written consent of LAO.

EXHIBIT D PROFESSIONAL SERVICES TERMS & CONDITIONS

1. SCOPE. These Professional Services Terms & Conditions form a part of the Agreement to which they are appended, and, together with the Specific Terms, General Terms and Conditions, and any executed statement of work which may be mutually agreed by the parties ("SOW"), apply to EK's performance of the Professional Services and/or provision of any deliverables set forth in the Specific Terms or any SOW ("Deliverables"). Each SOW will reference this Agreement and be incorporated herein by reference. If any terms of any SOW conflict with the terms of the Agreement of which these Professional Services Terms & Conditions form a part, the Agreement will control, unless the SOW specifically refers to and expressly overrides the terms of this Agreement.

2. ACCEPTANCE OF PROFESSIONAL SERVICES. Professional Services performed by EK, and any Deliverables provided hereunder, shall be accepted by CUSTOMER upon either CUSTOMER's written notice thereof, or upon the expiration of ten (10) days from completion or delivery (as applicable) without CUSTOMER providing written notice of nonconformance. CUSTOMER shall not withhold acceptance of Professional Services or Deliverables performed or provided in conformance with the applicable mutually-agreed specifications.

3. TERM & TERMINATION. The term of this Agreement with respect to Professional Services shall commence on the date set forth in the Specific Terms or as otherwise agreed by the parties in writing, and shall continue in force as provided in the Specific Terms or any mutually-agreed SOW. Either party may terminate this Agreement with respect to any Professional Services upon 30 days' written notice to the other party for material breach by the other party if such breach is not cured within such 30 day period. Upon termination of any Professional Services, Element K will invoice CUSTOMER for Professional Services performed prior to the effective date of termination, and CUSTOMER will pay such invoice in accordance herewith. Notwithstanding the foregoing, all Professional Services then in effect will automatically terminate immediately upon either party becoming the subject of any bankruptcy, liquidation, receivership or similar proceedings, making an assignment for the benefit of its creditors, or becoming unable to pay its debts as they become due, provided such event is not cured within thirty (30) days of the date the other party first became aware of any of the conditions listed in this paragraph. In the event of a termination by CUSTOMER as a result of a material breach by EK, EK shall refund any amount previously paid by CUSTOMER for the affected Professional Services attributable to the period following termination. The following sections of these Service Terms & Conditions shall survive termination of this Agreement for any reason: Proprietary Materials, Ownership & License Rights, Warranty Disclaimer & Limitation of Liability, Indemnity, and Confidentiality.

3. PROPRIETARY MATERIALS. The parties anticipate that, in the course of performance of the Professional Services, (a) CUSTOMER may provide Element K with access to a subject matter expert, and with certain electronic and paper documentation, source files, application software, imagery, and other materials and specifications as required or requested by Element K for performance of the Professional Services ("Customer Materials"); and (b) Element K may develop, use, or incorporate into Deliverables certain computer source code, customized graphics and animations, knowledge, information, processes, methodologies, formats, models, or other materials, tools or processes of Element K or its licensors ("Element K Materials").

4. OWNERSHIP & LICENSE RIGHTS. Effective upon payment in full, Element K assigns to CUSTOMER all right, title and interest, including all intellectual property rights, in and to any Deliverables created hereunder, exclusive of Element K Materials. Element K will retain all right, title, and interest, including all intellectual property rights, in and to Element K Materials. To the extent Element K Materials are

contained within Deliverables, or are delivered with and necessary for the operation of Deliverables, effective upon payment in full, Element K grants CUSTOMER a royalty-free, non-exclusive, nontransferable and perpetual right and license to use such Element K Materials solely as necessary to use and modify the Deliverables. CUSTOMER shall have no other right, whatsoever, with respect to the Element K Materials.

6. REPRESENTATIONS & WARRANTIES

a. Element K Representations & Warranties. Element K represents and warrants that: (i) it has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) the Deliverables, except to the extent they incorporate Customer Materials, do not and will not infringe or violate the copyright, patent, trade secret or other intellectual property or related proprietary rights of any third party; (iii) the Professional Services will be performed in a professional and workmanlike manner in accordance with industry standards; (iv) the Deliverables, upon delivery to CUSTOMER, will materially conform to and meet all applicable requirements contained in the applicable SOW.

b. CUSTOMER Representations & Warranties. CUSTOMER represents and warrants that: (i) CUSTOMER has the right, power and authority to enter into this Agreement and to perform its obligations hereunder; (ii) CUSTOMER will have obtained all the necessary licenses and authorizations to Customer Materials before providing such to Element K; and (iii) neither the Customer Materials nor Element K's use thereof to perform Professional Services do or will infringe or violate the copyright, patent, trade secret or other intellectual property or related proprietary rights of any third party.

5. WARRANTY DISCLAIMER & LIMITATION OF LIABILITY.

EXCEPT AS SET FORTH ABOVE, NEITHER PARTY MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATING TO THIS AGREEMENT, OR ITS PERFORMANCE HEREUNDER, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, OR ANY IMPLIED WARRANTY ARISING BY USAGE OF TRADE, COURSE OF DEALING OR COURSE OF PERFORMANCE. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, SPECIAL OR PUNITIVE DAMAGES WHATSOEVER (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, LOSS OF DATA OR OTHER PECUNIARY LOSS), IN CONNECTION WITH THIS AGREEMENT, WHETHER BASED UPON CONTRACT, TORT OR ANY OTHER LEGAL THEORY, INCLUDING NEGLIGENCE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION WILL APPLY NOTWITHSTANDING ANY FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN.

7. INDEMNITY. CUSTOMER and Element K will each, at its sole cost and expense, indemnify, defend and hold the other party, its affiliates and each of their officers, directors, employees, stockholders and agents harmless from any and all actions, claims, damages, expenses (including reasonable attorneys' fees and other legal costs) and liabilities that arise from or relate to any third party claim arising out of any breach of a representation or warranty of its indemnifying party. CUSTOMER will also at its sole cost and expense, indemnify, defend and hold Element K, its affiliates and each of their officers, directors, employees, stockholders and agents harmless from any and all actions, claims, damages, expenses (including reasonable attorneys' fees and other legal costs) and liabilities that arise from or relate to any third party claim arising out of CUSTOMER's use and distribution of Deliverables. The indemnifying party's obligations hereunder will be subject to the indemnified party: (a) promptly notifying the indemnifying party of a claim or threatened claim covered by such indemnification; (b) tendering sole control of the defense and settlement of such claim to the indemnifying party (provided that the indemnifying party will not enter into any settlement agreement that adversely affects the indemnified party without the indemnified party's

prior written consent) and (c) cooperating with such defense and/or settlement at the indemnifying party's expense.

CONFIDENTIALITY: Each party will retain in confidence the terms of their agreement for Professional Services and all other information and know-how of the other party disclosed to or acquired by such party ("Receiving Party") pursuant to or in connection with this Agreement, which is either designated as proprietary or confidential or which, under the circumstances, ought in good faith to be treated as proprietary or confidential ("Confidential Information"); provided that each party may disclose the terms of this Agreement to its legal and financial consultants or representatives or funding sources as reasonably necessary in the ordinary course of its business, or as required by law. Each party agrees to hold all Confidential Information in the strictest confidence using measures at least as great as those taken to protect its own confidential information of a similar nature. Confidential Information will not include any information that: (a) was known by the Receiving Party prior to disclosure thereof by the other party; (b) was in or entered the public domain through no fault of the Receiving Party; (c) is disclosed to the Receiving Party by a third party who made such disclosure; (d) is independently developed by the Receiving Party without reference to any Confidential Information of the other party; or (e) is ordered to be disclosed pursuant to a final binding order of a governmental agency or court of competent jurisdiction, provided that Receiving Party will provide prompt notice of such order to Disclosing Party and cooperate with and assist Disclosing Party in connection with obtaining a protective order at Disclosing Party's cost and expense. Upon request, or upon any termination or expiration hereof, each party will return to the other all materials, in any medium, which contain, embody, reflect or reference all or any part of any Confidential Information of the other party.

EXHIBIT D

Additional Service Description

Displaced Worker Program

Customer shall be permitted, upon written notice to EK and with such details as required by EK, to use EK's Displaced Worker Program whereby employees of Customer who are terminated or otherwise displaced shall have access to certain services as follows:

- Displaced employee shall have access to an authorized User ID to access the "Displaced Worker Program Collection of EK Content" (which such Content shall consist of a library of 300 of EK's most relevant courses)
- Quantity of IDs for displaced employees shall not exceed the quantity of paid IDs are purchased hereunder (excluding overages).

Each Displaced Worker Authorized ID had a six (6) month term and must be activated within the Content Service Term of the paid IDs purchased hereunder. Displaced Worker Authorized IDs shall be permitted to be activated on a thirty (30) day rolling-start basis.