

## Safety and Market Development – Gate 3: Executive Summary

Applicant Information		Docket Number: 22396	
Project Title: 2020 Learning Center Support			
Organization: Propane Education & Research Council			
Amount Requested: \$305,500		Total Project Cost: \$305,500	
Start Date: 2/1/2020		End Date: 12/31/2021	
PERC Team Leader: Chris Hanson			
Lead Vendor: eLogic Learning, LLC			

Executive Summary (completed by PERC staff)				
Project Summary				
This project supports the strategic goal of developing professional, informed, and skilled workforce and trade allies through world-class safety and technical training. It directly funds the learning management system platform that PERC's Learning Center uses. PERC is in the second year of a three-year contract with the learning management system vendor, eLogic. Most of this docket pays for those contract obligations. The remainder is for industry outreach for the Learning Center and possible programming support.				
Strategic Importance				
The Learning Center will become the central repository and tracking program for all PERC's online training programs (safety, sales, autogas, agricultural, CETP Certification, Propane Emergencies, etc.) This funding request will support the operations of all PERC's online educational programs.				
Budget Impact				
Category: Industry Safety and Training			Year Total: \$2,410,000	
YTD Remaining: \$2,410,000			Remaining if Funded: \$2,104,500	
Three Year Funding History for Similar Dockets				
Year	Docket	Budget \$	Actual \$	Results
2019	21835	\$157,410	\$105,242	System was launched and utilized in 2019
Success Measures				
<input type="checkbox"/> Describe the desired outcome of the project / measurement of success.				
Multiple metrics will be used to perform an analysis comparing historical usage vs. current usage. A steady increase in usage is expected as more content is added to the system throughout 2020.				

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## Safety and Market Development – Gate 3: Project Details

Project Title: 2020 Learning Center Support

Docket #: 22396

### Product Details (Completed by applicant)

#### 1. Market / Audience Rationale

- ☐ Who is the target audience?
- ☐ Why is the target audience important?
- ☐ What is the geographical reach (national, regional)?
- ☐ What input have you received on the project concept from the market/audience?
- ☐ What market research has been done in support of this project?
- ☐ What is the urgency of the project?

The target audience for this program is varied, including industry employees, secondary educational programs, industrial and commercial propane users, first responders, propane autogas users and technicians. The Learning Center was launched in late 2019 to meet a widespread need for this type of tool among those user targets.

#### 2. Development

- ☐ What content will be created?
- ☐ Who will create the content?
- ☐ How will the content be created?
- ☐ What existing content will be leveraged?
- ☐ What is the level of difficulty to create the content?
- ☐ What are the possible challenges in creating the content?

This docket does not fund the creation of any content but rather provides the delivery and tracking mechanism for all the online training content of PERC. All content development will be planned through PERC's Safety & Technical Training Working Group and executed by staff with select vendor support.

#### 3. Delivery

- ☐ How will the content be delivered to the market?
- ☐ What existing delivery channels will be used?
- ☐ What training is necessary, and who needs training to deliver this program?
- ☐ What are the possible challenges in delivering the program?
- ☐ What is needed to generate enthusiasm for the program within the propane industry and with partners?

The Learning Center hosts and delivers all types of training content available through any type of personal electronic device (desktop, laptop, iPad or smartphone). The immediate challenge is adapting existing materials that was developed with older technology to perform in this new system. The project launch already has generated a great deal of enthusiasm among prospective and actual users to date. The challenge will be to maintain the enthusiasm through outreach, operational excellence, and positive user experience.

#### 4. Customer Service and Support Needs

- ☐ What are the customer service and support requirements?
- ☐ What service and support resources are required?
- ☐ Are service and support developed through this project?

Customer service and support needs are both internal to PERC and external to users through outside helpdesk support. Internally a dedicated staff person manages the Learning Center along with additional administrative support. As the program grows and becomes more diverse, additional internal support likely will be needed. External support is funded through Docket #22395 - CETP Program Support.

#### 5. Leverage and Synergies

- ☐ What are the internal strengths leveraged to develop and deliver this program?
- ☐ How much dependence is on partners to develop and/or deliver the content?
- ☐ How could the content be used by other markets or industry organizations?
- ☐ How could the content be used with other audiences beyond the target audience?
- ☐ What results have been achieved with previous, similar projects?

This program relies heavily on the learning management system provider, eLogic. It can be utilized by a wide number of audiences beyond the propane industry. Although this is a new tool to many in the industry, learning management systems have proven very successful for similar applications in colleges and universities, large businesses and post-secondary educational programs.

#### 6. Cost/Benefit Analysis

- ☐ What is the expected impact on market?
- ☐ What are measurable success targets, e.g., units sold?
- ☐ What is the estimated quantifiable impact on gallons sold, if applicable?
- ☐ What is the relative cost per gallon and other measurable targets?

There are many advantages in moving educational materials into an electronic learning management system. Many involve expected cost saving that are not able to be accurately calculated at the onset of the project. They include:

- Reduced cost in updating printed materials
- Reduced cost in warehousing and printing materials
- Reduced employee time spent in required classroom training
- Reduced travel cost to have employees attend classroom training
- Standardized access to educational materials and testing
- Much more complete and accurate user data collection
- Improved ability to analyze educational materials and testing for effective delivery and comprehension
- Increased usage by making access to materials easier

Once the programs are completed there can be substantial evaluation comparing metrics on the new system vs. the previous method. Using actual usage data, an in-depth savings calculation can then be performed.

#### 7. Risk Assessment

- ☐ Identify 3-5 potential risks to the successful completion of the project or inability to meet outcome targets, how likely those are to happen, impact on the project, and how to resolve those risks.
- ☐ Indicate low, medium, or high for "Likelihood" and "Impact."

Risk	Likelihood	Impact	Risk Resolution and/or Contingency Plan(s)
Reduced number of users	Low	High	Perform user survey to establish cause and address
System software malfunctions	Low	High	Work with vendor to address issues
User issues with new programs	Medium	High	Increase outreach and education on system, improve helpdesk support, evaluation of common issues

#### 8. Budget

- ☐ Outline cost per task, including estimated cost share (cash and in-kind).
- ☐ If applicable, indicate hourly rates, including overhead
- ☐ Highlight contractor vs. pass-through costs.

Learning Center Support Total \$305,500

- Elogic LMS Annual fee \$250,000
- Programing changes 125 hours @ 200 per hour = \$25,000
- Outreach and promotion = \$25,500
  - o 6k for trade pubs and propane.com changes
  - o 7,500 print brochures and advertising space
  - o 12,000 staff attendance of promotional events
- SME support 40 hours @ \$125 per hour = 5,000

#### 9. Timeline

- ☐ Provide a detailed timeline of all activities, tasks, and milestones.
- ☐ Include commencement and completion dates.
- ☐ List most responsible person for each task.

The Learning Center has had sales training available since June 2019. The CETP training and certification testing went live Jan. 1, 2020; more content will be added in the first half of 2020. All existing PERC safety training and educational programs are expected to become available on the system by March 2020 with new programs available as they are produced.

**Measurement and Evaluation (Completed by PERC staff and applicant)**

**10. Project metrics**

- ☐ Detail how success will be measured for this project overall and by tactic, what the metric is, and when it will be achieved.

<b>Project Deliverable Metrics</b>	<b>Metrics</b>	<b>By When</b>
Increased usage of educational programs	Number of programs taken	6/1/2020
Increased usage of online programs	Number of online programs used	6/1/2020
Decrease number of paper tests and paper books used	Number of paper tests and paper manuals sold	6/1/2020
<b>Market Outcomes</b>	<b>Metrics</b>	<b>By When</b>

**11. Partner Selection**

- ☐ What was the basis for selecting the recommended contractor?
- ☐ If the basis for selection is not via a competition, describe the unique qualifications this vendor possesses.
- ☐ For time and material work arrangements, list or attach the Principal Hourly Rates and the basis used to determine that the rates are competitive.
- ☐ How will matching funds be verified?

This contractor was chosen after an exhaustive, year-long search using industry expertise and a consultant. More than 100 prospective vendors were considered with eLogic chosen to best meet the needs for the industry's particular applications.

## **Software Subscription Agreement Between eLogic Learning, LLC & Client**

**This Software Subscription Agreement** (“Agreement”) is made and entered into as of the Effective Date, by and between **eLogic Learning, LLC**, hereafter referred to as the “**Provider**”, having offices at 14934 N. Florida Ave. Tampa, Florida 33613 and Propane Education and Research Council (PERC), hereafter referred to as the “**Client**”, having offices at Suite 1075, 1140 Connecticut Avenue, N.W. Washington, D.C. 20036, “Client” shall be defined as Client and its Affiliates

**WHEREAS**, Provider is engaged in the business of developing and providing a hosted Software-as-a-Service (SaaS) Application branded “**eSSential™**”, for managing and delivering training for clients as well as a tool for providing strategic marketing or other information, consisting of certain proprietary Provider software application, and associated services described herein.

**WHEREAS**, Client desires to enter into an agreement with Provider, and Provider desires to enter into an agreement with Client, whereby Provider will host and maintain the Application for Client.

**NOW, THEREFORE**, in consideration of the foregoing premises and the mutual covenants contained herein, the parties hereby agree as follows:

### **1. DEFINITIONS**

**1.1 Effective Date:** The Effective Date shall be the date on which the last party executes this Agreement.

**1.2 Application:** The term “Application” means the Provider’s “eSSential” platform version: Standard v10.0 or the current version.

**1.3 Documentation** means all written or electronic operator, technical, and user manuals describing the functions, operational characteristics, and specifications of the Application or Services (as described in Exhibit A and Exhibit B incorporated into and made part of the Agreement by this reference).

**1.4 Service Level Agreement** means the Service Level Agreement as appended to this Agreement as Exhibit B incorporated into and made part of the Agreement by this reference.

**1.5 Software Application Delivery Date** means the date the Client is provided with user credentials to login and begin setup of the production application environment.

**1.6 Term of Service Date** means the date that begins the billing term and is defined as the first day of the month after the Software Application Delivery Date.

**1.7 Services** means the services set out in this Agreement or on Exhibit A and Exhibit B.

**1.8 Affiliates:** means any corporation or other entity which controls, is controlled by or is under common control with the same corporation or entity which controls Client. A corporation or other entity shall be deemed to control another corporation or entity if it, directly or indirectly, owns more than fifty (50%) percent of the voting shares or other interest, or has the power to elect more than half the directors or representatives of such other corporation or entity. For purposes of this agreement the term Affiliate includes the National Propane Gas Association (NPGA) as well as the state and regional propane associations that are affiliated with NPGA but that are not owned or controlled by NPGA.

**1.9 Term of Agreement** means the number of years beginning on the Term of Service Date of the Initial Term as defined in Section 2 of the agreement.

**1.10 Software Evaluation Period** means the 30-day time period beginning from the Software Application Delivery Date.

## **2. INITIAL AND SUBSEQUENT TERMS**

This Agreement shall be effective from the Effective Date and thereafter remain in effect for three (3) years from the Term of Service Date (the “Initial Term”) and shall renew automatically for subsequent periods of (1) one year (each, a “Subsequent Term,” collectively, “Subsequent Terms”) each unless terminated earlier according to the terms of this Agreement. Under no circumstances shall the Term of Service be less than the Term of Agreement. For example, if the Effective Date is 12/01/2018 and a three-year term Agreement and the Application Delivery Date is 2/10/2019, the Term of Service date is 3/01/2019 and the annual fee invoicing will be on 3/01/2019, 3/01/2020, and 3/01/2021 for the Initial Term.

## **3. SERVICES**

Provider agrees to provide to Client and its Affiliates the Services described in Exhibit A (“Services and Fees”) and Exhibit B (“Service Level Agreement”), subject to the terms and conditions set forth herein. Provider shall be under no obligation to provide the Services on terms and conditions other than as set forth herein. Any other services not specifically defined in Exhibit A will be governed under a separate Professional Services Agreement to be mutually agreed to in writing at the time additional services are requested by Client.

## **4. GRANT OF LICENSES**

### **4.1 License by Provider to Client.**

Subject to the terms and conditions of this Agreement, including Exhibit A and Exhibit B, Provider grants to Client and its Affiliates a non-exclusive, royalty-free, worldwide license to use the Application in executable code form and in accordance with the Documentation for the sole purpose of accessing and using the Application.

### **4.2 Use of Course Content by Provider.**

Client hereby grants Provider a non-exclusive license to use and reproduce, perform and display any course materials and course content provided by Client to Provider (“Client Data”), solely for the purposes of this Agreement.

#### **4.2 Limited Trademark License.**

Except as expressly authorized by this Agreement, no party will make any use of other parties' trademarks, logos, or trade names without prior written consent except for demonstrations and marketing purposes.

#### **4.3 Responsibility for Account Number/Passwords.**

Client is responsible for maintaining the confidentiality of Client's account numbers and passwords except for Provider accounts and passwords used expressly for purposes of supporting this Agreement. Each party agrees to notify the other party immediately of any unauthorized use of its Application as soon as reasonably practical.

#### **4.5 Responsibility for Content of Communication.**

Client is responsible for the content of all visual, written, or audible communications through the Application. Client agrees that Client will not use the Application to send unsolicited mass mailings that would be considered "spam". Client further agrees not to use the Application to communicate any message or material that is harassing, libelous, threatening, or obscene, which would violate the intellectual property rights of any party or is otherwise unlawful, that would give rise to civil liability, or that constitutes or encourages conduct that could constitute a criminal offense, under any applicable law or regulation. Although Provider is not responsible for any such communications, Provider may delete any such communications at any time without notice.

### **5. PROPRIETARY RIGHTS**

#### **5.1 Proprietary Rights of Provider.**

As between Provider and Client, the Application shall remain the sole and exclusive property of Provider. Nothing in this Agreement shall be construed to grant Client any ownership right in, or license to, the Application, except as provided in Section 4 and Exhibit A of this Agreement. All materials, including any computer software (in object code and source code form), script, programming code, data, information or HTML script developed by Provider or its suppliers, including any trade secrets, know how, methodologies and processes, shall be the sole and exclusive property of Provider, including without limitation all copyrights, trademarks, patents, trade secrets, and any other proprietary rights inherent therein and appurtenant thereto. Provider will defend, indemnify, and hold harmless Client and its Affiliates with regard to any party claiming that the Application is not the sole and exclusive property of Provider.

#### **5.2 Proprietary Rights of Client.**

All content provided by Client pursuant to this Agreement, including any Client Data, computer software (in object code and source code form), script, programming code, course material, data, employee information, Confidential Information (as defined below), trade secrets, know how, information or HTML script (collectively, "Client Content"), is and shall remain the sole and exclusive property of Client or its suppliers, including, without limitation, all copyrights, trademarks, patents, and any other proprietary rights inherent therein and appurtenant thereto. Nothing in this Agreement shall be construed to



grant Provider any ownership right in, or license to, the Client Content, except as expressly provided in this Agreement.

### **5.3 Restrictions.**

Client acknowledges that the Application and its structure, organization and source code constitute valuable trade secrets of Provider. Accordingly, Client agrees not to (a) modify, adapt, alter, translate, or create derivative works from the Application; (b) merge the Application with other software; (c) sublicense, lease, rent, loan, or otherwise transfer (except as explicitly provided in Section 14.5) the Application to any third party, (d) reverse engineer, de-compile, disassemble, or otherwise attempt to derive the source code for the Application; or (e) otherwise use or copy the Application.

## **6. FEES, TAXES AND EXPENSES**

### **6.1 Services Fees.**

Client shall pay to Provider all undisputed fees for the use of the Application and Services in accordance with the applicable fee schedule set forth in Section 6 or in Exhibit A. All such fees shall be referred to collectively as the “Fees.”

### **6.2 Payment.**

Unless otherwise provided by Provider and outlined in Exhibit A, Client shall pay all undisputed Fees within payment terms, which are net 30 days from invoice receipt date. Application set-up fees will be invoiced upon the Effective Date. Annual recurring license fees or registration fees and fees for any additional services listed in Exhibit A are billed on the initial Term of Service Date and each anniversary date of the Term of Service Date. Unless otherwise agreed to, invoicing will be provided via email to the designated accounting personnel. All undisputed payments must be made in U.S. dollars. Provider reserves the right to charge interest in the amount of eighteen percent (18%) per annum or the maximum rate permitted by applicable law, whichever is less, from the due date until paid, with the exception of disputed fees. Provider reserves the right to withhold further use of the Application for Clients that are over sixty (60) days past due of fee billing date of undisputed invoices. Provider must notify Client of the intent to withhold use of the Application and the intent to pursue the entire balance of all fees through the remaining term of the Agreement in writing. The Client has 15 days from such notice to cure the account deficiency. Recurring fees are not subject to change during the Initial Term. Annual recurring fees are subject to annual increases of 5% after the Initial Term.

### **6.3 Taxes.**

The Fees exclude all applicable sales, use, and other taxes. Providing such taxes are set out under this Agreement or applicable state or federal law, Client will be responsible for payment of all taxes and any fees, duties, charges, penalties, or interest arising from the payment of the Fees, the provision of the Services, or the license to the Application, excluding those taxes payable upon the income of the Provider. Where Client is responsible to pay fees, it may at its option pay them directly to the taxing authority.

### **6.4 Expenses.**



Client shall pay to Provider any reasonable and customary out-of-pocket expenses related to Services provided under this Agreement, which will be pre-authorized by Client. If travel is required to support the implementation, roll-out, or on-going maintenance of the Application for Client, then Client will reimburse Provider for any such pre-approved expenses.

## **7. MARKETING**

### **7.1 Publicity.**

Subject to Client's prior written approval, Client agrees that Provider may use the Client's name and logo, as well as parent company, to identify Client as a client of Provider as a part of a general list of Provider's clients for use and reference in Provider corporate, promotional, and marketing literature. Additionally, Client agrees that Provider may issue a press release identifying Client as a client and describing Client's intended utilization and the benefits that Client expects to receive from use of Provider Application. Similarly, Client may issue a press release identifying Provider as a provider of Services. In all cases, such press releases are subject to both parties' prior approval.

### **7.2 Web Sites.**

Subject to Client's prior written approval, Client agrees to allow Provider to place Client's Logo, links to the client's web site, and appropriate statements as restricted by this Agreement on Provider's web site for marketing purposes.

### **7.3 Non-Exclusivity.**

Nothing in this Agreement except as defined in this paragraph will prevent either party from entering into joint or cooperative marketing arrangements with, or offering or purchasing similar marketing assistance from, any other third parties at any time.

## **8. CONFIDENTIALITY**

**8.1 Confidential Information.** Each party (the "Disclosing Party") may from time to time during the Term disclose to the other party (the "Receiving Party") certain non-public information regarding the Disclosing Party's business, including technical, marketing, financial, employee, planning, and other confidential information ("Confidential Information"). Any non-public information that the Receiving Party knew or should have known, under the circumstances, was considered confidential by the Disclosing Party, will be considered Confidential Information of the Disclosing Party. The Application as viewed by Client's users through legitimate access is not Confidential Information.

### **8.2 Protection of Confidential Information.**

The Receiving Party will not use any Confidential Information of the Disclosing Party for any purpose not expressly permitted by this Agreement, and will disclose the Confidential Information of the Disclosing Party only to the employees or contractors of the Receiving Party who have a need to know such Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than the Receiving Party's duty hereunder. The Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same

manner as the Receiving Party protects its own confidential or proprietary information of a similar nature and with no less than reasonable care. Upon termination or completion of services, the Disclosing Party shall dictate, in writing, whether the Provider is to delete or return Confidential Information upon the termination hereof.

### **8.3 Exceptions.**

The Receiving Party's obligations under Section 8 of this Agreement with respect to any Confidential Information of the Disclosing Party will terminate if such information: (a) was already known to the Receiving Party at the time of disclosure by the Disclosing Party; (b) is disclosed to the Receiving Party by a third party who had the right to make such disclosure without any confidentiality restrictions; (c) is, or through no fault of the Receiving Party has become, generally available to the public; or (d) is independently developed by the Receiving Party without access to, or use of, the Disclosing Party's Confidential Information. In addition, the Receiving Party will be allowed to disclose Confidential Information of the Disclosing Party to the extent that such disclosure is (i) approved in writing by the Disclosing Party, (ii) necessary for the Receiving Party to enforce its rights under this Agreement in connection with a legal proceeding; or (iii) required by law or by the order of a court, provided that the Receiving Party notifies the Disclosing Party of such required disclosure promptly and in writing and cooperates with the Disclosing Party, at the Disclosing Party's request and expense, in any lawful action to contest or limit the scope of such required disclosure.

### **8.4 Return of Confidential Information.**

The Receiving Party will return or destroy (at the Disclosing Party's option) all Confidential Information of the Disclosing Party in the Receiving Party's possession or control and permanently erase all electronic copies of such Confidential Information promptly upon the written request of the Disclosing Party or the termination or expiration of this Agreement, whichever comes first. Client need not, during the term of this Agreement, destroy any Confidential Information needed to make ordinary use of the Application. Each party may retain an archival copy of the other party's Confidential Information which has been archived as part of such party's standard archival procedure. Each party may retain Confidential Information as part of comprehensive data backup programs for a period of no more than six (6) months after the required destruction of Confidential Information. Any Confidential Information retained after the required destruction will remain subject to this Agreement as if this Agreement was still in force.

### **8.5 Confidentiality of Agreement.**

Neither party will disclose any terms of this Agreement to anyone other than its employees with a need to know in order to perform under this Agreement, attorneys, accountants, and other professional advisors under a duty of confidentiality except (a) as required by law, or (b) pursuant to a mutually agreeable press release or (c) in connection with a proposed merger, financing, or sale of such party's assets (provided that any third party to whom the terms of this Agreement are to be disclosed signs a confidentiality Agreement with terms no less restrictive than the confidentiality terms herein).

### **8.6 Term of Confidentiality.**

The parties' obligations of confidentiality under this Section 8 shall terminate five (5) years after the termination of this Agreement.

## **9. REPRESENTATIONS AND WARRANTIES**

### **9.1 Provider Representations and Warranties.**

Provider represents, warrants, and covenants to Client and its Affiliates that during the Term that: (a) the Services (and the Application) will be provided in a diligent, professional, and workmanlike manner, free from material defects and consistent with generally accepted industry standards; (b) the execution, delivery and performance of this Agreement by Provider (i) has been duly authorized by all necessary corporate action and (ii) will not conflict with, result in a breach of, or constitute a default under any other agreement to which Provider is a party or by which Provider is bound; (c) in performing under this Agreement, including without limitation in providing the Services (and the Application) under this Agreement, Provider (i) is and will remain in compliance with all applicable laws; (ii) will not (A) misappropriate the confidential information and/or data of a third party, or (B) infringe on any copyright, trademark or patent rights, or any other rights of a third party including without limitation any other intellectual property rights; (iii) will establish and maintain security and other safeguards against the destruction, loss, alteration, and unauthorized access to Client provided content in the possession of Provider and during the electronic transmission, storage, and shipping thereof; (d) Provider has obtained and/or will obtain and maintain all applicable permits and licenses, and accreditation, required of Provider in connection with its operations, or obligations under this Agreement; and (e) Provider will use diligent efforts to ensure that its network and systems do not compromise the security or functionality of the systems used to provide the Services (and the Application), whether by transfer of viruses or other harmful code, requests for service, or otherwise. Provider agrees that, in the event Client's network and systems compromise the security or functionality of the systems used to provide the Services (and the Application), Provider shall use its best efforts to assist Client to mitigate and restore any losses that may be incurred.

**9.2 Warranty Exceptions.** To the extent not caused by Provider's negligence, the warranties set forth in Sections 9.1(a) and (e) are void to the extent that any problem which results in the performance of Services or system availability to be other than as warranted is due to (i) use of the Services by a Client Party outside the scope described in the Documentation; (ii) Client equipment and/or Client's third party software, hardware, or network infrastructure outside of Provider's data center to the extent not under the direct control of Provider; (iii) failure of the external internet beyond Provider's Network; (iv) electrical or Internet access disruptions; (v) any negligent actions or inactions of Client or any other third party not under the direct control of Provider; (vi) attacks (i.e. hacks, denial of service attacks, malicious introduction of viruses and disabling devices) caused by third parties; or (vii) events of force majeure.

### **9.3 Mutual Warranties.**

Each party represents and warrants that it has the authority to execute, deliver and perform its obligations under this Agreement, having obtained all required consents, is duly organized or formed and validly existing and in good standing under the laws of its

incorporation or formation, and is, and will remain for the Term, in compliance with all local, state, federal, and foreign laws applicable to its performance under this Agreement.

#### **9.4 Disclaimer.**

Except for the express warranties in this Agreement, Provider disclaims all other warranties, express, implied or statutory, regarding the services, including any implied warranties of merchantability, fitness for a particular purpose, and non-infringement of third-party rights. Client acknowledges that it has relied on no warranty other than the express warranties in this Agreement.

### **10. MUTUAL INDEMNIFICATION**

For purposes herein, each party, when required to provide indemnification, will be termed an “Indemnifying Party” and each party, when receiving the benefits of indemnification, shall be termed an “Indemnified Party.” The term “Indemnified Party” will include the party’s respective Affiliates, shareholders, officers, directors, administrators, managers, employees, servants and agents, successors and assigns.

#### **10.1 Mutual General Indemnity.**

Each Indemnifying Party will indemnify, hold harmless, and defend at its expense any and all third-party claims (including those threatened or alleged), actions, demands (including pre-litigation demands), direct costs of investigating a claim, damages, liabilities, direct costs, and expenses, including reasonable attorneys’ fees and expenses (each, a “Claim,” collectively, “Claims”) against the Indemnified Party which arise out of or relate to any material breach of this Agreement by the Indemnifying Party, or its employees or agents, or acts or omissions of gross negligence, willful misconduct, or fraud of the Indemnifying Party or its employees or agents.

#### **10.2 Infringement Indemnification.**

Provider will defend, indemnify, and hold harmless Client and its Affiliates, , franchisees, and each of their respective officers, directors, employees, agents, suppliers, successors, and assigns from and against and shall pay any and all damages, losses, fines, penalties, costs, and other amounts (including reasonable attorneys’ fees and other legal costs) directly or indirectly arising from or in connection with any and all actual or threatened claims, demands, investigations, or causes of action (each a “Claim”) by a third party, to the extent the Claim is based on or arises from or relates to an allegation that the Application infringes any third party copyright, patent, trade secret, or other intellectual property rights.

### **11. LIMITATION OF LIABILITY**

In no event will either party be liable for any consequential, indirect, exemplary, special or incidental damages, including any lost data and lost profits, arising from or relating to this Agreement. Notwithstanding the foregoing, such exclusion of consequential and related damages will not apply to: (a) any liability arising under or for breach of Section 9 or 10, (b) any breach of confidentiality, (c) a security breach related to Client’s use of the Application, (d) claims of intellectual property infringement and (e) gross negligence or willful misconduct by the parties (collectively, the “Limitation Exclusions”). Each party’s

total cumulative liability, absent gross negligence or willful misconduct, in connection with this Agreement, whether in contract or tort or otherwise, will not exceed the insurance policy limits of each party; provided, however, the foregoing limit shall not apply to any liability arising under or from the Limitation Exclusions. Each party acknowledges that the fees reflect the allocation of risk set forth in this Agreement and that the other would not enter into this Agreement without these limitations on its liability.

#### **11.1 Insurance.**

Provider's insurance coverage is \$2 million general liability, \$2 million Professional E & O and \$2 million Cyber Security and Privacy.

### **12. RELIEF**

#### **12.1 Injunctive Relief.**

Each party acknowledges that a breach of this Agreement would result in irreparable harm to the non-breaching party. Accordingly, the parties agree that in the event of a breach of this Agreement, the non-breaching party shall be entitled to apply to a court of appropriate jurisdiction for injunctive relief to prevent or stop harm to the non-breaching party, including harm relating to any intellectual property rights of the non-breaching party.

#### **12.2 Recovery of Litigation Costs.**

In the event of any action brought to enforce this Agreement, and subject to determination and award by a competent court of appropriate jurisdiction, the prevailing party shall be entitled to recover reasonable attorney's fees and other costs incurred in that action or proceeding from the other party in addition to any other relief to which it may be entitled.

### **13. TERMINATION**

#### **13.1 Termination without Cause.**

Either party may terminate this Agreement without cause only upon the expiration of the Initial Term or any Subsequent Term by providing written notice to the other party not less than ninety (90) days prior to that expiration or anniversary of the Term of Service Date.

#### **13.2 Termination for Cause.**

In addition to any other rights either party may have under this Agreement or applicable law, either party may, at its option, immediately terminate this Agreement, upon (i) a material breach of the other party's obligations under this Agreement which breach is not cured within thirty (30) days after the non-breaching party provides written notice thereof to the other party (such notice to terminate shall specify the details supporting the breach of the Agreement); (ii) the other party ceasing to do business in the normal course, becoming or being declared insolvent or bankrupt, being the subject of any proceeding relating to liquidation or insolvency which is not dismissed within ninety (90) days or making an assignment for the benefit of its creditors, or (iii) becoming aware of attempted theft of its trade secrets by the other party.

### **13.3 Termination during Software Evaluation Period.**

During the Software Evaluation Period, the Client may terminate this Agreement for any reason with written notice to Provider received prior to the expiration of the 30-day period from the Software Application Delivery Date and will be refunded any prorated license fees prepaid to Provider except for Application Set-up fees, which are not refundable under any circumstance.

### **13.4 Survival.**

Subject to certain restrictions in respective sections, any provision of this Agreement that by its nature is intended to survive will survive any cancellation, termination or expiration of this Agreement, including without limitation, Sections 5 (Proprietary Rights), 6 (Fees, Taxes, and Expenses), 8 (Confidentiality), 9 (Representations and Warranties), 10 (Indemnification), 11 (Limitation of Liability), 12 (Relief), 13 (Termination) 13.3 (Survival), and 14 (Miscellaneous) shall survive any expiration or termination of this Agreement. All Client information shall be provided to Client in a mutually acceptable format within 30 days of written notice of termination, time being of the essence.

## **14. MISCELLANEOUS**

### **14.1 Entire Agreement.**

This Agreement and the Exhibits attached hereto constitute the entire Agreement between Provider and Client with respect to the subject matter hereof and supersede all prior oral negotiations and prior written agreements with respect thereto.

### **14.2 Independent Contractors.**

Nothing in this Agreement or in the course of business between Client and Provider pursuant hereto shall be deemed to create between Client and Provider (including their respective directors, officers, employees and agents) a partnership, joint venture, association, employment relationship or any other relationship other than that of independent contractors with respect to each other. Neither party shall have the authority to commit or legally bind the other party in any manner whatsoever, including the acceptance or making of any agreement, representation or warranty.

### **14.3 Waiver; Non-Waiver; Amendment.**

Failure by either party to enforce any of the provisions of this Agreement or any rights with respect hereto or the failure to exercise any option provided hereunder shall in no way be considered to be a waiver of such provision, right, or option, or to in any way affect the validity of this Agreement. No waiver of any rights under this Agreement, or any modification or amendment of this Agreement shall be effective or enforceable, unless in writing and signed by both parties.

### **14.4 Governing Law and Venue.**

The laws of the State of Florida govern this Agreement. Any action or proceeding arising from or relating to this Agreement must be brought in a state or federal court in Hillsborough County in the State of Florida., and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding.



#### **14.5 Assignment.**

(a) NPGA and PERC may utilize the Application separately, jointly, or through an entity controlled by one or the other of them or controlled jointly by them. State and regional propane associations affiliated with NPGA may also use the Application. Provider hereby consents to Client's use of the Application in this fashion.

(b) Except as provided in Section 14.5(a) neither party may assign, delegate or sublicense (by operation of law or otherwise) this Agreement or any rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld; provided, however, that upon written notice to the other party, either party may assign this Agreement, and all its rights and obligations hereunder, to (i) an Affiliate, or (ii) an acquiring entity in the event of a merger, reorganization, consolidation, or sale of all or substantially all of such party's assets.

#### **14.6 Notices.**

All notices or other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by facsimile or electronic mail (with written confirmation of receipt), or (c) two (2) days after being deposited for delivery with a nationally recognized overnight delivery service, such as Federal Express, and addressed or sent, as the case may be, to the appropriate addresses or facsimile numbers set forth below (or to such other addresses or facsimile numbers as a party may designate by notice to the other party):

##### **In the case of Provider:**

Art Severn  
Controller  
14934 N. Florida Ave.  
Tampa, Florida 33613  
  
Tel: (813) 901-8600  
Email: asevern@elogiclearning.com

##### **In the case of Client:**

T. E. Perkins, Jr.  
President and CEO  
Suite 1075  
1140 Connecticut Ave., NW  
Washington, DC 20036  
Tel: (202) 452-8975  
Email: tucker.perkins@propane.com

#### **14.7 Severability.**

If any provision of this Agreement is held invalid or unenforceable, such provision shall thereupon be deemed modified only to the extent necessary to render the same valid or eliminated from this Agreement, as the situation may require, and this Agreement shall be enforced and construed as if such provision had been included herein as so modified in scope or applicability or not been included herein, as the case may be.

#### **14.8 Counterparts.**

This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute but one Agreement.

#### **14.9 Construction.**



The headings preceding the text of the paragraphs of this Agreement have been inserted solely for convenience of reference and neither constitute a part of this Agreement nor affect its meaning, interpretation or effect. Where used in this Agreement, the word "including" means "including but not limited to".

**14.10 Force Majeure.**

If performance hereunder is interfered with by any condition beyond a party's reasonable control, the affected party shall be excused from performance to the extent of such condition. The operation of Provider's servers and the provision of the services may be interfered with by numerous factors outside of Provider's control. Provider does not guarantee perfectly continuous, uninterrupted, or secure Services, and Client acknowledges that the Services may be unavailable for a temporary time period. basis.

The undersigned Parties acknowledge that they have read, understood, and accept the representations contained within this Agreement and exhibits attached hereto.

The undersigned Parties acknowledge that they have the authorization and authority to enter into a legal, binding agreement on behalf of their respective organizations

**Provider:**

**By:** (signature) \_\_\_\_\_

**Name:** Mark Anderson

**Title:** Chief Executive Officer

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

**A DULY AUTHORIZED OFFICER**

**Client:**

**By:** (signature) C. Michael Eason

**Name:** C. Michael Eason

**Title:** Senior VP, Administration & Finance

**Date:** 2/22/19

**A DULY AUTHORIZED OFFICER**

## EXHIBIT A

### **SERVICES AND FEES**

#### **1.0. Services:**

Services as described herein may only be amended or expanded with an amendment to the Agreement in writing or via email and agreed on by both parties.

#### **1.1 eLogic Learning User Access:**

Provider will provide a number of user licenses, registration or other user access to Client for the delivery of online courses using the Providers eSSential™ TM Platform consistent with this Agreement and Exhibit A.

#### **2.0 Hosting, Hardware & Maintenance:**

All hosting, maintenance, and hardware is included in the Fees as described below in this Exhibit A at no additional cost to Client. Additional hardware or other requirements may be necessary as Application usage and volume may require at the expense of Client.

**3.0 Enterprise Application Implementation:** Provider will perform the following Services on a mutually agreed schedule: \*

<b>Include</b>	<b>Service</b>
Yes	Provider will establish two dedicated LMS environments for Client. One environment (Stage) will be used by client personnel for design and testing purposes. The second environment (Production) will be used by Client for Production use.
Yes	Implementation Kick Off call (review project timeline, configuration options, project roles, and project logistics)
Yes	Project management services for 16 weeks during the implementation period. The project management services include development of an implementation project plan utilizing eLogic's proprietary Design Survey documentation, development of 16 status memos, and facilitation of 16 status meetings (The status meetings may be consecutive weeks or non-consecutive weeks depending on Client's timing and availability)
Yes	Provide approximately 12.5 hours of administrative training via web conference. The training is dedicated to Client with an agenda tailored to Client's specific business requirements. This training will typically be completed prior to the launch of the Application and at a mutually agreed date/time.
Yes	One Manager focused training between 30-120 minutes, conducted near go-live. This training will be delivered via web conference. The training is dedicated to the Client with an agenda tailored to the Client's specific business requirements. This training will be completed a mutually agreed date/time.
Yes	One 4-hour Administrator refresher training conducted near go-live. This training will be delivered via web conference. The training is dedicated to the Client with an agenda tailored to the Client's specific business requirements. This training will be completed a mutually agreed date/time.
Yes	Design and development assistance for 2 ad hoc reports. Reports will be built using standard ad hoc functionality.

Yes	Branding development assistance to include creation of three theme mock-ups, three certificate of completion mock-ups, plus HTML assistance for 2 end user facing content areas.
Yes	Data Conversion assistance including design meetings, mapping assistance, file review services, best practice guidance and Stage environment refresh for up to 3 full conversion tests. Data Conversion will utilize LMS standard functionality for data loading as per specifications defined in the user guide available on the company website. Client is responsible for extracting data in a format that conforms to the defined data load specifications. Data will be converted utilizing excel spreadsheets in a format that conforms to the defined data load specifications.
Yes	Data Integration (Flat File or Web Services) assistance including design meetings, source system mapping assistance, and file review services. Data Integration will utilize LMS standard functionality for data loading as per specifications defined in the user guide available as per * below. Client is responsible for extracting data in a format that conforms to the defined data load specifications.
Yes	Production application configuration assistance including 8 separate web conference meetings of 2 hours each (total of 16 hours of assistance). The objective of the configuration meetings is to work side by side with an eLogic Learning solution specialist in setting up Client's production system. The setup steps to be performed will be prioritized based on Client's business requirements for LMS usage. The site configuration and theme management configuration forms must be completed by Client prior to the first session. The first four configuration sessions will be scheduled to be completed within 3 weeks of the conclusion of the training. If the first four configuration sessions are not completed within three weeks after the administrative training, the remaining configuration sessions will be forfeited by Client.
Yes	dominKnow One Authoring Tool License (2)
Yes	Single Sign-on Integration using standard functionality for SSO
Yes	eCommerce Set-up using one of the standard supported payment gateways
No	One secure, https URL which is a subdomain of elogiclearning.com is provided (i.e. <a href="https://yourcompany.elogiclearning.com">https://yourcompany.elogiclearning.com</a> ).
No	eLogic Content Bundle
Yes	Up to 120-minute custom eLearning course developed by the eLogic Learning Solutions Team utilizing the authoring tool of eLogic's choice based on the tier/level selected by the client. Exact length of course will depend on tier level selected by client. (Higher the tier, lower the minutes). The custom course will be governed by a separate Statement of Work and will not affect any terms or conditions of this Agreement. In order to receive course at no additional fee, the development of this course must be completed within 12 months.

#### Add-Ons\*

Include	Service	Additional Fee
No	One-time Additional Site Setup	\$500
No	Annual Support for multi-site (per site)	\$1,000 Per Site
No	One Day Additional Training (approx.6 hrs. seat time & 2 hrs. prep and follow up time)	\$2,000
Yes	Custom URL HTTPS	\$3,000
No	Multi-language	** Market Price

Yes	Dual Factor Authentication - See Exhibit C	\$5,000
	<b>Total Add-on Fees</b>	<b>\$8,000</b>

Add-On fees listed above, with the exception of Dual Factor Authentication, should be divided between PERC (43.11%) and NPGA (56.89%).

Dual Factor Authentication should be invoiced to PERC for 100% of the cost.

\*For a complete description of the current standard functionality of the eSSential™ LMS (including all data integrations supported), please refer to the eSSential™ LMS User Manual located at [https://guide.elogiclearning.com/eSSential\\_User\\_Manual\\_v10.pdf](https://guide.elogiclearning.com/eSSential_User_Manual_v10.pdf). As per above and Section 3 of the Agreement, any other services not specifically defined in Exhibit A will be governed under a separate Professional Services Agreement to be mutually agreed to in writing at the time additional services are requested by Client.

\*\*If elected, language translation services are provided by Microsoft, packages and prices are subject to change by Microsoft at <https://azure.microsoft.com/en-us/pricing/details/cognitive-services/translator-text-api>.

#### **4.0 FEES.**

Fees as described herein may only be amended or expanded with an amendment or other appropriate formal documentation to the Agreement in writing or via email and agreed on by both parties. *All fees listed below, except for the cost of Dual Factor Authentication payable 100% by PERC, should be invoiced to both PERC and NPGA with PERC responsible for 43.11% of the costs and NPGA responsible for the remaining 56.89% of the costs.*

##### ***Application Set-up Fees: One Time Fees***

Application Set-up	\$ 45,000.00
Add on fees per Section 3 of Exhibit A	
Custom URL	\$ 3,000.00
Dual Factor Authentication - See Exhibit C	\$ 5,000.00

##### ***Annual Recurring Fees-Year 1***

Minimum Active User License Fee (140,000 @ \$10.00 per user per year)	\$140,000.00
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##### ***Annual Recurring Fees-Year 2 & 3***

Unlimited Active User License Fee	\$250,000.00
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#### **Active User License Definition:**

An Active User is any associate user with a status of active in the software application.

#### **Inactive User License Definition:**

An Inactive User is any associate user with a status of inactive in the software application without access to the application, curricula or other functionality. The intent of the inactive user status is to allow clients the ability continue to report on training completions for users who are no longer associated with the client organization (former employees or former clients) but not require a fee for those users. Client may have an unlimited number of inactive users for historical reporting purposes without incurring any additional charge. This includes the initial population of inactive users for clients converting from legacy LMS software applications.

**Additional Active User Application Licenses:**

Client may purchase additional active user licenses in minimum quantities of 500 active user licenses at the then current Minimum Active User License Fee per user for year 1. A separate invoice will be issued during the month the additional licenses are added, prorated for the remaining days until the next anniversary of the Term of Service Date. Subsequent to year 1, purchase of additional licenses is not applicable as Client has an Unlimited Active User License.

**dominKnow One Authoring Tool:**

Two licenses for the dominKnow One authoring tool suite consisting of Claro, Flow and Capture applications, are being purchased by eLogic Learning and provided to Client on a complimentary basis for the Initial Term of the Agreement. If Client elects to receive the dominKnow One licenses before the Term of Service Date, the term of the dominKnow One license will remain consistent with the term per Section 2.0 of the Agreement and will expire prior to the end of the Initial Term of Service. The dominKnow One licenses are governed by the dominKnow One Master Subscription Agreement described at <http://dominknow.com/service-agreement.html>. On the initial activation of the license, Client will be required to read and agree to the dominKnow One Master Subscription Agreement in order to use the dominKnow One authoring tools. This license includes Premium Support to you at no additional charge. The dominKnow One license is not severable or transferable from the eLogic Software Subscription Agreement and Section 1.4 from the Service Level Agreement applies, as appropriate.

## **EXHIBIT B**

### **Service Level Agreement**

This Service Level Agreement (“SLA”) details the terms for the Technical Support Services provided by eLogic Learning LLC (“Provider”) during the Initial Term and Subsequent Terms of the Agreement. The SLA specifically addresses service level definitions, measurements, and minimum service standards that will be in effect for the Service.

#### **1. Client Responsibilities. Client shall be responsible for:**

##### **1.1. Designating Primary and Technical Contacts.**

1.2. Providing to Provider all applicable information regarding any application issues and enabling Provider to duplicate the circumstances indicating a reported Product defect or error.

1.3. Using reasonable efforts to cooperate with Provider with respect to testing, isolating, identifying, documenting, and any other actions necessary, to resolve any Service issues and errors, including the application of a temporary workaround or bypass supplied by Provider, or temporary implementation by Client of a computer or operational procedure, in order to diminish or avoid the effect of the problem.

1.4. Should Provider’s review of an issue indicate, in Provider’s reasonable opinion, that a reported problem is not an Application defect but is due to other problems including, but not limited to, input not in accordance with specifications, problems caused by issues with course created in 3<sup>rd</sup> party authoring Application, Client’s abuse or misuse of the Application System, or Client’s failure to properly maintain the Computer System as instructed by Provider, then:

(i) Provider, at Client’s request, shall advise Client whether Provider can correct or assist in resolving such problem, and the terms under which Provider shall undertake the same. Upon written acceptance by Client, Provider shall correct or assist in resolving the problem in accordance with such terms.

1.5. Client Network Requirements. To ensure the highest network response over the Internet, Provider requires Client to allow all traffic to and from Provider’s servers for both the production and stage URLs. Depending on Client network security, this may involve “whitelisting” the URL and/or IP Addresses for the environments in both client hardware and software.

1.6. Client Contacts. Client shall designate Primary and Technical Contacts who have received Provider Systems Training and provide contact information and updates as needed:

1.6.1. Primary Client Contacts. Client may designate up to three (3) Client personnel (“Primary Client Contacts”) for LMS administration authorized by Client to interact with Provider for LMS support. Primary Client Contacts must be full-time employees of Client or contractors acting as full-time employees. Client and Provider agree that Primary Client Contacts must be trained on the Application prior to becoming a Primary Client Contact. Training can be achieved either by attending Provider offered training or by “train the trainer” training provided by another Primary Client Contract resource who has been trained on Application. Provider retains the option to withhold support to untrained designated Primary Client Contacts, which will not be unreasonably withheld.

1.6.2. Technical Contacts. Client shall designate a “Technical Contact” who shall be the primary information technology support contact for Provider and internal Client users with regards to the Client IT issues across all Client sites. A secondary contact shall be appointed as an alternative contact for urgent issues if the primary technical contact is unavailable. Technical Contacts shall be the primary information technology support contact for Provider and internal Client users with regards to the Client IT issues across all Client sites. Client IT issues may include but are not limited to: client hardware, client software including web browsers, desktop set-up, network, ISP Internet connectivity, and all other technical issues that affect operation of the Products outside of Provider provided hardware, Application, network operations, and Internet service.

1.7 Client is responsible for all activities that occur under Client’s User accounts. Client shall: (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Data; (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Service or its related Systems and Networks, and notify Provider promptly of any such unauthorized use; (iii) comply with all applicable local, state, federal, and foreign laws in using the Service; (iv) not send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (v) not send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortuous material, including material harmful to children or in violation of third party privacy rights; (vi) not intentionally or knowingly send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (vii) not interfere with or disrupt the integrity or performance of the Application, Service or the data contained therein; and (viii) not attempt to probe, scan, penetrate or test the vulnerability of a Provider system or network or to breach Provider’s security or authentication measures, whether by passive or intrusive techniques, without Provider’s express written consent.



2. Communication Methods. Client may communicate with Provider support team in any or all of the following ways noted below. Provider shall inform Client in writing of any changes to this information.

2.1. Via IssueTrak is the web-based Support Management system eLogic utilizes to track and manage client support requests. Primary Client Contacts will be trained on the use of IssueTrak during the initial administrative training. These will be the only clients authorized to log tickets via IssueTrak or the eLogic main phone number.

2.2 Main Corporate Telephone Number. (813)-901-8600

3. Hosting, On Demand Services and Application Uptime. Provider utilizes a secure hosting facility where the Provider servers and the Application are located. Provider shall use industry standard efforts to provide performance analysis and tuning services, hardware preventive maintenance, and regular back-up services. Client will have 99.7% Service Availability, except for: (a) regular weekly maintenance which Provider performs every Saturday from 12 a.m. EST – 8 a.m. EST (b) time sensitive maintenance, for which Provider shall give at least 8 hours' notice via email or phone, (c) major architecture maintenance which, to the extent reasonably practicable, will be scheduled during the weekend hours from 12:00 a.m. EST Saturday to 8:00 a.m. EST Saturday, but Provider reserves the right to change the Scheduled Downtime with reasonable prior notice; or (d) any unavailability caused by circumstances beyond Provider's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Provider employees), computer, telecommunications, Internet service provider or hosting facility failures or delays involving hardware, Application or power systems not within Provider's possession or reasonable control, and network intrusions or denial of service attacks. Provider shall provide a minimum of 8 hours' notice in advance of any Scheduled Downtime outside of regular weekly maintenance. In the event Provider's failure to meet the standards defined in this Section results in 48 hours of unscheduled downtime in any 30-day consecutive period, Client will promptly notify Provider in writing and Provider shall make commercially reasonable efforts to remedy such performance problem.

3.1. Response Time Definition. A response to an issue generated by Client shall consist of receipt of and acknowledgment by Provider of Client's request for issue resolution.

3.2. Service Availability Definition. Service Availability means the amount of time the Service is available and capable of receiving, processing and responding to requests ("Application Uptime").

3.3. Service Availability Measurement. Non-availability is the amount of time that the Service is neither available nor capable of receiving, processing and responding to incoming transactions from the requesting entity.

3.4. Service Availability Calculation. Service Availability for a given month is calculated as a percentage equal to the minutes the Service is available in the month, divided by the total minutes in the month, less the minutes of scheduled downtime during the month.

3.5. Minimum Service Availability Requirement. Service Availability starts at the point when the implementation project has been completed and signed off by Client. If Provider does not meet the Service Availability requirements in any month, then Client is entitled to a refund of the pro-rata annual unlimited active user license fee applicable to that month in the following amounts:

<b>Service Availability in any calendar month</b>	<b>Refund due of the pro-rata annual unlimited active user license fee applicable to that month</b>
99.7% or more	0%
Less than 99.7% to 97.5%	5%
Less than 97.5% to 95%	10%
Less than 95% to 94%	15%
Less than 94% to 93%	20%
Less than 93% to 92%	30%
Less than 92% to 91%	35%
Less than 91%	60%

3.6. Scheduled Down Time Definition. There will be a weekly scheduled down time period to perform system maintenance, backup and upgrade functions for the Service. This period will not exceed 8 hours per week and will normally be scheduled on Saturday's from 12 a.m. EST to 8 a.m. EST.

Any outages planned outside of this window, will be communicated in advance to the Client. Notification of scheduled down times will be made using e-mail. If a longer downtime window is required, the Client will be notified in advance using the same mechanism. Provider retains the right to shut down, reboot, modify or fix servers at any time if it is deemed necessary to prevent security breaches or operational failures (including, but not limited to viruses, worms, date bombs, time bombs or denial of service attacks). This may require loss of access to the system for a period of time, but such protective action shall constitute scheduled down time, and the client will be notified immediately.

3.7. System Security. In the event of a denial of service attack or a security breach of the Service Provider, Provider has the right to halt operations immediately to

protect the integrity and security of the system. Upon discovery of such an event, Provider will notify affected client within two (2) hours.

3.8. Service Updates. Provider may provide updates to the Service, such as correction of “bugs” and certain limited improvements to existing functionality of the Service as Provider may choose to provide. The subscription to the Service does include the right to receive any Updates, Upgrades, Reissues or new product releases by Provider. Provider will, in its own reasonable discretion, determine whether, and on what terms, any Upgrade, Reissue, or new product release will be made available to existing Clients.

3.9. Data Uploads. All data uploads to Provider’s databases that include 500,000 or more records shall require no less than 2 hours and no more than 8 hours for processing.

3.10. Excess Data Storage. Provider does not place hard limits on total space used for Client’s Production environment, but Provider does place individual file and course size limits. Individual files used in the web editor (dynamic content areas in the LMS, training detailed description area, notification templates, certificate of completion) cannot exceed 50 MB in size. When using larger image and video files in content areas, Clients should consider the impact on end-user performance. Larger files should always be optimized for web-based use before loading. SCORM Courses will not be allowed to exceed 750 MB in total size. For courses larger than 750 MB, streaming servers can be used by Client and have the course point to the large video files housed on the streaming server. This will appear seamlessly to the end user. They will not be aware some of the course files are located on different servers. In addition to the production individual file and course size limits, Provider does reserve the right to manage space consumption on the Stage environment with periodic purging of old SCORM courses on Client’s Stage site. This would be limited to the Stage environment only.

3.11. Network Response Time. Provider does not control the flow of data to or from the Internet nor Client’s internal network. Such flow depends in large part on the performance of Internet service provided or controlled by third parties. At times, actions or inactions of such third parties can impair or disrupt Provider or Client connections to the Internet. Provider can control and warrants the response time from Provider’s systems to Provider’s Internet connection which is .6 seconds to the Internet (and if over 3 seconds the Service is considered down).

3.12. Service Interruption. Provider will use commercially reasonable efforts to keep affected clients informed of the status of unexpected Service interruptions. In the event of an unexpected Service interruption, Provider’s first priority is to resolve the interruption followed by an internal investigation as to the cause. The results of that investigation are used by Provider to ensure the Service continues to meet contract requirements.

3.13. Stage User Licenses. Since the Stage environment is used for Client testing, the environment will be limited to 50 active user licenses.

4. Technical Support and Support Levels. Provider shall provide telephone and online standard support to Client, provided Client's account is in a current status with all payments. Support described below shall serve as a recommended process that may be subject to change at Provider's reasonable discretion; provided, however, that in no event shall any such change result in a material degradation of Provider's support obligation. Should the requirements set forth by Client impose any limiting factors that may result in inadequate support, Provider and Client shall mutually agree on reasonable terms that will achieve client satisfaction. Technical Support should not be confused with systems or training administration or training support. If systems and training administration support or training are needed, then these will need to be scheduled and Provider's standard fees will apply.

4.1. Help Desk Support. Standard Help Desk Support is designed to provide basic product help and configuration assistance to the Primary Client Contacts. Standard Help Desk Support will perform initial investigation of all issues logged via Provider's IssueTrak software. Client may log support tickets directly into IssueTrak or call Provider and request a support ticket be created. If the Help Desk Analyst can reproduce the issue and believes a problem exists with Provider Application, the support ticket will be escalated to the Technical Support team.

4.2. Technical Support. Standard Technical Support, as it relates to the Service, shall be provided by Provider and is called upon by a Client when they are unable to fully respond to an inquiry for product or technical assistance within their organization or when the Client and Provider believe that a problem is related to Provider's Application code, Network Infrastructure, or Hardware, and the problem is reproducible in Provider's environment. Standard Technical Support is designed to resolve technical issues and technical environment variables.

4.3. Help Desk Support Hours.

Help Desk Support: \* - Monday – Friday from 8:30 AM EST to 5:00 PM EST,

\* Help Desk Support will not be offered on Provider recognized holidays as listed on <http://elogiclearning.com/company>.

5. Technical Severity Definitions and Response Times. Technical Support Issues are defined as individual problems referred by Clients to Provider Technical Support that are reproducible by Provider. Provider's Technical Support Center creates a Support Ticket for the specific issues and categorizes the Support Ticket. Provider and Client agree to the following severity levels and response times schedule for Problems or Errors reported to Provider utilizing the severity designations detailed below. Provider shall respond to reported problems according to the following protocols:

<b>Severity</b>	<b>Definition</b>	<b>Response Time</b>
<b>Sev1</b>	<b>System Down</b>	The Application or production system is down. This indicates an Issue that materially affects data integrity, critical systems functions or system security; and/or which materially disrupts operations as assessed by Provider. Initial response within 1 hour of the case being submitted. The designated “Primary Client Contact” will be updated twice daily on progress. Actions will commence within 1 hour on all calendar days.
<b>Sev2</b>	<b>Major Issue</b>	The Application or production system is operational but has a major functional loss that impedes transactions from being completed (i.e. a major issue is more than one (1) course not working properly or an Application function loss). This indicates a major issue that causes a significant business impact, but Client still has access to portions of their site as assessed by Provider. Initial response within 2 hours of the case being submitted. The designated “Primary Client Contact” will be updated daily on progress. Actions will commence within 4 hours of notification during normal operating hours.
<b>Sev3</b>	<b>Non-Critical</b>	The Application or production system has a functional loss which includes a small portion of the entire site, such as a course or a few functions of the site, and where a suitable work around can be employed, or the functionality is not immediately necessary as assessed by Provider. Initial response within 4 hours of the case being submitted. The designated “Primary Client Contact” will be updated on an as needed basis. Provider will prioritize all client Sev3 requests and schedule accordingly.
<b>Sev4</b>	<b>Minor</b>	The Application or production system has a cosmetic or grammatical error that does not affect performance or stability of the system, or Client has questions regarding use of the product or service as assessed by Provider. Initial response within 1 day of the case being submitted. The designated “Primary Client Contact” will be updated on an as needed basis. Provider will prioritize all client Sev4 requests and schedule accordingly.
<b>Enhancement</b>	<b>Product Improvement Request</b>	Request for a new feature or new functionality that does not already exist in the product or service. Requirements will be noted and evaluated for the next release(s). Enhancement requests will be logged and submitted for consideration. The designated “Primary Client Contact” will be updated on an as needed basis.

\* Provider agrees to use “commercially reasonable efforts” to resolve a Severity 1 Issue. For purposes of this Agreement, “commercially reasonable” means that Provider will dedicate its engineering resources who are knowledgeable in the problem which has caused the Severity 1 Issue to provide a fix or a workaround, and such resources will work, as much as reasonably possible, on a continuous effort basis until a fix or workaround is provided, or until it has been determined that the source of the Severity 1 problem is not directly related to the Application and Hosted Service. Provider’s obligation to provide “commercially reasonable efforts” is contingent upon Client providing technical resources that are knowledgeable in the Severity 1 Issue to work on the resolution on as closely as reasonably possible a continuous commercially reasonable efforts basis.

6. Management and Classification of Third Party Hardware and Application Errors.  
Client agrees to set up and maintain all of Client’s LMS related hardware (PCs laptops,

etc.), software, and network connections according to specified End User requirements and Minimum Hardware requirements provided by Provider. Provider shall have no responsibility for correcting any errors in such configuration or in other manufacturers' hardware and/or software which includes, servers, network equipment, load-balancers, firewalls, browsers (Microsoft supported versions of Internet Explorer, Mozilla's Firefox and Google Chrome are supported), operating systems, or database systems. Client is responsible for resolving any client hardware and network errors in accordance with Client's support and maintenance agreements with the respective client hardware and network vendors.

In the event of a conflict between the provisions of the Agreement and this Service Level Agreement, the provisions of this Service Level Agreement shall prevail.

### **EXHIBIT C DUAL FACTOR AUTHENTICATION**

Provider will deliver enhancements outlined in Exhibit C to the Client's stage and production site within 4 months of execution of this agreement.

- A configuration will be added to the Theme – System page. This new field will be named “Dual Factor Authentication”. This will have a drop-down field that will have three options.
  - Disabled – If a client is setup for SSO, this will be selected and disabled. Dual Factor Authentication will not work with SSO.
  - Every Login – If this is selected, the system will force the Dual Factor Authentication each time. When the user enters their username and password successfully, they will be taken to a secondary authentication page. The page will have a content area at the top and an entry field for the code. When the page is opened, the system will email the user a randomly generated code. The user will have 20 minutes to enter that code. If the user does not have an email address on file, the system will present this error message. “Your account does not have an email address. You will not be able to login to the application. Please contact your system administrator to add an email address to your account.”
  - Trusted Device – If this is selected, the system will establish a cookie after the initial Dual Factor Authentication and the user will not have to perform the second authentication again for thirty days as long as the cookie is present on that device.
- A new Site Content Area will be added. This site area will be named “Dual Factor Authentication” and will appear at the top of the Dual Factor Authentication page.
- To support these new features, the following table updates will be made.
- avLoginDualFactor – This new table will be created to track dual factor authentication.
  - dfID – counter
  - dfCode -This will store the 6 digit randomly generated code

- dfDate – This stores the date/time the code was generated.
- dfUserID – this stores the ID for the user.
- dfEmailAddress – This stores the email address which received the dual factor code
- dfResult – This stores whether the user successfully entered the code or not. The default for the field is a 0 (code not provided). It will be updated to a 1 if the user authenticates successfully.