

ETO Software™ Sub-License Agreement

This AGREEMENT is made between **Social Solutions, Inc.** (“Licensor”) with the principle place of business at **2400 Boston St. The Factory Building, Suite 360, Baltimore, MD 21224** and **County of Monterey** (“Sub-Licensee”) an organization with a principle place of business at 1000 South Main Street, Suite 209-A, Salinas, CA 93901 and an affiliate of the **Child and Family Policy Institute of California** (“Distributor”), with the principal place of business at 1331 Garden Highway, Sacramento, California, 95833.

1. Definitions

- (a) “Member Organization” is a partner organization of Distributor with whom Sub-Licensee has a demonstrated historical or current contractual service relationship.
- (b) “Software” means ETO Enterprise Software licensed to Distributor.
- (c) “Deploy” means providing web-based access to the Software.
- (d) “Use” means gaining authorized access to the Software.
- (e) “Upgrade” means a modification to the Software that is completed according to Licensor’s exclusively determined timeline and specifications.

2. Grant of Rights

In accordance with the terms herein, Licensor grants to Sub-Licensee, and Sub-Licensee accepts from Licensor, a non-exclusive and non-transferable license to use Licensor's Software.

- (a) Software users shall be authorized upon Sub-Licensee’s execution and submission of this Agreement and payment in accordance with the terms referenced therein.
- (b) Use of the Software may be subsequently available to Users identified by Sub-Licensee, provided
 - (i) the total number of Users of the Software does not exceed five (5); or,
 - (ii) Where the User would be in addition to the number specified in Section 2(b)(i) above and Sub-Licensee has provided written notice of its request for additional user access and Sub-Licensee remits the appropriate fee specified in Section 8(b); or,
 - (iii) Where the User is approved by Licensor as a Guest for a duration to be determined.
- (c) The Software shall be used only for the processing of Child and Family Policy Institute approved programming and which shall include servicing, and maintaining records on behalf of Child and Family Policy Institute identified strategies, customers and clients only. Should participating counties wish to upgrade to a standard or professional license of ETO Software in order to manage other programs within their agency, they would need to execute a separate licensing agreement with Social Solutions.
- (d) Sub-Licensee shall not:
 - (i) Permit any unauthorized use;
 - (ii) Permit any unauthorized third party to use or reproduce the Software without the prior written consent of Licensor; or,
 - (iii) Use the Software in the operation of a service bureau.

3. License Term

This Agreement is effective when executed by both parties and the rights and obligations of each party remain in force for one (1) year or until terminated according to the terms and conditions stated in Section 17: “Termination.” This agreement can be renewed annually by the payment of appropriate annual user fees to Licensor at the discretion of Distributor.

4. Timeline for Performance WHERE APPLICABLE

The timeline for performance of all work around the deployment, training, customizations, implementation, and support shall be determined according to the needs determined by the Sub-Licensee, Distributor, and Licensor.

5. Custom Modifications

- a) Sub-licensee understands that multiple programs will be available via the Software (e.g.,

Team Decision Making; Recruitment, Development and Support; Building Community Partnerships; California Connected by 25; CAPP) and that there will be non-negotiable, standardized data elements that may include demographic, outcome, assessments, and feeder table elements, and reports that must be utilized in their standard form and may not be modified by the Sub-licensee.

- b) Beyond non-negotiable program elements, Sub-Licensee may, at any time during the term of this Agreement, request to have Licensor modify or enhance the Software to meet its exclusively determined needs (“Custom Modifications”). A copy of such request is to be provided to Licensee for review. If approved by Licensee, Licensor shall undertake all Custom Modifications of the Software as requested by Sub-Licensee at its then current time and materials charges. For each Custom Modification requested, Sub-Licensee shall provide written specifications to Licensor that shall be mutually agreed upon prior to Licensor’s commencement of such Custom Modification services. Using these specifications, Licensor shall offer Sub-Licensee a “capped” fee estimate to meet the specifications. Upon approval, the parties shall determine a mutually acceptable timeline for delivery, approval, deployment and payment for such Custom Modifications.
- c) Once deployed, these Custom Modifications become functional components of the Software and are subject to the same Warranty claims under Section 15 (a) and (b) below.
- d) Title and ownership of all Custom Modifications shall remain in Licensor

6. Technical Requirements

- b) **Client Requirements:** Provided by Sub-Licensee for the duration of the Agreement period.
 - (i) MS Windows Operating System (Windows 2000 or greater)
 - (ii) Internet connection
 - (iii) Internet Explorer 7 or greater

7. Software Deployment

Sub-Licensee’s receipt of Deployed Software is authorized upon its execution of this Agreement.

8. Software Use and Training

- a) **Software Use:** Sub-Licensee shall use reasonable efforts to limit the use of the Software to users who have been properly identified to Licensor and appropriately trained.
- b) **Additional End-User Licenses:** Subsequent to Software Deployment, Sub-Licensee may, upon written request and receipt of approval from Licensee and Licensor, be granted additional users at a cost based on the Social Solutions rate in effect at the time of purchase, pro-rated from the date of Agreement renewal. Once Sub-Licensee identifies names and roles, user accounts will be set-up by Licensor. Users will be able to change passwords after training.
- c) **Software Training:** Sub-licensee may request and receive additional training beyond that which is provided by the enterprise managers. For software training for Sub-Licensee users that is not arranged by the enterprise managers and funded by Licensee, the costs of such training will be provided at Licensor’s then current rate and will be born by Sub-licensee. Licensor shall make such training available to Sub-Licensee users at a location to be mutually agreed upon by Sub-Licensee and Licensor. Travel related costs for such training that requires Licensor staff to travel outside of a 25-mile radius of Licensor’s place of business shall be born by Sub-Licensee.

9) Standard Annual ETO Software™ Service Plan

- a) **Web-Domain Hosting:** SSG will maintain the Website through which the Service will be available to Customer on a twenty four (24) hours a day, seven (7) days a week basis, except during scheduled downtime or unscheduled downtime due to circumstances beyond SSG’s reasonable control. SSG shall use commercially reasonable efforts to prevent scheduled downtime Monday through Friday between the hours of 8am and 8pm Eastern Time. SSG provides automated monitoring of all production applications to assess application availability. SSG’s servers are monitored 24 hours a day by technicians who are on call.

- b) Security: SSG will maintain standard 128-bit Secure Socket Layer (SSL) encryption. SSG's servers will be protected by regular system-wide and Customer specific security audits and what SSG believes to be state-of-the-art intrusion detection systems, which monitor the security of the entire network from multiple access points. Operating system security releases are promptly installed and updated.
- c) Data Back up: All servers are backed-up daily to tape drive; SSG preserves the end of week tape which is securely stored off site. After 6 weeks SSG preserves the end of month tape for historical purposes. If Customer's data is lost as a result of the failure of hardware, Service or networks not directly controlled by SSG, SSG shall commence restoration within five (5) hours of notification from Customer and will use commercially reasonable efforts to restore Customer's data as of the last archive.
- d) Maintenance: SSG will use all commercially reasonable efforts to provide such error-correction services as may be required to ensure that SSG's applications remain in substantial conformance with current functionality.
- e) User-Support: SSG will provide such user support as may be required to promote the reasonable understanding and consistent use of the Service as currently configured. Standard user support is available via phone and email between the hours of 8am and 8pm, Eastern Standard Time, Monday through Thursday and Friday, 8am to 6pm Eastern Standard Time exclusive of holidays as may be established and amended by SSG from time to time. SSG shall provide user support in accordance with Appendix A to this Policy.
- f) Upgrades: SSG reserves the right to make such upgrades to the Service as may be necessary from time to time. Where applicable, SSG shall use commercially reasonable efforts to notify Customer and its Authorized End-Users of such upgrades within ten (10) business days of release and cause minimal user-level interruption. Where applicable, SQL Server and Microsoft Windows upgrades will be kept current with Microsoft-specified standards. Once deployed, these upgrades become functional components of the Service.

10. Software Ownership

- a) Licensor represents that it is the owner of the Software and all portions thereof and that it has the right to modify it and to grant Sub-Licensee a license for its use.
- b) Licensor represents that it maintains an active Technology Escrow Account, audited quarterly, with a qualified third party according to which, certain events, including the liquidation of Licensor, shall trigger a transfer of ownership of the Software and all related portions thereof to Sub-Licensee's perpetual, non-exclusive use.

11. Intent to Cooperate

Both Licensor and Sub-Licensee acknowledge that successful deployment and use of the Software pursuant to this Agreement shall require their full and mutual good faith cooperation.

12. Title in Content

- a) Licensor grants that it maintains no rights or title in Licensee and Sub-Licensee data collected, stored, and retrieved (collectively, "Content") by its End-Users in the Software during the term of this Agreement.
- b) Upon termination of this Agreement, Licensor shall deliver Sub-Licensee's Content in a mutually agreed upon media format. Subsequent to this delivery, Licensor shall destroy all tangible and digital records of Sub-Licensee's Content and related materials.
- c) Sub-licensee understands that it is the intention of Licensee that data regarding Child and Family Policy Institute identified strategies, programming and outcomes be viewed and aggregated across California sites to support technical assistance and analysis. Sub-licensee agrees to allow the University of California at Berkeley, Self-Evaluation Team, and Child and Family Policy Institute Data & Evaluations Administrator to view and aggregate data collected (through standard tools:

assessments, demographics, outcomes) in this Enterprise Edition of ETO Software. Licensor will ensure this view is available to designated University of California at Berkeley and Child and Family Policy Institute Data & Evaluation Administrator Personnel.

- d) Sub-licensee grants permission to share summary analyses of assessments, demographic variables, program fidelity and outcomes generated through Child and Family Policy Institute designated programs. These analyses will contribute to Sub-licensee Self Evaluation and effective implementation of Child and Family Policy Institute Identified strategies. Confidentiality is not a concern with this request as all analyses will be at a summary level and therefore will not include any client-level identifying information, such as client numbers. Sub-licensee provides consent for University of California at Berkeley and Child and Family Policy Institute Data & Evaluation Administrator to share summary-level analyses in the following arenas:
 - a) For reporting summary data to the Stuart Foundation, Walter S. Johnson Foundation California Department of Social Services, and the Children's Bureau of the U.S. Department of Health and Human Services as required under the terms of grants that support the implementation of practices that are documented in the ETO data base
 - b) Child Welfare related Conferences (for presentations and discussions of data collection and evaluation strategies with other counties involved in similar child welfare related work)
 - c) National Child Welfare related Conferences (for presentations and discussions of data collection and evaluation strategies with other counties involved in similar child welfare related work),
 - d) Academic Papers and Conferences (for discussion and development of data collection and evaluation strategies)

13. Title to Software Systems

- a) The Software and all programs developed hereunder, including without limitation the Software, the results of all development efforts independently initiated by Licensor, and the results of all development efforts made on the behalf of Sub-Licensee and all copies thereof are proprietary to Licensor and title thereto remains in Licensor.
- b) All applicable rights to patents, copyrights, trademarks and trade secrets in the Software or any modifications made at Sub-Licensee's request are and shall remain in Licensor.

14. Confidentiality

- a) Except to the extent expressly permitted in writing, Sub-Licensee shall not reproduce, duplicate, copy, sell, or otherwise disseminate the Software, including related materials, in any medium.
- b) Sub-Licensee acknowledges that the Software is an extremely valuable trade secret of Licensor and is currently patent-pending with the US Patent and Trademark Office; therefore, any disclosure to third parties who are not subject to confidentiality and restrictions similar to those contained in this Agreement is strictly prohibited.
- c) Sub-Licensee shall not release the results of any benchmark of the Software without Licensor's prior written approval.
- d) Neither Sub-Licensee nor Licensor shall release any terms of this Agreement without the other Party's prior written consent.
- e) Sub-Licensee agrees to secure and protect each module, software product, documentation and copies thereof in a manner consistent with the maintenance of Licensor's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to each program or software product to satisfy its obligations hereunder.
- f) Licensor agrees to secure and protect any and all Sub-Licensee's data in a manner consistent with the maintenance of Sub-Licensee's rights therein and to take appropriate action by instruction or agreement with its employees or consultants who are permitted access to each program or software product to satisfy its obligations hereunder.
- g) Licensor grants that it neither has nor retains any rights in the data collected by Sub-Licensee in the Software but that it may, from time to time, include Sub-Licensee's row and record counts, table acquisition and volume, individual user/program and site-wide transaction counts, transaction frequency, transaction rates, and transaction record volume, load balance

and timing, and transaction execution rates (“Unattributable Data”) in statistical analysis or formulaic combination to monitor and manage Software performance.

15. Warranty

- (a) Licensor warrants that Software will conform, as to all substantial operational features, to Licensor's current published specifications when installed and will be free of defects that substantially affect system performance.
- (b) Sub-Licensee must notify Licensor in writing of its claim of any defect. If the Software is found to be defective by Licensor, Licensor's sole obligation under this warranty is to remedy such defect in a manner consistent with Licensor's regular business practices.
- (c) THE ABOVE IS A LIMITED WARRANTY AND IT IS THE ONLY WARRANTY MADE BY LICENSOR. LICENSOR MAKES AND SUB-LICENSEE RECEIVES NO WARRANTY EXPRESS OR IMPLIED AND THERE ARE EXPRESSLY EXCLUDED ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT FOR CONSEQUENTIAL, EXEMPLARY, OR INCIDENTAL DAMAGES EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE STATED EXPRESS WARRANTY IS IN LIEU OF ALL LIABILITIES OR OBLIGATIONS OF LICENSOR FOR DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, OR PERFORMANCE OF THE SOFTWARE SYSTEMS.
- (d) If Sub-Licensee makes any unauthorized modifications to the Software, this warranty shall immediately be terminated. Correction for defects traceable to Sub-Licensee's errors or system modifications shall be the responsibility of Sub-licensee and will be billed at Licensor's standard time and material charges.
- (e) Sub-Licensee agrees that Licensor's liability arising out of contract, negligence, or strict liability in tort or warranty shall not exceed any amounts payable by Sub-Licensee for the Software identified above.

16. Indemnity

Licensor, at its own expense, will defend any action brought against Sub-Licensee to the extent that it is based on a claim that the Software used within the scope of this Agreement infringes any patents, copyrights, license or other property right, provided that Licensor is immediately notified in writing of such claim. Licensor shall have the right to control the defense of all such claims, lawsuits and other proceedings. In no event shall Sub-Licensee settle any such claim, lawsuit or proceeding without Licensor's prior written approval.

If, as a result of any claim of infringement against any patent, copyright, license or other property right, Licensor is enjoined from using the Software, or if Licensor believes that the Software is likely to become the subject of a claim of infringement, Licensor at its option and expense may procure the right for Sub-Licensee to continue to use the Software, or replace or modify the Software so as to make it non-infringing. If neither of these two options is reasonably practicable, Licensor may discontinue the license granted herein on one month's written notice and refund to Sub-Licensee the unamortized portion of the fees. The foregoing states the entire liability of Licensor with respect to infringement of any copyrights or patents by the Software or any parts thereof.

17. Termination

Licensor shall have the right to terminate this Agreement and any and all license(s) granted herein:

- (a) Upon ten days' written notice, in the event that Sub-Licensee, its officers, or employees violates any provision of this Agreement including, but not limited to, confidentiality and payment;
- (b) In the event Sub-Licensee:
 - (i) Violates any term or condition referenced in Section 2 above;
 - (ii) Terminates or suspends its business;
 - (iii) Becomes subject to any bankruptcy or insolvency proceeding under Federal or state statute, or

- (iv) Becomes insolvent or subject to direct control by a trustee, receiver or similar authority.

In such case, Licensor shall have the right to terminate the license(s) and immediately terminate Sub-Licensee's right to use the Software and take immediate possession of all related documentation without demand or notice.

- (c) Use of the Software by any User other than those identified in accordance with the terms set in Section 2 b(ii) above shall be the basis for immediate termination of this Agreement.
- (d) Termination under this paragraph shall not relieve Sub-Licensee of its obligations regarding confidentiality of the Software.
- (e) Without limiting any of the above provisions, in the event of termination as a result of the Sub-Licensee's failure to comply with any of its obligations under this Agreement, the Sub-Licensee shall continue to be obligated for any payments due. Termination of the license(s) shall be in addition to and not in lieu of any equitable remedies available to Licensor.

Sub-Licensee shall have the right to terminate this agreement and license(s) granted herein by supplying Licensor with notice in writing of its intent to terminate services no less than thirty days prior to date of termination. Upon receiving such notice, Licensor shall provide Sub-Licensee with a digital copy of all data collected by Sub-Licensee in the Software in MS Access 2000 format within 10 days of the date of termination.

18. General

- (a) Complete Agreement: Each party acknowledges that it has read this Agreement, it understands it, and agrees to be bound by its terms, and further agrees that this is the complete and exclusive statement of the Agreement between the parties, which supersedes and merges all prior proposals, understandings and all other agreements, oral and written, between the parties relating to this Agreement. This Agreement may not be modified or altered except by written instrument duly executed by both parties.
- (b) Performance Delays: Dates or times by which Licensor is required to make performance under this License shall be postponed automatically to the extent that Licensor is prevented from meeting them by causes beyond its reasonable control.
- (c) Applicable Law: This Agreement and performance hereunder shall be governed by the laws of the State of California.
- (d) Enforceability: Where any provision of this Agreement is invalid or unenforceable under any applicable statute or rule of law, it is to that extent to be deemed omitted.
- (e) Assignment: Sub-Licensee may not assign or sub-license, without the prior written consent of Licensor, its rights, duties or obligations under this Agreement to any person or entity, in whole or in part.
- (f) No Agency: Nothing contained herein will be construed as creating any agency, partnership, joint venture or other form of joint enterprise between the parties.
- (g) Arbitration: Should a dispute under this Agreement arise, the parties agree to submit it to binding arbitration. Should this effort fail to resolve the dispute, the prevailing party shall have the right to collect its reasonable expenses incurred in enforcing this agreement including attorney's fees.
- (h) Notice: All notices and other communications given in connection with this License shall be in writing and shall be deemed given as follows:
 - (i) When delivered personally to the recipient's address as appearing in the introductory paragraph to this Agreement; or,
 - (ii) Three days after being deposited in the United States mails, postage prepaid to the recipient's address as appearing in the introductory paragraph to this Agreement; or,
 - (iii) When sent by fax or email to the last fax or email address known to the party giving notice.
 - (iv) Any party may change its address appearing in the introductory paragraph of this Agreement by giving notice of such change in accordance with this paragraph.

19. Signatures

I, the undersigned, represent and warrant that I have reviewed and understand this Agreement, and am duly authorized on this date to bind the principals of my company to the terms and conditions stated in this Agreement.

LICENSOR:

LICENSEE:

Social Solutions, Inc.
Organization

Child and Family Policy Institute
Organization

Authorized Signature

Authorized Signature

Printed Name

Printed Name

Title

Date

Title

Date

SUB-LICENSEE

Monterey County Social Services
Organization

Authorized Signature

Printed Name

Title

Date

*Approved as to Form
J. Malkin
County Counsel 7.11.12*