



**Disaster Recovery as a Service  
Service Level Agreement**

**Agreement No. DRaaS.XXXX.X.XX.20xx**

This Service Level Agreement (SLA) is made as of this XX, \_\_\_\_\_, 20 between Electro Systems Engineers, Inc. (d.b.a. ESEI) a Texas corporation with offices at 5400 Suncrest Dr. Ste. B3, El Paso, TX 79912 ("ESEI") and \_\_\_\_\_, with offices at \_\_\_\_\_, \_\_\_\_\_ ("Customer"). ESEI and Customer are sometimes hereinafter collectively called "the Parties".

**Witnesseth**

**Whereas**, ESEI represents that they have the experienced personnel, equipment, applications, and tools to perform, and the Customer desires ESEI to perform and provide Disaster recovery as a Service solutions herein described.

**Whereas**, ESEI represents that only sound engineering and information technology practices and industry-wide accepted standards shall be used in providing the technical services herein described.

**Now**, therefore, in consideration of the mutual undertakings herein contained and for other good and sufficient consideration, the receipt and adequacy of which is hereby acknowledged, the Parties agree as follows:

**1. Term of Agreement**

The initial term of this SLA for Disaster Recovery as a Service (DRaaS) shall begin on the \_\_\_\_\_, 20\_\_ (the "Commencement Date") and end on the \_\_\_\_\_, 20\_\_ (the "Initial Term").

At the end of the Initial Term, this SLA, Customer may extend this contract by amendment for up to three- optional one-year terms upon Customer providing 30 day written notice to vendor prior to the then-expiration date The Agreement will terminate at the end of the term specified in this contract and service will stop if no response is received from Customer regarding an extension.

The rights, benefits, duties and obligations of this Agreement may be assigned in accordance with Appendix A, Section 3.D of DIR Contract No. DIR-TSO-4122.

**2. Definitions**

**Operational** - Operational is defined as working and available to Customer. A server, desktop and/or laptop is Operational when the Customer can use it in the normal course of business and Customer's business operations are not adversely affected by the operational state of desktops/laptops, servers, and network.

**Failure (Downtime)** - A failure occurs when any critical function of a desktop/laptop and server does not function. A function shall be considered critical when the loss of such function will result in the Customer's inability to perform its business duties.

**Exclusions** - Failures under this SLA do not include hardware problems, including but not limited to problems with the motherboard, processor, disc drives, network cards, fans, or power supplies; software application failure (licensed, unlicensed, shareware, etc.) that run from any of Customer's equipment; network interruptions; actions taken by internet service providers or other third parties; failure of the Network or Internet Service providers. Lastly, any problems with equipment or applications resulting from Customer's negligence are not considered under this SLA.

**Force Majeure** - Customer acknowledges and agrees that neither Party shall be held responsible for any failures or delays in performing services under this SLA in accordance with Appendix A, Section 11.C of DIR Contract No. DIR-TSO-4122.

### **3. Administrative Access to Systems**

Customer will provide ESEI with administrative rights to the desktops/laptops, servers and networking equipment for which ESEI will provide DRaaS support as per the services outlined in the SOW.

### **4. Customer Representation – Technical Point of Contact**

Customer agrees that Customer will identify in writing a Technical Point of Contact with the necessary authority to approve and authorize performance of work as described herein on behalf of the Customer. Customer further agrees that any changes to this contact will be communicated in writing.

### **5. Monitoring Software Agent**

ESEI will install Disaster Recovery software in each computer/laptop and server which is to be protected by ESEI's DRaaS program and which will be imaged as specified in Exhibit A of this Agreement.

In addition, and in order to provide the services specified herein, ESEI will install remote monitoring and management software agents on Customer's desktops/laptops and servers, and other equipment as required. Customer network equipment must have TCP/IP Outbound Port 5721 available. Customer grants permission to ESEI to install these remote monitoring and management agents, or any other remote monitoring and managing software agent deemed necessary by ESEI. Customer grants ESEI permission to remove all remote monitoring and management agents upon termination of this Agreement.

### **6. Software Updates**

ESEI is not responsible under this agreement for any update to Customer's software residing and operating in any desktop/laptop computer and server owned and operated by the Customer.

### **7. Specific Services**

ESEI will provide the DRaaS outlined in Exhibit A of this SLA.

### **8. Image Storage Environment**

Customer will provide Servers or External Drives for ESEI to store images generated by the Disaster Recovery software.

**9. Cost of Services**

ESEI will bill and Customer will pay for the services as per the terms in accordance with Appendix A, Section 8.J of DIR Contract No. DIR-TSO-4122.

**10. Additional Work**

Any work outside the scope of the services outlined in Exhibit A will be considered Additional Work and will be billed separately. Additional Work may include design and implementation of network expansions, addition of new desktop/laptops, new servers, cabling, etc. ESEI will present Customer with estimate of the total cost to implement additions or changes. ESEI will only proceed until Customer has had ample time to review and approve the estimate in writing.

**11. Hours of Service**

The following hours of operations apply to this SLA:

**Regular Hours** – All services under this agreement shall be provided between the hours of 8:00 AM and 5:00 PM (Mountain Standard Time) Monday through Friday excluding ESEI corporate holidays. ESEI observes the following holidays: New Year’s Day, Good Friday, Memorial Day, Independence Day, Labor Day, Thanksgiving Day, Day after Thanksgiving, and Christmas Day. If the contract calls for performance on a day that is not a regular business day, then service will be delivered on the next business day.

**12. Response and Resolution Times**

ESEI will respond, via telephone or e-mail, within 60 minutes of a trouble ticket being received via our ticketing system or Customer telephone call to our office during Regular Hours. ESEI will act on trouble tickets as per the Response and Resolution Times and Escalation Levels specified in Exhibit C of this SLA. ESEI will send a closed ticket notification once the issue addressed by the alert or support ticket has been resolved.

**13. Complete Agreement**

DIR Contract No. DIR-TSO-4122 and this SLA contain the entire agreement between the parties hereto with respect to the matters covered herein. Customer acknowledges that it is entering into this agreement solely on the basis of the representation contained herein.

**14. Terms and Conditions**

The State of Texas – Department of Information Resources (DIR) Contract for Products and Related Services and the Standard Terms and Conditions for Products and Related Services Contracts are incorporated into this SLA by reference and shall prevail.

**15. Conflicts**

In the event of a conflict in the provisions of this SLA and its attachments hereto and the provisions set forth in the DIR Contract No. DIR-TSO-4122 shall govern.

**16. Applicable Law**

This SLA shall be interpreted, construed, and governed according to the laws of the State of Texas. Venue of any action shall be state courts located in Travis County, Texas. Nothing herein shall be construed to waive the sovereign immunity of the State of Texas.

## **17. Enforceability**

If the scope of any of the provisions of the Agreement is too broad in any respect whatsoever to permit enforcement to its full extent, then such provisions shall be enforced to the maximum extent permitted by law, and the parties hereto consent and agree that such scope may be judicially modified accordingly and that the whole of such provisions of this Agreement shall not thereby fail, but that the scope of such provisions shall be curtailed only to the extent necessary to conform to law.

## **18. Dispute Resolution: Binding Arbitration**

Any controversy or claim arising out of or relating to this SLA shall be handled in accordance with Appendix A, Section 11.A of DIR Contract No. DIR-TSO-4122.

## **19. Notices.**

Notices shall be handled in accordance with Appendix A, Section 12 of DIR Contract No. DIR-TSO-4122.

## **20. Confidential Information**

To the extent allowable under the Texas Public Information Act, both ESEI and Customer understand and agree information gathered and/or obtained by or from either party over the term of this Agreement, in accordance with the services in Exhibit A and the terms in Exhibit B, is deemed proprietary and confidential. As such, all such information gathered or obtained by or from either party may not be shared, communicated, disseminated or reproduced, with or to any third party, without first having obtained the written permission of ESEI or Customer, as the case may be.

## **21. Independent Contractor Relationship**

ESEI is an independent Contractor and ESEI is not employed by Customer. ESEI is hereby contracting with Customer for the services described in this Agreement and ESEI reserves the right to determine the method, manner, and means by which the services will be performed. ESEI is not required to perform the services during a fixed hourly or daily time.

ESEI shall not be required to devote their full time to the performance of the services required hereunder, and it is acknowledged that ESEI has other Customers and offers services to the general public. The order or sequence in which the work is to be performed shall be under the control of ESEI. Customer shall not provide any insurance coverage of any kind for ESEI, and Customer will not withhold any amount that would normally be withheld from an employee's pay.

## **22. Non-Solicitation of Employees**

During the term of this SLA and for a period of 12 months thereafter, Customer agrees to not, directly or indirectly, for itself and on behalf of any other firm, corporation, partnership, individual, or other entity, engage, solicit, recruit, employ, or entice any employee or employees, employed by ESEI, or any employee that has been previously employed by ESEI since the Commencement Date of this SLA, to terminate his/her employment relationship with ESEI, without the prior written consent of the President of ESEI. ESEI hereby agrees that it will not solicit, hire, or retain, in any capacity whatsoever, any of Customer's employees, without the prior written consent of

Customer. Employment solicitations advertised to the general public are not subject to this provision.

**23. Limited Warranty**

ESEI warrants to Customer that the services to be delivered or rendered under this SLA will be of the kind and quality described in this SLA, and will be performed by qualified personnel. ESEI makes no promises or warranties other than the warranties contained in this SLA, and Customer acknowledges and agrees that no oral warranties of any kind have been made by ESEI. All items provided by Customer or through third parties are provided AS IS.

**EXCEPT AS PROVIDED ABOVE, ESEI PROVIDES NO EXPRESS OR IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND DATA ACCURACY, AND ESEI EXPRESSLY DISCLAIMS ALL SUCH EXPRESS OR IMPLIED WARRANTIES. FURTHER, ESEI MAKES NO WARRANTIES OR GUARANTEES, EXPRESS OR IMPLIED, REGARDING THE ABILITY TO RESOLVE COMPUTER-RELATED PROBLEMS, RECOVERY OF DATA, OR TO AVOID LOSING ANY EXISTING DATA.**

Modifications to the services or products provided by ESEI, by other parties, could significantly affect the performance of the products and services provided by ESEI. Any modifications, other than as performed or authorized in writing by ESEI will invalidate and terminate any and all warranties provided by ESEI effective on the date of any such modification.

**24. Limitation of Remedies and Damages**

Limitation of Liability shall be handled in accordance with Appendix A, Section 10.K of DIR Contract No. DIR-TSO-4122.

**IN WITNESS WHEREOF**, the Parties hereto have signed this Agreement and agree that it shall be binding upon the parties and their respective heirs, successors, and assigns.

By: \_\_\_\_\_  
ESEI Date  
J. Antonio Rico, President

By: \_\_\_\_\_  
\_\_\_\_\_. Date  
\_\_\_\_\_, XXXXXX

**APPENDIX F TO DIR CONTRACT NO. DIR-TSO-4122**

**Disaster Recovery as a Service  
Service Level Agreement  
Exhibit A**

**Agreement No. DRaaS.XXX.XX.XX.20xx**

**Services:**

The DRaaS under this SLA consists of:

1. Desktop/laptop and server imaging:

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2. Desktop/laptop and server restoration:

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**Disaster recovery as a Service  
Service Level Agreement  
Exhibit B**

**Agreement No. DRaaS.XXXX.X.XX.20xx**

**Fixed Rate Services** ESEI agrees to perform for Customer the services listed in Exhibit A for the following monthly fixed fees as computed in the matrix below and as identified in the corresponding SOW.

SERVICE DESCRIPTION	NUMBER OF DEVICES PROTECTED			Monthly Amount
	Desktops/	Laptops	Servers	
Disaster Recovery as a Service				\$xx,xxx.xx
	<b>TOTAL</b>			\$xx,xxx.xx

N/C – No Charge

Taxes shall be handled accordance with Appendix A, Section 8.E of DIR Contract No. DIR-TSO-4122.

**Other Rates:**

**3<sup>rd</sup> Party Vendor Support**

Should ESEI incur any 3<sup>rd</sup> party vendor support charges in the resolution of technical issues, these charges will be paid by the Customer. ESEI will only incur such charges after receiving Customer’s written authorization to incur them.

Customer may add or remove servers, desktop PCs, or laptop PCs by e-mailing a request to ESEI at [helpdesk@esei.com](mailto:helpdesk@esei.com). The removal of devices will not change the terms of the agreements. ESEI will bill, on a monthly basis, for each additional device as per the price list below:

Any Additional Work and or after hours, as specified in Paragraph 10 of this SLA, required during the period of performance specified in this SLA will be billed.

**Fixed Rate Payment Terms**

DRaaS will be invoiced and paid in advance for the current month services. Upon execution of this SLA, Customer agrees to a payment for the first month of the service; this amount may reflect a partial month proration based on the actual number of days in the current month. ESEI will invoice for the next months’ DRaaS services by the 5<sup>th</sup> of each calendar month. All payments will be handled in accordance with Appendix A, Section 8.J of DIR Contract No. DIR-TSO-4122.

**Hourly Payment and 3<sup>rd</sup> Party Support Terms**

Work that is performed on an hourly basis and charges resulting from the need for 3rd Party Vendor Support will be invoiced separately from fixed rate services and invoiced by the 10<sup>th</sup> of each calendar month. These invoices are due in accordance with Appendix A, Section 8.J of DIR Contract No. DIR-TSO-4122 within 30-days of the invoice date.