

Emergency Solutions Ltd. (ESL)

Terms and Conditions

1. Proposals

Proposals are open for thirty (30) days, unless withdrawn within that time. If work begins upon **Client's** request prior to execution of an agreement or engagement letter, these terms will govern the terms of the engagement. When an agreement or engagement letter is executed, these terms will supplement the agreement. If there is a conflict between these terms and conditions and the terms of any such agreement or engagement letter, the terms of the agreement or engagement letter will prevail. These terms and conditions will apply to the agreement between **ESL** and **Client**, unless otherwise expressly agreed notwithstanding contrary terms or conditions contained in any purchase order or other document which **Client** uses to accept **ESL's** proposal.

2. Estimates

Any estimate of costs and expenses relating to the project of which the work is a part or of **ESL** work itself, other than in fixed fee arrangements, are estimates only. **ESL** cannot assure that actual construction or other costs will not vary from any proposal or project budget. **Client** should anticipate that some changes and adjustments to the project may be required.

3. Professional Services

Hourly Project: Billings are based on the hours worked, including travel time. Where an estimated total has been given, unless specifically noted, it is not a guaranteed figure but is provided solely to assist in project planning.

4. Additional Services

Services beyond those agreed to, including among others, revisions due to adjustments in the project scope, quality, or budget are considered Additional Services and will be billed at hourly rates.

5. Overtime: Overtime services as set forth will be provided only upon authorization at 1.5 times the hourly rate.

6. Reimbursable Expenses

In addition to payment of fees, **Client** must reimburse **ESL** for its out-of-pocket expenses incurred in performing the work, such as, but not limited to, prints, reproducible, photocopies, travel related expenses, mileage, deliveries, long distance communications, fax transmissions, photography, outside consultants, approval and permit fees, and any supplemental insurance requested. Reimbursable expenses will be billed at **ESL's** standard rate plus 20 percent. Reimbursement will be provided at cost for any sales tax, which may be assessed in the course of providing professional services.

7. Client's Responsibility

In addition to other agreed upon obligations, the **Client** shall disclose any physical, chemical or biological hazards at its location or locations and Hazardous Substances as required by the Occupational Safety and Health Administration Hazardous Communication Standard to **ESL**, prior to the inspection. The **Client** shall also disclose to **ESL** all hazards, conditions and other facts which are known or should be known to the **Client** which may effect **ESL's** work or the content of **ESL's** report. The **Client** agrees to hold harmless and indemnify **ESL** with respect to any liability concerning which the **Client** fails to make disclosure as required. The **Client** shall also timely provide access to legal, accounting and insurance advice as **ESL** may require, timely review of proposals, schedules, plans and specifications prepared by **ESL** and cooperate with **ESL** so that **ESL** may complete its work in a timely fashion.

8. Invoices

Unless otherwise agreed, **Clients** will be invoiced monthly for services performed during the previous month. Payment is due on receipt. Interest will be added after 30 days at the rate of 1.5% per month. **ESL** may suspend or terminate its work upon ten days notice if any invoice is not paid when due. **Client** will reimburse **ESL** its actual attorney's fees and litigation costs incurred in pursuing collection of any amount due from **Client**.

9. Report

ESL will render a Report. The Report will be in **ESL's** usual form. The **Client** may request reasonable explanations or clarifications of the Report; however, **ESL** will not be obligated to provide any written Report, except as the parties expressly agreed. **ESL** makes no representation or warranty as to the safety, insurability, lawfulness, or advisability of any facilities, equipment, processes or other subject of the Report, except as may be expressly provided in the Report.

10. Independent Contractor

ESL is an independent contractor, not an employee of the **Client**. **ESL** maintains Worker's Compensation, and general liability insurance. Copies of insurance certificates are available upon request.

11. Confidential Information

All information, records, documents and data of the **Client** shall be maintained in strictest confidence by **ESL** and any information obtained by **ESL** in the course of performing its services, shall be held in strictest confidence under the provisions of the law.

12. Information, Databases and Reports

It is understood that all training materials, procedure systems, software programs and other materials provided by **ESL** shall remain the sole property of **ESL**. Database information or reports which have been generated by **ESL's** performance of services under contract with **Client**, shall become the property of **Client**. However, **ESL** shall be permitted to retain a copy of any and all information.

13. Force Majeure

In the event that **ESL** is prevented from performing its obligations by acts of God, natural disaster, war, terrorists attacks, labor disputes, illness, death, incapacity, governmental action, including governmental action to require **ESL's** services in any capacity on an emergency basis, or similar cause, **ESL** will be relieved of any further obligation under this Contract until such time as **ESL** may reasonably resume performance. **Client** will be relieved of the obligation to make further payments to **ESL**, except reimbursement of expenses, until performance is resumed, but will not be entitled to refund of any amounts already paid to **ESL**.

14. Labor Dispute

In the event that a labor dispute interferes with **ESL's** ability or willingness to perform its obligations under this Contract, at **ESL's** option such obligations will be null and void; provided, that **Client** will not be obligated to make any further payments, except reimbursement of expenses to **ESL**.

15. Dispute Resolution

All claims, disputes and other matters in question arising out of, or relating to, this Agreement shall be referred to statutory arbitration under the Pennsylvania Uniform Arbitration Act, 42 Pa. C.S. Sections 7301 et seq. (the "Uniform Arbitration Act"). Such arbitration shall be by a panel of three arbitrators, with the **Client** and **ESL** each to choose an arbitrator, and together the first two arbitrators shall choose a third arbitrator. Costs for the arbitration shall be shared equally by the parties. The arbitration shall take place in Lancaster County, Pennsylvania. Arbitration shall occur within sixty (60) days from the date the written request for appointment of arbitrators is made by either party unless an extension is mutually agreed upon by the parties. This Agreement to arbitrate shall be specifically enforceable under the prevailing Arbitration Law. The award rendered by the arbitrators shall have the effect provided in the Uniform Arbitration Act.

16. Limitation of Liability, Indemnification

Unless expressly agreed to the contrary, damages incurred by **Client**, or with respect to which **Client** is threatened as a result of any action or failure to act arising out of **ESL's** work (whether as a breach of contract or the negligence of **ESL**) shall in no event exceed the greater of \$50,000 or the total amount of **ESL's** fees paid by **Client** in connection with the work, whichever is less. **Client** shall indemnify, defend, and hold **ESL** harmless from and against any and all cost, damage, losses, liability and actions to which **ESL** may be subject, or with which it may be threatened as a result of anything, **Client** or its representatives, contractors, subcontractors, employees or agents do, or fail to do, in connection with the project of which the work is a part; or as a result of any failure by **Client** to perform any of its obligations under this agreement.

17. Non-solicitation of ESL's Employees

The **Client** agrees that at no time, during the term of this Contract or for a period of one (1) year immediately following the termination of this Contract, will it (i) call upon any employee of **ESL** for the purpose of employing, hiring or otherwise interfering with the contractual relations of such employee without the prior written approval of **ESL**, which approval may be withheld, delayed or conditioned at the sole discretion of **ESL**; or (ii) directly or indirectly for itself or on behalf of or in connection with any other person, firm, partnership, corporation or association solicit, hire, employ as an employee or independent contractor any such employee of **ESL**.

In the event of a breach by **Client** of the covenant set forth in this Section, then **ESL** shall, in addition to any other remedy it may have under this Contract, at law or in equity, have the right to apply to a court of competent jurisdiction for an injunction to restrain **Client** from employing such employee and/or an order enforcing the terms of the covenant so breached, and **Client** shall be liable to **ESL** for all actual attorney's fees, costs and expenses incurred by **ESL** in enforcing the provisions of said covenant.

18. Binding Agreement

This Contract is binding upon the parties, their heirs, successors or assigns.