



CHARTER

This Charter ("Charter") is made as of the Effective Date of January 16, 2001, by and between the Defense Acquisition University ("DAU"), and ESI International, Inc. ("ESI").

RECITALS

WHEREAS, DAU and ESI (the "Parties") entered into a Letter of Intent on September 5, 2000, (Attachment 1) to create a strategic partnership; and

WHEREAS, that Letter of Intent called for the Parties to create a Charter under which DAU students could take the professional-level classroom-based training in project management, information technology project management, government contracting, and commercial contract management that ESI, in association with The George Washington University ("GW"), delivers to the general public ("Training") along with the courses DAU independently delivers in order for DAU's students to receive a Master's Certificate from DAU, GW, and ESI (a "Joint Master's Certificate"),

NOW, THEREFORE, this Charter describes the agreement of the Parties to conduct the joint master's certificate program.

1. ESI

- 1.1 ESI will deliver Training from time to time at the sole discretion of ESI in facilities paid for by ESI. All Training will be delivered and all Course Materials (defined in Section 4) will be written in the English language. ESI will provide the Course Materials and instructors for all Training.
- 1.2 **Provide Administrative Support Services.** For the Training, ESI will perform all administrative support services such as shipping course materials to the course site; preparing, distributing, and collecting course evaluation forms; and collecting post-course reports. ESI will also be responsible for maintaining records of student participation for all Training and awarding student course completion certificates (for all students who successfully complete a course) and Master's Certificates to those who meet the requirements set forth by ESI.

Successful completion of Training requires attendance at all morning and afternoon sessions and a passing score on the final exam, if a final exam is required. Students who miss a course session or fail the final exam may make up the time or take a re-test at another Training course free of charge.

- 1.3 **Qualified and Experienced Personnel.** ESI warrants that its personnel are sufficiently qualified and experienced to perform the Training hereunder and that such personnel shall diligently apply themselves to perform the Training in a professional fashion.
- 1.4 **Marketing.** ESI will market its programs to DAU students through the normal marketing mechanisms available to all private instructional organizations.

2. DAU

- 2.1 **Work with Program Manager.** DAU will work directly with the ESI program manager at ESI or his or her replacement—and not ESI instructors—to discuss Training.
- 2.2 **Communications.** DAU will publish the availability of the Joint Master's Certificate Program through its normal communication channels. DAU will also provide ESI with mailing lists of business addresses of its students to permit ESI to directly promote the Joint Master's Certificate Program, subject to limitations of the Freedom of Information Act (FOIA) & Privacy Act.

2.3 **DAU Students.** The term "DAU students" as used in this agreement should mean any person, government or non- government, who completes a DAU certified course.

3. TUITION AND PAYMENT

3.1 **Tuition.** Tuition for DAU students to attend ESI Training courses is specified in the Federal Supply Schedule Contracts (FSS contract). Any student not fully satisfied with a Training course will be afforded a full refund of any tuition paid or will be offered another comparable Training course without charge to the student.

3.2 **Payment and cancellation** To attend ESI Training, DAU's students shall pay for the Training they wish to attend with either a government training form or a credit card at the time of registering for the Training. Payment and cancellation should be governed by the terms of the applicable federal supply schedule contract. Any dispute should be required pursuant to the FSS contract. This charter shall create no right of action against DAU.

4. OWNERSHIP AND USE OF MATERIALS NAMES

4.1 **ESI's Exclusive Ownership Of Course Materials.** ESI shall retain the exclusive right, title, and interest in and to the entirety of the courses, student course manuals, tests, study and instructor guides, methodologies, processes, multimedia, communication transcripts and libraries, technologies, and systems used in the classroom and online that ESI may develop and/or employ in performing this Charter—and any translations or derivatives thereof—including any pre-existing ESI material and any new material that ESI creates for DAU, whether the new material is incorporated into ESI's existing courses or created as a stand-alone product ("Course Materials"). ESI's copyright of the Course Materials will be noted on the bottom of all of the pages of the Course Materials.

4.2 **Grant of License.** ESI grants a perpetual, royalty-free license to DAU to use the Course Materials subject to the following conditions:

- DAU will not sublicense or sell the Course Materials as a whole (and/or any portion of it that belongs to ESI) in any form for any purpose.
- DAU will not reproduce, distribute, disclose, alter, develop derivative products, or otherwise use the Course Materials as a whole (and/or any portion of it that belongs to ESI) in any form for any purpose except "Internal Business Purposes," without ESI's prior written authorization. "Internal Business Purposes" are defined as: keeping materials for internal library and reference materials; providing copies to clients or potential clients for their evaluation of the organization's capabilities, methods, and techniques; preparing project management checklists; and creating working tools to be utilized by DAU's students in the conduct of their job responsibilities to the extent appropriate for their duties. "Internal Business Purposes" does not include training other than the Training provided by ESI under this Charter.
- ESI will not provide DAU with its instructor guides. If DAU acquires access to an ESI instructor guide for any reason, DAU will notify and return it to ESI immediately. If DAU would like to view an ESI instructor guide, DAU may do so in ESI's corporate offices upon request.
- DAU will not remove ESI's copyright and trademark on the Course Materials.

4.3 **Ownership of ESI's and GW's Name and Marks.** ESI's name and service marks are owned exclusively by ESI. GW owns the GW name and mark and has granted ESI the right to sublicense the GW name and mark for the purposes of this Charter.

4.4 **Grant of License to Use Names.** ESI hereby grants DAU a non-exclusive license to use ESI's and GW's name and marks pursuant to the terms and conditions specified in this Charter, including the following:

- i) ESI's name and logo may appear on the cover of all joint master certificate literature ("literature").

- ii) The George Washington University's name and logo may also appear on all literature distributed by DAU, and, if used, must be used in exactly the same form and format that ESI uses such logo, which states under it: "School of Business and Public Management."
- iii) The following phrase is used on promotional literature to describe the relationship between the Parties: "This Training is provided by ESI International in association with The George Washington University School of Business and Public Management and is offered in conjunction with the Defense Acquisition University."
- iv) The Training is never identified as being associated with any training provider other than ESI and DAU or with any institution of higher education other than GW, without ESI's prior authorization.
- v) DAU never uses the ESI or GW name or logo except in connection with the Training, without ESI's prior authorization.
- vi) DAU will send the ESI Legal Department a copy of any materials using the GW name or logo that are made available to DAU's students. The material should be sent to ESI International, Legal Department, 4301 Fairfax Drive, Suite 800, Arlington, VA 22203.
- vii) DAU will immediately stop the distribution of any literature using the ESI or GW name or logo if ESI or GW object to the manner in which DAU uses the names and marks.

4.5 **ESI use of DAU's Name and Marks.** ESI may place DAU's name and marks on the Joint Master's Certificates and other appropriate literature.

5. JOINT MASTER'S CERTIFICATE

5.1 **Joint Master's Certificate.** The Parties will offer Joint Master's Certificates to DAU students in Project Management, Information Technology Project Management, Government Contracting, and Commercial Contract Management. The specific required courses that DAU students must successfully complete to obtain the Joint Master's Certificate in each of the eleven training tracks now offered by DAU, and for personnel at Levels 1, 2, and 3 in each track, are identified in Attachment 2.

6. ESI PROPRIETARY AND BUSINESS SENSITIVE INFORMATION

6.1 **Confidentiality.** The Parties recognize that it is necessary for ESI to protect for its exclusive use and benefit and to withhold from its competitors and the public in general information including, but not limited to, Course Materials developed at ESI's sole expense (including instructor guides), and various trade, business, and technical secrets. ESI will clearly mark and identify any printed or electronic material furnished to DAU that contains Proprietary or Business sensitive information. Any material furnished to DAU is subject to the laws and regulations governing all public records which may be subject to possible disclosure under applicable provisions of the Freedom of Information Act, and other public laws.

7. LIMITS ON LIABILITY

7.1 **Limits on Liability.** The parties are not liable for any indirect, incidental or consequential damages, or for loss of profits, revenue, or data, whether in an action in contract, tort, product liability, statute or otherwise, even if advised of the possibility of those damages.

7.2 **Force Majeure.** Neither party will be responsible for delays nor failure of performance resulting from acts beyond the reasonable control of such party. Such acts include, but are not limited to, acts of God, strikes, walkouts, riots, acts of war, epidemics, governmental regulations, power failures, earthquakes, or other disaster.

7.3 Nothing in this agreement should give either party, any right of action on claim against the other party.

8. TERM AND TERMINATION

Either party may terminate this Charter at any time for any reason upon notice to the other party.

9. MISCELLANEOUS

- 9.1 **Scope of Agreement.** This Charter shall relate only to the Joint Master's Certificate Program specified herein, and nothing herein shall be deemed to:
- Confer any right or impose any obligation or restriction on either Party with respect to any other effort or marketing activity at any time undertaken by either Party, jointly or separately; or
 - Preclude either Party from soliciting or accepting any contract or subcontract from any third party under this or any other effort after termination of this Charter; or
 - Limit the rights of either Party to promote, market, sell, lease, license, or otherwise dispose of its standard products or services.
- 9.2 **Costs.** Any and all costs, expenses, or liability to either Party caused by or arising out of this Charter, its implementation, amendment, or expansion shall be borne by each Party separately and individually, and neither Party shall be liable or obligated to the other for any such cost, expense, or liability
- 9.3 **Entire Charter.** This Charter, and the aforementioned Attachments, is the entire agreement between the Parties as to the subject matter hereof and supersedes all other agreements, express or implied, written or oral. No modification of, or amendment to, this Charter shall be binding unless such modification or amendment makes specific reference to this Charter and be in writing and signed by both parties.
- 9.4 **No Waiver.** Neither failure or delay on the part of any party to exercise any right, remedy, power, or privilege hereunder nor course of dealing between the parties shall operate as a waiver thereof, or of the exercise of any other right, remedy, power, or privilege.
- 9.5 **Severability.** Invalidity or unenforceability of one or more provisions of this Charter shall not affect any other provision of this Charter.
- 9.6 **No Assignment.** Neither Party may assign this Charter without the prior written consent of the other Party.
- 9.7 **Relationship.** Nothing contained in this Charter is to be construed to constitute DAU and ESI as partners or joint ventures of each other, or to constitute the employees, agents or representatives of either Party as the employees, agents or representatives of the other Party. It is the intention of both parties that the relationship between DAU and ESI shall at all time be that of independent entities. Neither Party hereto shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other Party or to bind the other party to any contract, Charter or undertaking with any third party.
- 9.8 **Notice.** Any notices required or authorized to be given hereunder shall be deemed to be given when mailed by certified or registered mail, postage prepaid, as follows:

To ESI: Charles W. Clark
ESI International
Arlington, VA 22203

To DAU: Paul T. McMahon
Defense Acquisition University
9820 Belvoir Road G-3
Fort Belvoir, Virginia 22060

Either party may, from time to time, change its notice address by giving written notice to the other party.

- 9.9 **Headings.** The headings used herein are included solely for the purposes of convenience, and shall not be used in any way to construe, modify, explain, enlarge or restrict any of the provisions hereof.

9.10 Governing Law. The laws of the United States of America shall govern this Charter.

IN WITNESS WHEREOF, the parties have caused this Charter to be executed by their respective duly authorized representatives.

By: Frank J. Anderson Jr.
Frank J. Anderson, Jr.

President,
Defense Acquisition University

Date: 16 JAN 01

By: J. LeRoy Ward
J. LeRoy Ward

Senior Vice President,
ESI International, Inc.

Date: 16 JAN 01