

## 2017 Site Server Replacement Program Agreement

THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT (AS DEFINED BELOW) CREATE A CONTRACT BETWEEN YOU AND THE ELECTRONIC INFORMATION NETWORK. PLEASE READ IT CAREFULLY. TO CONFIRM YOUR UNDERSTANDING AND ACCEPTANCE OF THIS AGREEMENT, CLICK "AGREE" ON THE PRECEEDING ORDER PAGE.

**EIN Contact:** Help Desk  
**Telephone:** 412-622-3146  
**Email:** helpdesk@einetwork.net

This Site Server Replacement Program Agreement ("Agreement") is made by and between The Electronic Information Network, a nonprofit corporation organized under the laws of the Commonwealth of Pennsylvania ("EIN"), and the EIN Participating Library ("LIBRARY") by LIBRARY placing the order for certain Server Equipment described in Order Confirmation Email hereto (the "Server Equipment") through EIN's on-line ordering system.

### RECITALS:

**WHEREAS**, EIN has entered into agreements with hardware manufacturers and various companies for the purchase and installation of Server Equipment and associated licenses, warranties and software (collectively, "Supply Agreements") to facilitate the efficient use of the Site Servers on behalf of EIN's library members; and

**WHEREAS**, through the Supply Agreements, EIN offers the opportunity to the LIBRARY for installation and use of the Server Equipment and receipt of support services from EIN regarding the Site Servers; and

**NOW, THEREFORE**, EIN and LIBRARY, for good and valuable consideration, receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound hereby, agree as follows:

#### 1. Equipment Description.

##### a. Site Servers

Offered equipment is detailed on the on-line order (incorporated into, and made part of, this Agreement by this reference as if fully set forth herein); and includes various configurations. A confirmation email will be sent with the on-line order that includes in the email a link to this Agreement.

All software necessary for use with standard EIN Site Servers is also included.

The equipment also includes a three-year hardware warranty. This hardware warranty includes maintenance on all Server internal parts. EIN Help Desk will coordinate all hardware support for Site Servers included in this agreement and covered under warranty.

#### 2. Fees.

The LIBRARY agrees to pay EIN for the equipment offered through this program as detailed in the on-line Order Form (incorporated into, and made part of, this Agreement by this reference as if fully set forth herein).

LIBRARY will be invoiced for the equipment on a semi-annual basis. Payments to EIN are within 30 days of receipt of invoice.

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LIBRARY agrees to pay EIN replacement costs for any damage to or loss of the Server Equipment (outside the warranty) while in LIBRARY's custody.

Libraries may install non-standard software (software not included in the base EIN image delivered on the server). If necessary when equipment or software problems occur, EIN will provide only the then current standard base server image offered by EIN.

### **3. Equipment Protection and Use.**

LIBRARY acknowledges its sole responsibility for the maintenance and repair of the Site Server Equipment while within Library custody or control. LIBRARY shall notify EIN promptly of any loss, damage or theft of the Equipment. LIBRARY shall take all reasonable steps (but in no event, steps that are less restrictive than those taken to protect any of LIBRARY's assets) to secure physical and remote access to and use of the Site Server Equipment.

The LIBRARY is responsible for insuring all program assets that are part of this Agreement at commercially-reasonable levels and also agrees to follow the EIN guidelines, policies, and standards for purposes of ensuring successful and secure use of EIN hardware and software.

The Equipment is intended for use by LIBRARY's staff and patrons. LIBRARY shall not permit the use of the Equipment by any third party other than LIBRARY's staff and patrons.

The LIBRARY acknowledges that the Site Server Equipment will be returned to EIN at the termination of this Agreement for any reason.

### **4. Term and Termination.**

This Effective Date for this Agreement shall be the date upon which LIBRARY places its order for the Server Equipment and the Agreement will terminate on June 30, 2020. EIN may remove the Site Server Equipment prior to termination of Agreement in order to provide effective replacement of the Equipment for all libraries to which EIN provides services similar to those contemplated by this Agreement. Additionally, EIN may terminate this Agreement immediately if LIBRARY breaches any of its obligations.

### **5. Assignment.**

The rights granted in this Agreement may not be assigned or transferred by LIBRARY without the prior written approval of EIN, which consent EIN may withhold in its sole discretion. LIBRARY shall not be permitted to delegate its responsibilities or obligations hereunder without the prior written approval of EIN, which approval EIN may withhold in its sole discretion.

### **6. Governing Law, Jurisdiction.**

This Agreement and all matters arising out of or relating to this Agreement, shall be governed by the internal laws, and not the laws of conflicts, of the Commonwealth of Pennsylvania, USA.

Any legal action or proceeding relating to this Agreement shall be instituted in a state or federal court in Pittsburgh or Allegheny County, Pennsylvania, USA. LIBRARY and EIN agree to submit to the jurisdiction of, and agree that venue is proper in, these courts in any such legal action or proceeding.

### **7. DISCLAIMER OF WARRANTY.**

EXCEPT AS OTHERWISE SPECIFICALLY SET FORTH IN THIS AGREEMENT, EIN HEREBY DISCLAIMS ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, WARRANTIES OF MERCHANTABILITY OR

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FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SERVER EQUIPMENT. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ALL OTHER WARRANTIES OF EIN, EXPRESSED OR IMPLIED, AND ALL REPRESENTATIONS, GUARANTEES, INSTRUCTIONS, PROMISES, DESCRIPTIONS AND SAMPLES FROM EIN PERTAINING TO QUALITY OF THE SERVER EQUIPMENT, CONDITION, CHARACTERISTICS, PERFORMANCE OR OTHER MATTERS, AND ALL WARRANTIES OF EIN WITH RESPECT TO ANY PATENT INFRINGEMENT INVOLVING THE GOODS ARE HEREBY EXPRESSLY DISCLAIMED AND EXCLUDED. IN ADDITION, EIN SPECIFICALLY, AND NOT BY WAY OF LIMITATION, DOES NOT WARRANT THE ACCURACY OR SUFFICIENCY OF ANY ADVICE OR RECOMMENDATIONS GIVEN TO LIBRARY IN CONNECTION WITH THE SERVER EQUIPMENT, EXCEPT AS OTHERWISE EXPRESSLY REFLECTED IN THIS AGREEMENT.

### **8. Limitation of EIN's Liability.**

In no event shall EIN be liable for any special, indirect, incidental, consequential, or punitive damages. EIN's liability and LIBRARY's exclusive remedy for any cause of action arising in connection with this Agreement or the sale or use of the Server Equipment, whether based upon negligence, strict liability, breach of warranty, breach of contract or equitable principles, is expressly limited to, at EIN's option, replacement of, or repayment of the program payments received by EIN for the portion of the Server Equipment with respect to which damages are established. Notwithstanding anything to the contrary, EIN's maximum liability to LIBRARY pursuant to this Agreement, regardless of the theory on which any claim is based, shall not exceed the aggregate amount of the total program payments LIBRARY paid to EIN pursuant to this Agreement.

### **9. General Terms.**

In the event any provision of this Agreement is held to be invalid or unenforceable, the remaining provisions of this Agreement will remain in full force.

This Agreement (together with the Recitals and the attachments hereto, which are made a part of this Agreement by this reference as if fully set forth herein) constitutes the complete agreement between the parties and supersedes all prior or contemporaneous agreements or representations, written or oral, concerning the subject matter of this Agreement. This Agreement may not be modified or amended except in writing and authorized by a duly authorized representative of each party; no other act, document, usage or custom shall be deemed to amend or modify this Agreement.

No failure or delay on the part of either party in the exercise of any right, power or remedy under this Agreement shall operate as a waiver thereof, nor shall any single or partial exercise of any right, power or remedy preclude other or further exercise thereof, or the exercise of any other right, power or remedy.

Neither party shall be liable for failure to perform hereunder, except for LIBRARY's obligation to pay the amounts due to EIN, if the failure results from a cause beyond its control, including, without limitation, fire, electrical, mechanical, or equipment breakdowns, delays by third party vendors (such as, but not limited to, shipping delays attributable to the hardware manufacturer), civil disturbances or disorders, strikes, Acts of God or acts or omissions by the other party.