



## MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

This Master Software License and Services Agreement (the **"Agreement"**) is entered into as of the last date of signature listed on an applicable, fully executed Service Order Form (the **"Effective Date"**), by and between the customer listed on the same fully executed Service Order Form (**"Customer"**) and Enhanced Telecommunications, Inc. d/b/a ETI Software Solutions (**"Company"** or **"ETI"**), a Georgia corporation, with offices at 6065 Atlantic Blvd., Norcross, GA 30071.

### Section 1: DEFINITIONS

DEFINITIONS. The following terms shall have the meaning set forth below:

**"Affiliate"** means all entities which are controlling, controlled by or under common control with a party. For purposes of this definition, "control" means possessing, directly or indirectly, the power to direct or cause the direction of the management, policies or operations of an entity, whether through ownership of voting securities, by contract or otherwise.

**"Customer Content"** means Customer data and information inputted into the SaaS Services.

**"Documentation"** means the user manuals and guides, instructions, performance and technical specifications accompanying or delivered in relation to ETI Solutions.

**"ETI Solution"** means a Product or Service.

**"Marks"** means ETI's trademarks, service marks, trade names, logos or other words or symbols identifying the ETI Solutions and/or ETI.

**"Product"** means Software or SaaS Solutions provided to Customer pursuant to a Schedule. All references in this Agreement to purchases of Software are intended by the parties to mean purchases of licenses to Software.

**"SaaS Solutions"** means software provided on a software-as-a-service basis.

**"Schedule"** means a document executed by the parties and governed by this Agreement which details the Products purchased by Customer (e.g. Service Order Form).

**"Service"** means consulting, installation, implementation, training, maintenance, hosting or other service to be provided by ETI pursuant to this Agreement.

**"Software"** means all or any portion of the binary computer software programs and Documentation provided by ETI, including all software products listed in a Schedule and made a part hereof, and all corrections or updates thereto provided by ETI under the Support Services.

**"SOW" or "Statement of Work"** means a document executed by the parties pursuant to this Agreement which describes, Services to be provided by ETI.

**"Support Services"** means technical support for the Software as set forth in Exhibit A hereto.

**"Term"** means the term specified on the applicable Schedule with respect to the Products licensed thereunder, and, for this Agreement, shall mean the period from the Effective Date until termination.

### Section 2: Rights and Limitations

- (a) The specific terms of the Products and Services use rights granted by ETI to Customer pursuant to this Agreement will be documented in one or more Schedules and shall be governed by this Agreement, but if not specified shall be for a one (1) year term, without automatic renewal. The license for Software shall be limited to the Term and scope of license defined in the applicable Schedule, and any Support Services provided therein shall be provided pursuant to Exhibit A herein. SaaS Solutions shall be limited to the Term and scope defined in the applicable Schedule. Unless otherwise agreed in a Schedule, all Products and related Documentation are provided on a non-exclusive, non-transferable, non-sublicensable subscription and/or fixed term basis for the term described in the applicable Schedule, for Customer's internal purposes only. Unless otherwise agreed in a Schedule, no perpetual licenses shall be provided

hereunder. Software may require implementation Services, which may mutually agreed by the parties a separate SOW. ETI grants to Customer a license in the deliverables provided pursuant to a SOW on the same terms and subject to the same limitations as the license or access rights granted under the applicable Schedule for the Products for which such deliverables relate. In addition, unless otherwise agreed in the applicable SOW, no Support Services shall be provided for SOW deliverables.

- (b) Customer agrees to use ETI Solutions only for Customer's own business and may permit its employees, Affiliates, agents and/or contractors to access and use ETI Solutions only in service of Customer's business. Under no circumstances shall Customer (i) sell, license, sublicense, publish, display, distribute or otherwise transfer to a third party the ETI Solution, in whole or in part, without Company's prior written consent, (ii) reverse engineer, decompile, translate, adapt, or disassemble the Products or Services including to (1) build or create a competitive product or service, (2) build or create a product or services using similar ideas, features, functions or graphics of the Products or Services, nor shall Customer attempt to create the source code from the object code for the Products; (3) use the Products on a service bureau basis; or (4) permit any third party to access the Products or Services except as expressly permitted herein.
- (c) Customer is responsible for obtaining and managing the hardware, virtual machines, and third-party software licenses, including but not limited to operating systems and databases, that may be required to utilize the Software.
- (d) If the ETI Solutions include software or software-as-a-service solutions ("**Third Party Solutions**") from third party licensors or providers ("**Third Party Developers**") which are described as being provided by a third party, or if a Third Party Solution is contingent upon Customer maintaining a license from the applicable Third Party Developer, whether provided by ETI or procured by Customer or a third party on behalf of the Customer, then notwithstanding anything to the contrary in this Agreement (i) use of the Third Party Solutions is at Customer's own risk and any Third Party Solutions provided by ETI are provided "as-is" and "as available," (ii) ETI makes no representations or warranties regarding such Third Party Solutions and disclaims all express or implied warranties including but not limited to merchantability, fitness for a particular purpose, title and non-infringement, (iii) ETI shall not be liable for, or have any responsibility in connection with, Customer's use of the Third Party Solutions, claims that the Third Party Solutions infringe intellectual property rights or Customer Content processed or used by such Third Party Solutions or shared or transferred by Customer via the ETI Solutions to such Third Party Solutions, (iv) Customer shall seek support and maintenance services directly from the applicable Third Party Developer and shall refrain from reporting issues with such Third Party Solutions to ETI for Support Services, (v) Services shall not include professional services for such Third Party Solutions unless explicitly stated in the relevant SOW, (vi) expiration or termination of Customer's agreement with the Third Party Developer shall not result in any refund, credit or set-off for the ETI Solutions, (vii) Customer shall indemnify and defend ETI for any claims by a third party that Customer breached the terms of, or infringed the intellectual property rights of, a Third Party Solution, (viii) Customer warrants that it has the right to provide, and will provide ETI with a license or other rights solely as necessary for ETI to access the API or obtain administrative access to any Third Party Solution which Customer requires ETI to integrate with ETI Software, and (viii) Customer will abide by all the terms and conditions of use of such Third Party Solutions. (ix) in the case where ETI provides a Third Party Solution, it has the right to replace that solution with a like solution, so long as Customer usage is not materially degraded. ETI may provide the applicable Third Party Developers with the names, email addresses, Customer name and other identifying information of Customer and its users of the ETI Solutions as reasonably necessary for permissioning Third Party Solution access and billing

### Section 3: Term and Termination

- (a) The termination of this Agreement will not operate to terminate any existing Schedules or SOWs, and the terms of this Agreement shall continue to govern such existing, or any new, Schedules and SOWs until completion or the earlier termination of such Schedules and SOWs in accordance with this Agreement.
- (b) Either party may terminate this Agreement for convenience upon 90 days' written notice if there is no outstanding Schedule or SOW. Either party may terminate this Agreement, a Schedule or a SOW for cause, upon written notice to the other party setting forth the effective date of termination, if the other party fails to cure a material breach of this Agreement, a Schedule or a SOW, respectively, within 30 days after receiving such notice. The termination of this Agreement will not operate to terminate any Schedules or SOWs, and the terms of this Agreement shall continue to govern any Schedules or SOWs which are not terminated for cause until completion or permitted termination.
- (c) This Agreement will terminate, effective upon delivery of written notice by either party to the other party: (a) upon the institution of insolvency, receivership, or bankruptcy proceedings or any other proceedings for the settlement of debts of the other party; (b) upon the making of an assignment for the benefit of creditors by the other party; or (c) upon the dissolution of the other party.
- (d) Any provision of this Agreement, a Schedule or a SOW that contemplates performance or observance subsequent to the termination

of such Schedule or SOW and any other provision that by its nature may reasonably be presumed to survive any termination of this Agreement, a Schedule or a SOW shall survive its termination.

#### Section 4: Payments and Pricing

- (a) Unless otherwise set forth in a Schedule or SOW, (i) the invoice for initial annual Product and Support Services fees as specified on the applicable Schedule shall be issued upon execution of such Schedule, and (ii) invoices for Services fees, charges and expenses shall be issued on a monthly basis. Customer shall reimburse ETI for such expenses in accordance with ETI's travel and expense policy. Customer shall pay to ETI all fees or other costs due hereunder in the currency stated in the invoice in US Dollars, and in full within 30 days following Customer's receipt of ETI's invoice by email, mail or delivery service. With respect to any amount due to ETI which is not paid within 30 days following the date of Customer's receipt of ETI's invoice, ETI may apply interest at the rate of 1.5% per month, or such lesser amount required by law, assessed from the due date through the date of payment. Without waiving any of its rights or remedies under the Agreement or at law, ETI reserves the right to suspend delivery of Products or performance of Services until any amounts that are outstanding and past due are paid in full by Customer.
- (b) All fees and charges for ETI Solutions are exclusive of taxes and shall be made free and clear of, without reduction for, (and Customer shall be responsible for and shall indemnify ETI against) any applicable U.S. and foreign, state and local taxes, value added or sales taxes, withholdings, withholding taxes, duties or levies, tariffs, and assessments, howsoever designated or computed, pertaining to the payments under this Agreement or any made pursuant to this agreement (excluding taxes based upon the net income of ETI). All such taxes, tariffs and impositions (whether imposed on ETI or Customer or both) shall be paid by Customer.

#### Section 5: Confidentiality

- (a) **"Confidential Information"** means and includes any information relating to or disclosed in the course of negotiation, performance of this Agreement, or otherwise disclosed during the life of this Agreement, which is or should be reasonably understood by the receiving party to be confidential or proprietary to the disclosing party, including, but not limited to, the terms of this Agreement, technical processes and formulas, techniques, source codes, product designs, sales, cost and financial information, product and business plans, projections and marketing data. Confidential Information shall not include information: (a) already lawfully known to or independently developed by the receiving party, (b) generally known to the public other than as a result of any actions or omissions of the receiving party, or (c) lawfully obtained from any third party without an obligation of confidentiality.
- (b) Nonuse and Nondisclosure - Each party acknowledges that Confidential Information may be disclosed to the other party during the course of this Agreement. Each party agrees that it shall use the same or greater degree of care in safeguarding Confidential Information as it does its own, but no less than a reasonable degree of care. The parties will prevent the duplication or disclosure of Confidential Information of the other party, other than on a need-to-know basis to its directors, officers, employees, accountants, attorneys, advisers, independent contractors, and agents ("Advisors"), whose duties reasonably require them to have access to such Confidential Information, provided that any of the aforementioned persons are legally bound to maintain the confidentiality of such Confidential Information to the same extent as if they were parties hereto. The receiving party shall be responsible for any breach of this Confidentiality provision by its Advisors. In addition to any other restrictions set forth elsewhere herein, neither party shall use the other party's Confidential Information for any purpose other than for its internal business purposes, in connection with the performance of this Agreement, or as otherwise expressly provided herein.
- (c) Third-party Confidential Information - The parties may receive from third parties confidential information in furtherance of this Agreement. Such third-party information shall be deemed included in the definition of Confidential Information for purposes of this Agreement.
- (d) Return of Materials - Upon the termination of this Agreement each party shall, upon request by the other party, promptly return or certify destruction of all tendered Confidential Information. If return is required, the requesting party shall pay any third-party data egress and transmission fees. ETI may destroy any Confidential Information or other Customer data in its possession if Customer fails to request return of such information within 15 days of the expiration or termination of an ETI Solution.
- (e) Compelled Disclosure - Notwithstanding anything to the contrary contained herein, the receiving party may disclose Confidential Information of the disclosing party pursuant to an order made pursuant to applicable law, regulation or legal process, provided that: (a) to the extent permitted under applicable law, the receiving party gives the disclosing party prompt written notice of such order so that the disclosing party has an opportunity to seek a protective order, confidential treatment, or other appropriate remedy to such order; (b) the receiving party provides the disclosing party with all reasonable assistance, at the disclosing party's expense, in opposing such required disclosure or seeking a protective order or confidential treatment for all or part of such Confidential Information; and

(c) the receiving party discloses only such portion of the Confidential Information as is either permitted by the disclosing party or required by the court, tribunal, governmental agency or other authority, subject to any protective order or confidential treatment obtained by the disclosing party.

(f) The obligations set forth in this Section shall survive termination of this Agreement.

#### Section 6: Proprietary Rights and Ownership

- (a) Customer expressly understands and agrees that ETI and/or its successors and third party licensors shall retain sole and complete title and ownership in and to the ETI Solutions and all Documentation, and all copies thereof, including, but not limited to, any derivative works, creations, or compilations thereof, and all related patent rights, intellectual property rights, copyrights, trade secrets, trademarks, service marks, related goodwill and confidential and proprietary information, and each shall remain the exclusive property of ETI or its licensor, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Software and Services are used or licensed. ETI shall retain the right to any work or customization created pursuant to this Agreement. Customer shall have no rights in or to the ETI Solutions except as explicitly stated in this Agreement. Customer shall not take any action to jeopardize, limit or interfere in any manner with any proprietary rights of ETI. Customer shall promptly notify ETI of any infringement thereof of which it is aware. The ETI Solutions are protected by copyright and other intellectual property laws and international treaties.
- (b) Inventions, Discoveries and Improvements. All inventions, discoveries and improvements, whether patentable or unpatentable, made, devised or discovered made under this Agreement and/or any subsequent agreement between the parties, whether by itself or jointly with others, shall inure to the benefit of ETI and become and remain ETI's sole and exclusive property. Customer hereby assigns full and exclusive rights and ownership in any such inventions, discoveries and improvements to ETI. Customer agrees to execute an assignment to ETI or its nominee of its entire right, title and interest in any such inventions, discoveries and improvements, and to execute any other instruments and documents that may be requested by ETI for the purpose of applying for and obtaining patents with respect thereto. Customer further agrees to cooperate to the extent and in the manner reasonably requested by ETI in the prosecution or defense of any patent claims or any litigation or other proceedings involving any such inventions, discoveries or improvements, but all of its reasonable expenses therewith shall be paid by ETI.
- (c) Customer acknowledges the exclusive ownership right of ETI in the Marks and agrees that all use of ETI's Marks shall inure to the benefit, and be on behalf, of ETI. Customer acknowledges that its utilization of ETI's Marks shall not create in it, nor shall it represent it has, any right, title, or interest in or to such Marks other than the licenses expressly granted herein.

#### Section 7: LIABILITY; LIMITATION OF LIABILITY

- (a) EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT OR EXCEPT TO THE EXTENT OTHERWISE PROHIBITED BY LAW, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS (WHETHER ACTUAL OR ANTICIPATED) OR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR EXEMPLARY DAMAGES ARISING FROM THE SALE OR PERFORMANCE OF THE ETI SOLUTIONS OR ANY PROVISION OF THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, ANY LOSS OF REVENUE, DATA, ANTICIPATED PROFITS OR BUSINESS, SUSTAINED OR INCURRED REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, INCLUDING NEGLIGENCE, STRICT LIABILITY, INDEMNITY (EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT) OR OTHERWISE, AND WHETHER OR NOT SUCH DAMAGES WERE FORESEEN OR UNFORESEEN AND REGARDLESS OF WHETHER SUCH PARTY HAD RECEIVED NOTICE OR HAD BEEN ADVISED, OR KNEW OR SHOULD HAVE KNOWN, OF THE POSSIBILITY OF SUCH DAMAGES OR LOSSES. IN NO EVENT WILL ETI BE LIABLE FOR ANY CLAIM AGAINST CUSTOMER BY ANY END USER OR THIRD PARTY. THE AGGREGATE LIABILITY UNDER THIS AGREEMENT FOR EACH PARTY UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT RECEIVED BY ETI FROM CUSTOMER DURING THE 12 MONTHS PRIOR TO SUCH CLAIM PURSUANT TO THE SCHEDULE OR SOW FOR THE ETI SOLUTION GIVING RISE TO SUCH CLAIM.
- (b) Nothing in the above subclause or otherwise in this Agreement excludes or limits the liability of either party for damages which are the subject of the intellectual property indemnification herein or occasioned by the breach by either party of its obligations of confidentiality, death or personal injury, willful breach of any payment obligations hereunder, or for any other liability which may not be excluded by applicable law.

#### Section 8: Warranties

- (a) Subject to any additional terms set forth in a Schedule, ETI warrants that Software and SaaS Solutions will operate substantially in accordance with the applicable Documentation during the 90 day period beginning on the effective date of the applicable

Schedule (“**Warranty Period**”). Should the Software or SaaS Solutions fail to comply with the warranty set forth in this Section above during the Warranty Period, Customer’s sole and exclusive remedy and ETI’s sole obligation shall be, in ETI’s sole discretion and at no charge to Customer, to correct or replace such Software or Software and SaaS Solutions, as applicable, so that it complies with the warranty set forth above.

- (b) ETI warrants that all Services performed pursuant to this Agreement will be performed in a professional and workmanlike manner, consistent with reasonable and generally accepted professional standards and practices prevailing.
- (c) ETI DOES NOT WARRANT THAT ANY INFORMATION, ETI’S EFFORTS OR ANY PRODUCTS OR SERVICES PROVIDED BY ETI WILL FULFILL ANY OF CUSTOMER’S PARTICULAR PURPOSES OR NEEDS, NOR DOES ETI WARRANT THAT THE OPERATION OF THE PRODUCTS OR ACCESS TO THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. EXCEPT AS EXPRESSLY STATED IN A SCHEDULE, NO WARRANTIES, EXPRESS OR IMPLIED, ARE MADE BY ETI TO CUSTOMER, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, WHICH ARE SPECIFICALLY EXCLUDED.
- (d) Customer warrants to ETI that: (a) Customer is the owner or authorized licensee of the Customer Content, and has secured all necessary licenses, consents, authorizations and waivers for the use of the Customer Content; (b) Customer shall not use the facilities or capabilities of the ETI Solutions to conduct any illegal activity, solicit the performance of any illegal activity, or engage in any other activity which infringes upon the rights of ETI or any third party; and (c) the use by Customer of the ETI Solutions and the Customer Content shall be in compliance with all applicable laws, rules and regulations and the terms of this Agreement.

#### Section 9: Indemnification

- (a) ETI shall indemnify, defend, and hold harmless Customer from and against any loss, cost, expense, or liability (“Losses”) resulting from or arising out of a claim brought by a third party (“**Third Party Claim**”) against Customer to the extent that such Third Party Claim alleges the infringement of such third party’s U.S. patent or copyright by the Products or Services. The foregoing indemnity shall not apply if the infringement arises out of: (a) specifications or designs furnished by Customer and implemented by ETI at Customer’s request; (b) the Products or Services being modified by, combined with, added to, interconnected with or used with any equipment, apparatus, device, data, Products or service not supplied or approved by ETI in writing; (c) the modification to a Products or Services by any person or entity other than ETI; or (d) use of a Products or Services other than in accordance with its Documentation.
- (b) If a Third Party Claim for which Customer is entitled to be indemnified under the above subclause has occurred, or in ETI’s opinion is likely to occur, ETI shall, at ETI’s expense, do one of the following in its sole discretion: (a) procure for Customer the right to continue using the affected Products or Services; (b) replace with non-infringing alternates or modify the relevant Products or Services so that it becomes non-infringing but its functionality after modification is substantially equivalent; (c) accept the return of the affected Products and cease providing the affected Services and refund any prepaid fees applicable to the period after the use of the term license Products or performance Services has ceased, and for perpetual license Products refund the fees for the affected Products amortized by an equal annual amount over a three year period beginning from the date of shipment of the affected Products. The collective obligations of ETI pursuant to the above and this subclause state the sole and exclusive liability of ETI, and Customer’s sole and exclusive remedy, with respect to intellectual property infringement or misappropriation.
- (c) Promptly after Customer obtains knowledge of the existence or commencement of a Third Party Claim for which it is entitled to be indemnified above, Customer will notify ETI of such Third Party Claim in writing, provided, however, that any failure to give such notice will not waive any rights of Customer except to the extent that the rights of ETI are actually prejudiced or liability increased thereby. ETI will have exclusive control of the defense and settlement of such Third Party Claim; provided, however, that Customer may join in the defense and settlement of such Third Party Claim and employ counsel at its own expense, and will reasonably cooperate with ETI in the defense and settlement of such Third Party Claim. ETI may settle any Third Party Claim without Customer’s written consent unless such settlement: (i) does not include a release of all covered claims pending against Customer; (ii) contains an admission of liability or wrongdoing by Customer; or (iii) imposes any obligations upon Customer other than an obligation to cease using any infringing items.
- (d) Customer shall reciprocally indemnify, defend and holds harmless ETI upon the same terms set forth above in relation to Customer Content and anything else which Customer supplies to ETI or which ETI uses at the request or with the consent of Customer when providing the Services.

#### Section 10: Change Orders

Each party may request changes that affect the scope or duration of the Services relating to any ETI Solution, including changes in the specifications or deliverables. If a party requests any such change, ETI shall notify Customer if it believes that an adjustment in the fees or pricing to be paid to ETI is required. The parties shall then negotiate in good faith a change order or amendment to the applicable Schedule or SOW. Unless otherwise requested by Customer, ETI shall continue to perform pursuant to an existing agreement, and neither party shall be bound by any change requested by the other party, unless such change has been accepted and documented in a writing signed by both parties.

#### Section 11: General Terms

- (a) With respect to notices permitted or required under this Agreement related to the following matters, such notices must be in writing and delivered by personal delivery, by registered or certified mail (return receipt requested), or by internationally recognized overnight delivery service: (i) notices of breach other than breaches of payment obligations; (ii) notices of termination; and (iii) notices regarding actual or potential legal action, including claims subject to indemnification hereunder. Notices will be deemed given: (A) on the date of delivery when delivered personally, (B) one (1) business day after deposit for next day delivery with an internationally recognized overnight delivery service, and (C) on the date of delivery when mailed by registered or certified mail (return receipt requested). Notices other than those described above may also be delivered by electronic mail, and will be deemed upon personal electronic reply acknowledging receipt, whichever is applicable. Notices will be sent to the addresses as first set out above or to such other address as either party may specify in writing.
- (b) Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. Any waiver of any provision of this Agreement will be effective only if in writing and signed by waiving party.
- (c) Transfer and Assignment. Customer shall not assign or otherwise transfer the ETI Solution(s) or this Agreement (or any agreement made pursuant to this Agreement) to anyone, including any parent, subsidiaries, or affiliated entities without prior written notice and acceptance by ETI.
- (d) Miscellaneous. This Agreement together with each Schedule and SOW, represents the entire understanding between the parties with respect to the subject matter of this Agreement, and cancels and supersedes all prior agreements or understandings, whether written or oral, with respect to the subject matter. This Agreement may only be modified or amended by an instrument in writing signed by duly authorized representatives of the parties. No verbal changes to a Scope Document shall be permitted, and Customer shall make no payment for Services or Products provided pursuant to verbal order or agreement.
- (e) ETI may accept a Customer-issued purchase order for the ETI Solutions in ETI's sole discretion. Any such purchase order shall be deemed to be governed by this Agreement. Any preprinted terms on Customer purchase orders will not add to, modify, or have any effect on the terms of this Agreement and are hereby rejected.
- (f) ETI has existing arrangements with certain hosting and technology service providers ("**Augmented Resource(s)**"). Customer acknowledges and agrees that ETI may use a combination of its personnel and Augmented Resources to assist ETI with the delivery of certain ETI Solutions under this Agreement. ETI will remain responsible to Customer for the performance and conduct of such Augmented Resources.
- (g) It is expressly agreed that the parties are acting hereunder as independent contractors and under no circumstances shall any of the employees of one party be deemed the employees of the other party for any purpose. This Agreement shall not be construed as authority for either party to act for the other party in any agency or other capacity, or to make commitments of any kind for the account of or on behalf of the other party except to the extent and for the purposes expressly provided for and set forth herein.
- (h) The Products may be subject to export laws and regulations of the United States of America and other jurisdictions, and Customer shall comply with all applicable export and import control laws and regulations. Customer shall not permit access to, or use of, the Products by a person or in a country embargoed by, or in violation of, any applicable export laws or regulation.
- (i) ETI may use the name and logo of Customer in its customer lists and on its website, and in any document where such use is required by law or in any regulatory filing. Further, promptly after execution of this Agreement, the parties shall work together in good faith to issue a press release announcing the relationship created hereunder.
- (j) Neither party shall be deemed to be in default of any provision of this Agreement, or for failure in performance of its obligations hereunder (excluding payment obligations), resulting from acts or events beyond the reasonable control of such party, including acts of God, civil or military authority, acts or threats of terrorism, civil disturbance, war, riot, strike or labor dispute (not related to either

party's workforce), fires, floods, or act of government (each a "**Force Majeure Event**"). Such Force Majeure Event, to the extent it prevents a party's performance or any other undertaking under this Agreement, will extend the time for performance for as many days beyond the applicable performance date as is required to correct the effects of such Force Majeure Event.

- (k) **Governing Law/Attorney Fees/Jurisdictions and Venue.** This Agreement shall be governed by and construed in accordance with the laws of the State of Georgia, notwithstanding any conflicts of law principles. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. In any such action at law or in equity that may be necessary to enforce or interpret this Agreement, the prevailing party shall be entitled to reasonable attorney's fees actually incurred and costs, in addition to any other relief to which it may be entitled. The federal and state courts located in Gwinnett County, Georgia, shall have the sole and exclusive jurisdiction over any disputes arising under the terms of this Agreement. The parties hereby expressly consent to such exclusive jurisdiction and irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. Each party waives the right to trial by jury in any action arising out of or relating to this Agreement.
- (l) **Severability.** If any provision of this Agreement is declared or determined to be invalid or unenforceable under applicable law, such invalidity or unenforceability will not invalidate or render this Agreement unenforceable, but this Agreement will be construed as if not containing the particular invalid or unenforceable provision and the rights and obligations of the parties will be construed and enforced accordingly.

**Exhibit A**  
**Support Services Terms and Conditions**

These Support Services Terms and Conditions (**Support Terms**) are incorporated as Exhibit A into the Master Software License and Services Agreement (the **Agreement**) between Company and Customer.

**1. Coverage**

Company will provide Customer with Support Services on the terms set forth below, for Software licensed by Company to Customer through an applicable Schedule.

Support Services consist of Email and/or Telephone Support, each on the terms set forth below, relating only to the use of the Current Version of the Software and any previous version of the Software released during the one year period immediately preceding the release date of the Current Version, in use on a production environment. Support Services shall only be provided for licensed Company Software.

**2. Support Services**

**2.1. Contacting Technical Support**

a. Technical Support can be contacted either by (as may be updated by notice to Customer):

- i) Phone at (800) 332-1078 option 1
- ii) Email at techsupport@etisoftware.com

b. Support Services are provided remotely. In exceptional cases, Support Services can also be provided at Customer's location, for an additional fee to be mutually agreed in an applicable order.

**2.2. Services Included.** Support Services includes updates, and Telephone Support and Email Support for Customer's authorized Technical Support Contacts. Support Services shall be available (i) 24 hours per day, 7 days per week for Severity 1 and 2 Errors; and (ii) during Business Hours for Severity 3 and 4 Errors. Support Services cover

- a. Troubleshooting potential Errors in the Software.
- b. Troubleshooting ETI-built integrations with third-party systems using the Software.
- c. Troubleshooting performance issues that can be linked directly to either: a) a specific misbehavior of Software b) incorrect behavior of a simple application development pattern using Company primitives.

**2.3. Error Reporting Procedure.** Customer's authorized Technical Support Contacts shall report all Errors by contacting Company Support as set forth in Section 2.1. For Severity 1 and 2 Errors reported outside of Business Hours, Customer must report via Email and the Telephone Support options.

**2.4. Response Times.** If Customer has properly reported an Error, Company shall exercise all commercially reasonable efforts to acknowledge the report as follows:

Issue Severity	First Response After Proper Reporting
Severity 1 – Critical	2 hours
Severity 2 – High	4 hours
Severity 3 – Medium	2 business days
Severity 4 – Low	5 business days

**2.5. ERROR CORRECTION PROCEDURES**

a. Severity 1 Errors:

Company shall promptly initiate the following procedures: (i) assign senior technical support members to correct the Error; (ii) notify senior Company management that such Errors have been reported and that steps are being taken to correct the Error; (iii)



provide Customer's Technical Support Contacts with periodic reports on the status of the corrections; and (iv) exercise all commercially reasonable efforts on an urgent priority basis to provide Customer with a Workaround or Fix.

b. Severity 2 Errors:

Company shall promptly initiate the following procedures: (i) assign senior technical support members to correct the Error; (ii) notify senior Company management that such Errors have been reported and that steps are being taken to correct the Error; (iii) provide Customer's Technical Support Contacts with periodic reports on the status of the corrections; and (iv) exercise all commercially reasonable efforts on an urgent priority basis to provide Customer with a Workaround or Fix. Any outstanding Severity 1 Errors must be resolved prior to providing Support Services for a Severity 2 Error. Counting of response time obligations will not start for Severity 2 Errors until all Severity 1 Errors are resolved.

c. Severity 3 Errors:

Company shall exercise all commercially reasonable efforts to provide Customer with a Workaround and to include the Fix for the Error within the next two Versions.

d. Severity 4 Errors:

Company may include the Fix for the Error in the next two Versions of the Software.

e. Company's response to a Severity 1 or 2 Error will include then current instructions for escalation procedures.

### 3. Customer Obligations

3.1. Reasonable Investigation and Information Gathering. Prior to or in connection with reporting an Error, Customer's Technical Support Contacts shall have:

- a. Checked for basic issues unrelated to the Software such as connectivity, database and environment issues.
- b. Pulled and reviewed all logs pertinent to the process(es) affected by the Error.
- c. Ascertained and provided to Company the entire flow of the Software where the Error occurred.
- d. Provided to Company all logs pertaining to the Software and any integrated third-party software needed for resolution of the Error, including in such logs all troubleshooting steps already taken to investigate the Error.

3.2. Response Time Tolling. All Company response time obligations set forth herein shall be tolled for any period during which Company has reasonably requested information or cooperation from Customer and Customer has not yet provided such information or cooperation.

3.3. Closure for Non-responsiveness.

- a. If Customer fails to respond substantively to a request by Company with respect to a specific report of an Error within five Business Days, Company shall notify Customer's Technical Support Contact who reported the Error (as identified in the Technical Support Portal) via email. If Customer fails to respond substantively within five Business Days of that first notification, Company shall notify such Technical Support Contact a second time via email. If, after such second notification Customer fails to respond substantively to Company within five Business Days, the relevant support ticket shall be closed in the Technical Support Portal.
- b. Customer may reopen a support ticket that has been closed for non-responsiveness within 30 days after such closure. A support ticket has been closed for non-responsiveness for more than 30 days shall be permanently closed and cannot be reopened.

3.4. Technical Support Contacts. Customer's Technical Support Contacts shall be knowledgeable in the use of the Software and Customer's Operating Environment.

### 4. Service Level Agreement

4.1. Case Severity Definitions

<b>Severity 1 – Critical</b>	Severity 1 is a catastrophic production problem, which may severely impact the Customer's production systems, e.g. "System is Down" or product is completely inoperative, a condition severely impacting a production environment where no procedural workaround exists.
<b>Severity 2 – High</b>	Severity 2 is a high-impact business condition possibly endangering a production environment. The Software may operate in a severely restricted/reduced capacity. The situation is causing significant impact to portions of the Customer's business operations and productivity. The system is exposed to potential loss or interruption of service.

<b>Severity 3 – Medium</b>	Severity 3 is a medium- to low-impact problem, which involves partial non-critical functionality loss. One that impairs some operations but allows Customer to continue to function. This may be a minor issue with limited loss or no loss of functionality or impact to the Customer's operation or an issue in which there is a circumvention or workaround available for the avoidance of the problem by the end user. This includes documentation errors.
<b>Severity 4 – Low</b>	Severity 4 is a minor problem that does not affect the Software functionality or a general usage question or recommendation for a future product enhancement or modification. There is no material impact on the quality, performance or functionality of the product.

4.2. Company will classify Errors in accordance to the above categories.

4.3. Errors in Non-Production Environments will only be classified as either Severity 4 or Severity 3.

## **5. Term and Termination**

5.1. Support Services for licensed Software shall be provided for the Term as set forth on the applicable Schedule, but never perpetually.

5.2. Support Services will commence upon the effective date of an applicable Schedule purchasing licensing for Software and Support Services. . Company may not provide or may immediately discontinue Support Services if Customer (1) fails to make payments in accordance with an applicable Schedule, or (2) in the event Customer materially breaches the Agreement and such breach has not been cured within 30 days of receipt of notice of breach. Company may suspend or cancel Support Services in addition to any other rights or remedies available to Company.

## **6. Sunset/End of Life**

6.1. In addition to, and not to limit, the Support Services limitations in Section 1 of this Exhibit, from time to time, Company, at its sole discretion, may choose to discontinue the sale and Support Services of Software, in whole or in part (referred to as Sunsetting and/or End of Life). In such a case, Company shall give 180 days' notice to Customer prior to a product reaching its End of Life. This right also extends to any third party software offered, sold, or resold by Company as part of the overall solution to Customer.

## **7. Exclusions**

Company shall have no obligation to support (i) altered or customized Software (other than configurations made pursuant to the Documentation), (ii) Software that is not the Current Version or any previous version of the Software released during one-year period immediately preceding the release date of the Current Version, (iii) Software problems caused by Customer's negligence, hardware malfunction or other causes beyond the control of Company; (iv) Software installed in an Operating Environment or in a hardware environment which is not supported by Company; (v) Third party software; (vi) development of additional code, unless it is necessary to remedy an Error; (vii) issues with Customer or third party website authentication or certificates; (viii) Software if is not possible to obtain the elements needed for troubleshooting using commercially reasonable efforts. Company shall have no liability for any updates or upgrades in Customer's hardware which may be necessary to use a released version of the Software.

## **8. Updates as Software**

Maintenance Patching Releases and new Versions of the Software shall be included in the definition of "Software" and are subject to the terms and conditions of the Agreement.

## **9. Force Majeure**

Company shall not be liable for any failure or delay in performance under these Support Terms due to causes beyond its reasonable control.

## **10. Definitions**

Unless defined otherwise herein, capitalized terms used herein shall have the same meaning as set forth in the Agreement.

**Business Day** means Monday through Friday, 9:00 am through 5:00 pm prevailing Eastern Time, excluding United States federal holidays.

**Business Hours** means consecutive hours occurring during a Business Day.

**Current Version** means the then-current Version of Software for use in a particular Operating Environment.

**Error** means an error in the Software which materially degrades the use of the Software in accordance with the Documentation. For the sake of clarity with respect to Software that includes features or functionality that, consistent with the license granted to Customer with respect to such Software under the Agreement, allows Customer to create rules, queries, views or other configurations without Company's assistance, an error in such Customer-developed configurations shall not comprise an Error for the purposes of this Agreement.

**Fix** means the repair or replacement of object or executable code versions of the Software to remedy an Error.

**Instance** means a single installation of the Software running on a single certified Operating Environment at a single Site.

**Maintenance Patching Release** means an update that includes a compilation of previously released patches, bug fixes and other prior minor releases, but does not constitute a new Version and which are designated by Company by a number on the right of the second decimal point (e.g. Release 2.1.X). Updates shall not include any new options or future products which Company licenses separately and for which a separate license fee is charged.

**Operating Environment** means a specific combination of hardware, operating system and other software environment components which the Documentation provides is supported by a specific release of the Software.

**Technical Support Contact** means a Customer employee (or independent contractor retained by Customer) who is designated by Customer as the point of contact to communicate with Company concerning Support Services. Technical Support Contacts shall be knowledgeable in the use of the Software and Customer's Operating Environment. Customer may designate an unlimited number of named individuals as a Technical Support Contact.

**Telephone Support** means Software technical support telephone assistance provided by Company to the primary or backup Technical Support Contact concerning the installation and use of the Current Version and the Previous Sequential Version (as applicable).

**Version** means a release of the Software which contains substantial and significant enhancements, or other substantial change in functionality or performance as compared to the previous version (if any), which is designated by Company by a number on the left and right of the decimal point (e.g. Release X.Y) and for which Company generally charges its customers who have purchased Support Services. Updates shall not include any new options or future products which Company licenses separately and for which a separate license fee is charged.

**Workaround** means a method for achieving a task or goal when the usual or planned method is not working.