



OBSERVE MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT

This Observe Software License and Services Agreement (the "Agreement") is entered into as of the last date of signature listed on an applicable, fully executed 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 ("Supplier" or "ETI"), a Georgia corporation, with offices at 6065 Atlantic Blvd., Norcross, GA 30071.

Section 1: Definitions

"Active Subscriber": Any subscriber marked and/or indicated as active in the ETI Solution. Only such end-users marked as active in the ETI Solution can receive Customer's services or benefits via an ETI Solution. However, even if not indicated as active, any end-user receiving services directly from Customer through an ETI Solution, or via authorized utility service provider relationships, will be considered an Active Subscriber.

"Affiliate" or **"Affiliates"** 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.

"Authorized User" or **"Authorized Users"** means any individual or entity that, directly or indirectly, accesses or uses the ETI Solutions (as defined below).

"Customer Data" means any information, data, materials, and content (a) that Customer or its Authorized Users enter, provide or make, or is otherwise provided or made available by or on behalf of Customer or any Authorized User through the ETI Solutions, and (b) collected, downloaded, or otherwise received by ETI or the ETI Solutions for Customer or any user pursuant to this Agreement, or any Order Form, or SOW, or at the written request or instruction of Customer or an Authorized User, and any improvements, modifications, adaptations, translations and derivative works thereof. Customer Data does not include any component of the ETI Solutions or material or data provided by or on behalf of ETI or its licensors.

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

"ETI Solution" or "ETI Solutions" means, individually or cumulatively, the licensed Software products (excluding hardware, certain third party software, and third party hosted services), hosted services, and Services as set forth and agreed to by the parties in any order or addendum subject to and made pursuant to this Agreement (i.e., Order Form, SOW, purchase order, etc.) and any Documentation provided by ETI. This definition includes any customization or any other work created pursuant to this Agreement.

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

"Order Form" means a document executed by the parties and governed by this Agreement which sets forth the ETI Solutions and/or Services purchased by Customer, including pricing, quantity and other details. Each Order Form is incorporated herein by reference.

"Services" means consulting, installation, implementation, training, maintenance/Support Services, hosting or other services to be provided by ETI pursuant to an Order Form, SOW (as defined below) or this Agreement. Services may be provided by any ETI resource inside or outside the United States.

"Software" means all or any portion of the binary computer software programs and Documentation provided by ETI, including all software products listed in an Order Form and made a part hereof, and all corrections or updates thereto provided by ETI under the Support Services (as defined below).

"SOW" or "Statement of Work" means a document executed by the parties specifying the Services and/or Deliverables (as defined in Section 2(a)) to be provided, the Services fees and any other specifications. Each SOW is incorporated herein by this reference.

"Support Services" means, subject to payment of the corresponding fees and the applicable Order Form, maintenance and support services provided by ETI in accordance with the terms of ETI's **Posted Support Services Terms and Conditions** and available at www.etisoftware.com/terms ("Posted Support Services Terms and Conditions"), which Customer has reviewed and agrees to the terms and provisions thereof, and which ETI upon written notice to Customer may reasonably modify from time to time provided that any such modification is not inconsistent with the terms of this Agreement, any Order Form, or any SOW.

"Term" means the period commencing on and for the period as set forth in the applicable Order Form ("**License Term**") unless earlier terminated pursuant to this Agreement or the applicable Order Form, and, for this Agreement, means the period from the

Effective Date until termination.

Section 2: Rights and Limitations

- (a) Subject to Customer's payment of the fees specified in and compliance with the terms and conditions of the applicable Order Form or SOW and this Agreement, ETI hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable right during the License Term set forth in the applicable Order Form or SOW to use, and permit its Authorized Users to access and use, for Customer's internal purposes only, (i) the ETI Solution(s) (as specified in an Order Form or SOW), (ii) Documentation, and (iii) deliverables provided by ETI in its performance of Services ("Deliverables"). Unless otherwise agreed in writing by ETI, no perpetual licenses will be granted and no Support Services will be provided by ETI for Deliverables. Software may require implementation Services, which may be mutually agreed by the parties in a separate SOW.
- (b) Customer shall not (i) sell, license, sublicense, rent, lease, publish, copy, display, distribute or otherwise transfer to a third party the Software or ETI Solutions in whole or in part, without ETI's prior written consent, (ii) change, alter or modify the Software, ETI Solutions, (ii) reverse engineer, decompile, translate, adapt, create derivative works, or disassemble the Software, ETI Solutions, or Services including but not limited to (1) build or create a competitive product or service, or (2) build or create a product, software or services using similar ideas, features, functions or graphics of the Software, ETI Solutions, or Services, (iii) attempt to create the source code from the object code for the Software; (iv) use the Software or ETI Solutions on a service bureau basis; or (v) permit any third party to access the Software or ETI Solutions except as expressly permitted in this Agreement.
- (c) Except as otherwise provided in this Agreement, Customer is responsible for obtaining and managing the hardware, virtual machines, infrastructure, and third-party software licenses, including but not limited to operating systems and databases, that may be required to utilize the ETI Solutions.
- (d) The Software or ETI Solutions may integrate with other software supplied to or procured by Customer (collectively, "Third-Party Software"). ETI makes no warranty and disclaims any warranty regarding the functionality of the Software and ETI Solutions with such Third-Party Software. Should Customer have any claims, including breach of warranty claims, against those third parties, Customer agrees to pursue those claims against such third parties and not ETI. Except as provided in an Order Form or SOW, ALL THIRD-PARTY SOFTWARE OFFERED FOR USE WITH ETI'S SOFTWARE AND ETI SOLUTIONS ARE PROVIDED TO CUSTOMER THROUGH CUSTOMER'S THIRD-PARTY SOFTWARE PROVIDER(S) AND SHALL BE SUBJECT TO CUSTOMER'S AGREEMENT WITH SUCH THIRD-PARTY SOFTWARE PROVIDER(S). IN ANY EVENT, ETI SHALL HAVE NO LIABILITY WHATSOEVER TO CUSTOMER OR ANY THIRD PARTY CLAIMING BY OR THROUGH CUSTOMER, FOR ANY ISSUE RELATING TO THIRD-PARTY SOFTWARE INCLUDING, WITHOUT LIMITATION, THE ACCURACY, TIMELINESS OR CONTINUED AVAILABILITY OF SUCH THIRD-PARTY SOFTWARE OR THE INTEROPERABILITY OR CONTINUED INTEROPERABILITY OF THE THIRD-PARTY SOFTWARE WITH ETI'S SOFTWARE AND ETI SOLUTIONS. Notwithstanding anything to the contrary in this Agreement (i) Services shall not include professional services for such Third-Party Software unless explicitly stated in the applicable SOW, (ii) expiration or termination of Customer's agreement with the Third-Party Software shall not result in any refund, credit or set-off for the ETI Solutions (iii) Customer will abide in all respects by all the terms and conditions of use of such Third-Party Software, and (iv) in the case where ETI provides Third-Party Software, ETI has the right to replace that software with like software, so long as the Software, the ETI Solutions is not adversely affected. ETI may provide the applicable Third-Party Software vendors with the name, email address, Customer name and other identifying information of Customer and its Authorized Users.

Section 3: Term and Termination

- (a) Either party may terminate the Term of this Agreement for convenience upon 90 days' written notice to the other if there is no outstanding Order Form or SOW and all sums owing to ETI have been paid in full. Either party may terminate this Agreement, an Order Form or a SOW for material breach, upon 30 days' written notice to the breaching party and failure by the breaching party to cure within such 30-day period. The termination of the Term of this Agreement, any Order Form, or SOW will not terminate any other outstanding Order Form or SOW then in effect; and the Term of this Agreement will remain in effect for the remaining period of such Order Form(s) and/or SOW(s).
- (b) The Term of 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.
- (c) Any provision of this Agreement, an Order Form or a SOW that contemplates performance or observance subsequent to the termination of such Order Form or SOW and any other provision that by its nature may reasonably be presumed to survive any termination of this Agreement, an Order Form or a SOW shall survive its termination.

Section 4: Payments and Pricing

- (a) Unless otherwise set forth in an Order Form or SOW, ETI will invoice Customer (i) for the ETI Solution fees (and Support Services fees if separate) for the initial annual Term stated in an applicable Order Form, in advance, upon its execution, and (ii) invoice

Customer for Services fees, charges and expenses on a monthly basis. Customer shall reimburse ETI for such expenses in accordance with ETI's travel and expense policy or as otherwise set forth in any applicable Order Form or SOW. Unless otherwise specified in the Order Form or SOW, Customer fees will be due and payable within thirty (30) days of ETI's invoice. Payment will be in U.S. Dollars. Should any invoice be overdue by more than thirty (30) days, interest will be charged at the rate of 18% per annum. Without waiving any of its rights or remedies under this Agreement or at law, ETI reserves the right to suspend the ETI Solutions or performance of Services until past due amounts are paid in full by Customer.

- (b) All monthly, annual, or otherwise recurring costs or fees payable pursuant to this Agreement are subject to annual increase(s) by amount of the aggregate increase in the Consumer Price Index for all Urban Consumers, U.S. City Average for all Items (CPI-U) published by the U.S. Bureau of Labor Statistics (or similar index) for the preceding twelve months at time of invoicing, but no more than 5% in any year.
- (c) 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 (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.
- (d) License Key. At the option of ETI, the Software and ETI Solutions may be unlocked by a license key that authorizes a number of elements to be managed by the Software and/or ETI Solutions. Upon payment of the applicable license fee for a certain number of elements, ETI will provide Customer a license key which will allow the Software and/or ETI Solutions to function. If subsequent full and timely payment is not made to ETI, the license key may expire and require a new license key in order to function. Customer agrees that it will not alter or modify the license key functionality of the Software or ETI Solutions.

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, advisors, 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 Section 5 (Confidentiality) 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 the Term of this Agreement each party shall, upon written 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 reasonable 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 as may be required by law or pursuant to a subpoena, an order made pursuant to applicable law, or government authority, 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 so that the disclosing party has an opportunity to seek a protective order, confidential treatment, or other appropriate remedy to such order; (b) upon request of the disclosing party, 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 is reasonably interpreted by the receiving party to be required by a 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 the Term of this Agreement.

Section 6: Proprietary Rights and Ownership

- (a) Subject to the rights from ETI to Customer herein, 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 licensors, whether or not specifically recognized or perfected under the laws of the jurisdiction in which the Software, ETI Solutions, and Services are used or licensed. Unless otherwise agreed by the parties in an Order Form or SOW, ETI shall retain the right to any work or customization created pursuant to 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. 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 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. During or after the Term hereof, 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. Notwithstanding the foregoing, nothing in this Agreement shall be deemed to grant ETI any interest in the proprietary information, trade secrets, business plans, or pre-existing or independently developed intellectual property rights of Customer, which shall remain the sole and exclusive property of Customer.
- (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.
- (d) Customer may, but is not required to, provide Customer Data to ETI in connection with this Agreement or any applicable Order Form or SOW. As between Customer and ETI, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all intellectual property rights relating thereto.

Section 7: LIMITATIONS OF LIABILITY

- (a) Subject to Section 7(d), EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT OR EXCEPT TO THE EXTENT OTHERWISE PROHIBITED BY LAW, UNDER NO CIRCUMSTANCES SHALL ETI BE LIABLE TO CUSTOMER FOR INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS) RELATED TO THIS AGREEMENT OR RESULTING FROM CUSTOMER'S USE OR INABILITY TO USE THE SOFTWARE OR ETI SOLUTIONS, ARISING FROM ANY CAUSE OF ACTION WHATSOEVER, INCLUDING CONTRACT, WARRANTY, STRICT LIABILITY OR NEGLIGENCE, EVEN IF ETI HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES.
- (b) IN NO EVENT WILL ETI BE LIABLE FOR ANY CLAIM AGAINST CUSTOMER BY ANY END USER OR THIRD PARTY.
- (c) Subject to Section 7(d), THE LIABILITY OF ETI UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT RECEIVED BY ETI FROM CUSTOMER DURING THE 12 MONTHS PRIOR TO SUCH CLAIM PURSUANT TO THE ORDER FORM OR SOW FOR THE ETI SOLUTIONS GIVING RISE TO SUCH CLAIM.
- (d) Nothing in the above subclauses or otherwise in this Agreement excludes or limits the liability of ETI for damages which arise under or relate to Section 5 (Confidentiality), Section 6 (Proprietary Rights and Ownership), Section 9 (Indemnification), death or personal injury, gross negligence or intentional misconduct or for any other liability which may not be excluded or limited by applicable law.

Section 8: Warranties

LIMITED WARRANTY

- (a) Subject to any additional terms set forth in an Order Form, ETI warrants that the ETI Solutions will operate substantially in accordance with the applicable Documentation during the 90-day period beginning on the date the Deliverables are provided by ETI to Customer ("**Warranty Period**"). Should ETI receive written notice during the Warranty Period that the ETI Solutions fail to comply with the warranty set forth herein, Customer's sole and exclusive remedy and ETI's sole obligation shall be, at no charge to Customer, for ETI to correct or replace such ETI Solution(s), or portions thereof, as applicable, so that it complies

with this warranty.

(b) ETI warrants that it will perform its Services in a professional and workmanlike manner.

(c) **DISCLAIMER OF IMPLIED WARRANTIES.** To the extent permitted by applicable law, THE FOREGOING LIMITED WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, AND ETI DISCLAIMS AND CUSTOMER HEREBY WAIVES ANY AND ALL OTHER WARRANTIES AND IMPLIED WARRANTIES OR CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OF TITLE, NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, regardless of whether ETI knew or had reason to know of Customer's particular needs. No ETI dealer, distributor, agent, or employee may make any modification or addition to this warranty.

ETI SHALL NOT BE LIABLE FOR THE INADVERTENT CORRUPTION, ERASURE OF DATA RECEIVED ON OR USING THE SOFTWARE OR ETI SOLUTIONS ON CUSTOMER'S COMPUTERS, MISTAKES, OMISSIONS, INTERRUPTIONS, DELETION OF FILES, ERRORS, DEFECTS, DELAYS IN OPERATION, OR TRANSMISSION OR ANY FAILURE OF PERFORMANCE, WHETHER OR NOT CAUSED DUE TO ACTS OF GOD, COMMUNICATION FAILURE, THEFT, MALWARE, CYBER-ATTACKS, DESTRUCTION OR UNAUTHORIZED ACCESS TO CUSTOMER'S COMPUTER OR THE SOFTWARE OR ETI SOLUTIONS. PRIOR TO THE INSTALLATION OF THE SOFTWARE OR USE OF THE ETI SOLUTIONS AND AS FREQUENTLY THEREAFTER AS CUSTOMER DEEMS BEST, ETI STRONGLY URGES CUSTOMER TO BACKUP ALL DATA.

SOME STATES MAY NOT ALLOW FOR THE EXCLUSION OF IMPLIED WARRANTIES, SO THAT THE ABOVE EXCLUSION MAY NOT APPLY TO CUSTOMER. THIS LIMITED WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY STATE TO STATE.

(d) Customer warrants to ETI that: (a) Customer is the owner or authorized licensee of the Customer Data, and has secured all necessary licenses, consents, authorizations and waivers for the use of the Customer Data; (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, to Customer's knowledge, or as should be reasonably known by Customer, infringes upon the rights of ETI or any third party; and (c) the use by Customer of the ETI Solutions and the Customer Data 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, trademark or copyright by the Software. The foregoing indemnity shall not apply if the alleged infringement arises out of: (a) specifications or designs furnished by Customer and implemented by ETI at Customer's request; (b) the Software being modified by, combined with, added to, interconnected with or used with any equipment, apparatus, device, data, software or service not supplied or approved by ETI in writing; (c) modification to the Software by any person or entity other than ETI; or (d) use of the Software other than in accordance with its Documentation.

(b) In addition to intellectual property matters, which are exclusively governed by Section 9(a), ETI agrees to indemnify, defend and hold harmless Customer and Customer's Affiliates, officers, directors, employees and agents from and against any and all losses, costs, liabilities or expenses (including but not limited to reasonable attorney's fees actually incurred) arising, directly or indirectly, out of or in connection with third party claims involving the willful or negligent acts or omissions of ETI or any of its employees and agents occurring on the Customer's premises.

(c) If a Third-Party Claim for which Customer is entitled to be indemnified under the above subclause (a) has occurred, or in ETI's opinion is likely to occur, ETI shall, at ETI's expense, elect to do one or more of the following, in its sole discretion: (a) procure for Customer the right to continue using the affected Software; (b) replace with non-infringing alternates or modify the relevant Software so that it becomes non-infringing but its functionality after modification is substantially equivalent; and/or (c) terminate the Term of the Software and refund any prepaid fees applicable to the period after the termination of the Term of the Software, and for perpetual (if any) license Software refund the license fees for the affected Software prorated on the basis of sixty-months by the strait-line method of amortization beginning from the effective date of the beginning of the Term of the affected Software. The collective obligations of ETI pursuant to this Section 9 state the sole and exclusive liability of ETI, and Customer's sole and exclusive remedy, with respect to intellectual property infringement or misappropriation of intellectual property rights.

(d) 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, notwithstanding any contrary provision in this Agreement, employ counsel solely 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.

- (e) Customer shall indemnify, defend and holds harmless ETI upon the same terms set forth above in relation to Customer Data 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 Order Form 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) Notices. 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 U.S. first class registered or certified mail (return receipt requested), or by nationally 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 a nationally recognized overnight delivery service, and (C) on the date of delivery (or non-acceptance thereof) when mailed by U.S. first class registered or certified mail (return receipt requested). Notices other than those described above may also be delivered by electronic mail (with delivery confirmation), and will be deemed to have been made upon personal electronic reply acknowledging receipt (which shall be given in good faith), 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) No Waiver. 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 the 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 written acceptance by ETI. Notwithstanding the foregoing, Customer may assign or transfer this Agreement with the prior written consent of ETI, which will not be unreasonably withheld, conditioned, or delayed, in connection with (i) the sale or transfer of all or substantially all of the assets or equity interests of Customer or (ii) a merger or reorganization in which Customer is a constituent, except in each case to or with a direct competitor of ETI. In furtherance of the preceding sentence, the parties agree that: (A) so long as the scope of ETI's obligations hereunder remain unchanged, a change in pricing or cost shall be an unreasonable basis for ETI to withhold, condition, or delay consent, and (B) a material diminishment in the terms bargained for herein, other than regarding pricing or cost, shall be a reasonable basis for ETI to withhold, condition, or delay consent.
- (d) Entire Agreement. This Agreement, together with each Order Form and SOW, and any document referenced in this Agreement, 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 hereof. 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 an Order Form or SOW shall be permitted.
- (e) Customer Purchase Orders. ETI may accept in writing a Customer-issued purchase order for the ETI Solutions in ETI's sole discretion. Any such accepted 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) Augmented Resources. 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, with regard to this Agreement, solely responsible to Customer for the performance and conduct of such Augmented Resources.
- (g) Relationship of the Parties. Nothing contained in this Agreement shall create or be deemed to create a relationship between ETI and Customer as joint venturers or partners. Other than the rights of ETI and Customer in this Agreement, neither party has any ownership interest with respect to the other party or the right or obligation to manage or control the other party in any manner whatsoever.

- (h) The Software 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 Software 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, if the parties both so elect, the parties shall work together in good faith to issue a press release announcing the relationship created hereunder.
- (j) Force Majeure. 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; provided, that if any Force Majeure event prevents a party from performing its obligations under this Agreement for a period longer than ninety (90) days, the other party upon written notice may terminate the Term of this Agreement.
- (k) Governing Law/Attorney Fees/Jurisdictions and Venue. This Agreement shall be governed by and construed and interpreted 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 action at law or in equity 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 having jurisdiction in the State of Georgia, County of Gwinnett, 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.
- (m) Binding Effect. This Agreement shall be binding on the parties' successors and permitted assigns.
- (n) Time of Essence. Time is of the essence of this Agreement.
- (o) Representation and Warranty of Authority. Each of the parties signing below represents and warrants to the other party that the person or persons signing this Agreement on behalf of such party has the full right, power and authority to enter into and sign this Agreement on such party's behalf and that no consent from any other person or entity is necessary as a condition precedent to the legal effect of this Agreement.
- (p) Multiple Counterparts. This Agreement may be executed in multiple counterparts which when taken together shall constitute an original agreement. This Agreement may be signed by scanned pdf or facsimile signatures, or by digital or electronic signatures, which shall be considered original signatures.

[End of Agreement]