

ETS STANDARD TERMS AND CONDITIONS

Effective as of January 1st or 2024

These ETS Standard Incorporated Terms and Conditions (these “Terms”) are incorporated into and shall apply to any Program Agreement and Client Order Form (COF) (together with these Terms, the “Agreement”) executed between ETS and the client identified in the Agreement (“Client”). ETS and Client may be referred to individually as a “Party” and collectively as the “Parties.”

1) Term, Default, and Early Termination.

- a) Term. The Agreement shall remain in effect for a minimum of one (1) year or the Term specified on the respective COF (the “Initial Term”). Except as otherwise set forth in these Terms, the Agreement shall automatically renew for successive terms of one (1) year each (each, a “Renewal Term,” and together with the Initial Term, the “Term”) unless otherwise stated on the respective Program Agreement or COF, or unless either Party provides written Notice (as defined hereunder) of non-renewal to the other at least ninety (90) days before the expiration of the then-current Term. Such renewal shall be subject to the then-current version of these Terms.
- b) Material Default; Early Termination. If either Party materially defaults in the performance of any of its obligations under the Agreement, written Notice shall be given to the defaulting Party specifying the section of the Agreement allegedly in default within thirty (30) days of such alleged default. If the alleged default is a Monetary Breach (as defined below) and is not cured within fourteen (14) days after written Notice, or within three (3) days after written Notice of any subsequent Monetary Breach that occurs within the same twelve (12) month period, or for any other alleged default, is not substantially cured within thirty (30) days after receipt of such Notice, or with respect to those defaults which cannot reasonably be cured within thirty (30) days, if the defaulting Party fails, within thirty (30) days after receipt of such Notice, to proceed with all due diligence substantially to cure the default, but in any event does not substantially cure the default within ninety (90) days, then the Party not in default may, by giving written Notice of termination to the defaulting Party, terminate the Agreement as of a date specified in the Notice of termination. Any “Early Termination” (which shall be defined as (i) the termination for any or no reason, except for an uncured default by ETS as outlined above, effective prior to the latest Renewal Term on any COF, or (ii) including as a result of Client’s Monetary Breach as defined below), shall require immediate payment of (a) any outstanding balances; plus (b) liquidated damages calculated as (i) the then current MSC (plus CPI, if applicable), plus (ii) for any variable charges paid in arrears, the average monthly payment during the six months (or if in force less than six months, the number of months in force) prior to termination; with the sum of (i) and (ii) times (iii) the remaining term of the Agreement (or the remaining term of the specific item SKU, if longer), including renewal if within less than the Notice period. Any Early Termination by Client shall not be applied until the next Renewal Term.
- c) Effect of Termination. Upon termination of this Agreement for any reason and payment of all obligations and balances due to ETS for the remaining Term of the Agreement, Client may, within 30 days of such termination: (a) request a return of any prepaid deposit amounts (“Deposit”) on file with ETS, which Deposit shall be returned, and (b) transfer its data hosted by ETS, if any, to different system, for the then current fees as outlined herein. If any service is cancelled at renewal, all applicable discounts related to the cancelled service will be automatically cancelled as well, whether or not so reflected on the COF. Upon notice of non-renewal or cancellation for any reason (other than Monetary Breach, which must be paid immediately as stated herein), if Client does not have a valid DDA on file, payment must be made within ten (10) days for the full amount remaining due under the Agreement through its final term. Since any Early Termination may not only result in a loss attributable to a specific transaction but also to the goodwill and enterprise value of ETS, Client acknowledges and agrees that the amount of liquidated damages represents a fair, reasonable, and negotiated approximation of the damages that would be sustained by ETS. Client further acknowledges and agrees that the damages that would be sustained by ETS from Client’s future breach, including (among other possible damage) a loss of goodwill and/or enterprise value, is not ascertainable as of the time of contracting.

2) Payment and Monetary Breach.

- a) Payment. Timely receipt by ETS (or its assignee) of all payments pursuant to all agreements between Client and ETS is a condition precedent to all ETS obligations. Client shall pay all fees, charges, and invoiced amounts in full at the time(s) they are due irrespective of and without reduction or delay based upon (a) any claim, dispute, or right of setoff or recoupment asserted by Client at any time for any reason, or (b) the existence or claimed existence of any other dispute or controversy involving Client, ETS, or any other person or entity at any other time. If not otherwise stated, all amounts, including any one-time fees (UFC), monthly fees (MSC), per User fees, minimums, and Additional Charges, are due and payable upon receipt of invoice by ETS, which shall be deemed “received” immediately when electronically transmitted to the Client’s email address on file, or within three (3) days of being mailed by first class mail. All MSC amounts shall be due and payable monthly in advance and must be paid by approved ACH, direct debit or credit card charge initiated by ETS, or payable for the full remaining term in advance. A DDA or CCA is required for all monthly payments and amounts billable in arrears, and the Client agrees to keep current their bank account and credit card information, as applicable. Although ETS shall have no obligation to accept any payments other than by ACH direct debit, or payment in full, in the event ETS does elect to accept such alternative payments, a \$25 convenience fee (or the maximum amount permitted by law) shall be added to each invoice. Any checks, authorized debit, or credit card charges that are disputed or returned by ETS’ bank shall be automatically re-deposited / re-debited, and Client will incur a \$100 Non-Sufficient Funds (“NSF”) fee (or the maximum amount permitted by law) for each time that such return occurs, in addition to any other remedies contained herein, including those provided for Monetary Breach. All amounts not paid within five (5) days shall bear interest at the rate of one and one-half percent (1½%) per month, or the maximum permitted by law, whichever is greater.
- b) Payment Options. The applicable Payment Plan (as set forth in the respective COF) shall be paid in accordance with the following:
- i) ZERO MONEY DOWN. Upon Approved Credit.

- ii) STANDARD PLAN – REQUIRES DDA/CCA ON FILE. If selected on the COF (or if no other Payment Option is selected), Client agrees to pay the “Up Front” amount within ten (10) days of signing this Agreement. The “Up Front” amount shall consist of the Setup Fee plus the first and last month’s MSC, as well as any Deposit. In addition, Client agrees to pay the MSC (as may be adjusted pursuant to this Agreement) by way of ACH, direct debit from their bank account or Credit Card account, which amount shall be automatically, and without further Notice, deducted on the first of each month starting the first of the month following the Effective Date.
 - iii) PAID IN FULL. If selected on the COF, Client agrees to provide payment in full within ten (10) days of signing this Agreement, which payment shall be net of the additional discount stated in the COF for this option. No further amounts shall be due for that COF during the Initial Term (except as otherwise stated). Deposit will be fully refunded upon ETS receipt of full payment.
 - iv) ARREARS SERVICES – REQUIRES DDA ON FILE. If Services billed in arrears (each an “Services Billed in Arrears”) are selected on the COF, ETS shall use reasonable commercial efforts to bill such Services Billed in Arrears within ten (10) days after the end of the month for which services are performed, and (whether or not billed within ten days) such invoice shall be deducted by way of ACH direct debit five (5) days following invoice. All other charges shall be billed and paid pursuant to one of the other Payment Options listed above. Client must pay a Deposit for the average monthly amount of Services Billed in Arrears, and increase such Deposit periodically if advised by ETS that the current Deposit is not sufficient.
- c) Monetary Breach. Each of the following shall be deemed a “Monetary Breach”: (i) Non-payment of any amounts due, including but not limited to Additional Charges, within five (5) days of the date when due, subject to service interruption, and excluding any amounts disputed in good faith; (ii) Failure by Client to timely execute all reasonable additional relevant documents or provide verbal authorization when requested, including any delivery & acceptance confirmation; (iii) Client attempts to assign this Agreement in whole or in part, unless assigned pursuant to Section (1716) below; (iv) any notification from Client (in any form) of termination (or intent to terminate) effective prior to the end of the Term (not including Notice of non-renewal effective at the end of the Term); (v) any proceedings in bankruptcy are instituted by or against Client or any guarantor of this Agreement, or if Client or any guarantor of this Agreement files, or any creditor or other person files, any petition in bankruptcy under any law, rule or regulation of the United States of America or of any State, or if a receiver of the business or assets of Client or of any guarantor of this Agreement shall be appointed, or if a general assignment is made by Client for the benefit of creditors; (vi) Client ceases to operate its business; (vii) Client becomes insolvent under any generally accepted measure of insolvency, including if Client becomes unable pay its debts as they become due or if Client does not possess sufficient assets to pay its existing debts; (viii) Client violates any law, regulation, ordinance, or contractual obligation to any person or entity that may result in the termination or suspension of Client’s business operations for any period of time, or of the sale or transfer of any amount of Client’s business or assets to any person or entity; (ix) ETS informs Client of its belief that any event constituting a Monetary Breach has occurred and Client fails within fourteen (14) days cure the breach or provide evidence, reasonably satisfactory to ETS, demonstrating no such breach has occurred; or (x) any change of Client’s ownership, whether in whole or in part, unless assigned pursuant to Section 16) below.
- In the event of a Monetary Breach, ETS shall have the right during any cure period to suspend, upon notice concurrent with the written Notice described in Section (1) above, any or all Services and deny Client any or all access to Software, hardware, or security devices including but not limited to gateways, reconnection to any of which will require a \$500 Reconnect Fee, (ii) the right to immediately terminate the Agreement and recover all damages from Client (including but not limited to amounts due from Early Termination as defined in Section 1 above), and (iii) such other rights and remedies against Client as may be provided under the Agreement and applicable law. ETS’s rights and remedies are cumulative and not alternatives.
- 3) Taxes, Travel and Shipping. Applicable Taxes, shipping, travel expenses, and freight charges, if any, are not included and are billed separately as charged or required by law. Unless stated otherwise, all payment amounts exclude any applicable sales, use, property or any other tax allocable to the System (“Taxes”). Any Taxes payable under the Agreement which are not added to the payment amounts due under this Agreement are due and payable by Client, and Client shall remain liable for any filing obligations. All hardware shall be shipped FOB Origin; title transfers upon shipment. Travel charges will be charged as Additional Charges pursuant to the ETS Travel Policy.
- 4) Additional Services. Any additional services provided by ETS that are not specifically included in the executed COFs (“Additional Services”) shall be subject to the terms hereof; provided, however, that such Additional Services will not be deemed to be included in the price unless otherwise specified or requested in writing, and will be billed as Additional Charges. Client is responsible for any Additional Services, including payment and completing any associated paperwork.
- 5) Ownership and Preservation of Property Rights. Client acknowledges and agrees that all Software and ETS’s and its vendors’ respective intellectual property (i.e., source code, copyrighted or patented material, trademarks, service marks, trade secrets, and proprietary and confidential information) are the property of ETS or its vendors, respectively, and are available for Client’s use only pursuant to this Agreement. ETS or its vendors, respectively, retain all rights in their intellectual property, including any enhancements thereto or derivative works thereof. Client shall not modify, reverse assemble, or decompile, in whole or in part, the Software. It is expressly understood and agreed that title to, or ownership of, any part of the Software or any related items provided hereunder, including any enhancements thereto or derivative works thereof, shall not ever be transferred to Client. Client agrees not to use ETS or its vendors’ service marks, trademarks or brand names (collectively, the “Marks”) relating to the Software without ETS’ prior written permission. ETS or its vendors, respectively, reserve all rights related to the Marks. ETS grant of any right to use any of the Software is subject to the rights retained by ETS or its vendors, which are exercisable in ETS and its vendors’ sole discretion. ETS may use Client’s identification in its marketing literature, including on its website.
- 6) ETS Obligations. ETS agrees to use its reasonable commercial efforts to provide the Products and Services as outlined in the COFs in effect during the Term of this Agreement.

- 7) **Service Levels.** During the Term of the Agreement, ETS will make commercially reasonable efforts to secure compliance with the Service Level Agreement (“SLA”), available online at <https://etsworks.com/container/documents>, as may be reasonably modified from time to time.
- 8) **Force Majeure.** ETS shall be excused from performance under the Agreement and shall have no liability to Client for any period of time it is prevented from performing any of its obligations, in whole or in part, as a result of an event or delay that is caused, directly or indirectly, by fire, flood, earthquake, pandemic, virus, bacteria, pathogen, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions in the United States, strikes, lockouts, or labor difficulties, third party vendors, Client’s failure or delay in training, changes in law or regulations, or any other similar cause beyond the reasonable control of ETS (each, a “**Force Majeure Event**”). If a Force Majeure Event occurs, ETS will be excused from any further performance or observance of the obligation(s) so affected for as long as such circumstances prevail and it continues to use commercially reasonable efforts to recommence performance or observance whenever and to whatever extent possible without delay. For purposes of clarity, Client’s obligation to pay is not excused by any Force Majeure Event, unless such Force Majeure event prevents ETS’s reasonable performance for more than three consecutive months following receipt of Notice from Client.
- 9) **Limitation of Liability.**
- a) USE OF THE SYSTEM, SOFTWARE, SERVICES, AND GOODS ARE AT THE SOLE RISK OF THE CLIENT. ETS, ITS AFFILIATES, AND THEIR THIRD PARTY VENDORS SHALL HAVE NO LIABILITY FOR SPECIAL, INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL OR ANY DAMAGES WHATSOEVER ARISING OUT OF OR IN ANY WAY RELATED TO THE PRODUCT OR WITH THE DELAY OR INABILITY TO USE THE PRODUCT, OR FOR ANY INFORMATION, PRODUCTS, OR SERVICES ADVERTISED IN OR OBTAINED THROUGH THE PRODUCT, ETS REMOVAL OR DELETION OF ANY MATERIALS SUBMITTED OR POSTED ON ITS PRODUCT, OR OTHERWISE ARISING OUT OF THE USE OF THE PRODUCT, RESULTING FROM UNAUTHORIZED ACCESS TO THE SYSTEM, LOSS OF USE, LOSS OF DATA, LOSS OF PROFITS, LOSS OF GOODWILL, ADDITIONAL EMPLOYEE HOURS OR LOSS OF ANTICIPATED SAVINGS OR REVENUE ARISING OUT OF OR IN CONNECTION WITH THE AGREEMENT OR THE PERFORMANCE OR FAILURE TO PERFORM THEREOF, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF ETS OR THIRD PARTY VENDORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES.
- b) ALL DATA ENTRY AND SUBMISSIONS ARE SOLELY THE RESPONSIBILITY OF THE CLIENT TO REVIEW AND SUBMIT; ETS SHALL NOT BE RESPONSIBLE FOR ANY ERRORS CONTAINED THEREIN, EVEN IF ETS ENTERED OR PREPARED THEM.
- c) ETS SHALL NOT BE RESPONSIBLE FOR ANY ERRORS OR OMISSIONS IN ANY CLAIMS OR OTHER INTERFACE TRANSMISSIONS TO OR FROM CLIENT. WITH RESPECT TO PROCESS OR TRANSMISSION ERRORS, AS CLIENT’S SOLE AND EXCLUSIVE REMEDY, ETS WILL USE COMMERCIALY REASONABLE EFFORTS TO CAUSE THE CLAIMS CLEARINGHOUSE OR OTHER ENTITY TO REPROCESS OR RESUBMIT THE APPLICABLE CLAIM OR TRANSMISSION. IT IS THE SOLE RESPONSIBILITY OF CLIENT TO REVIEW TRANSMISSION LOGS AND REPORTS AND TO IMMEDIATELY NOTIFY THE VENDOR OF ANY ERROR, OMISSION, OR OTHER DISCREPANCY. ETS SHALL NOT BE RESPONSIBLE FOR ANY UNAUTHORIZED OR OTHER IMPROPER TRANSMISSION BY OR ON BEHALF OF CLIENT. CLIENTS AND END USERS HEREBY ACKNOWLEDGE THAT ANY INFORMATION SENT OR RECEIVED DURING USE OF THE SOFTWARE OR SERVICES MAY NOT BE SECURE AND MAY BE INTERCEPTED OR OBTAINED BY UNAUTHORIZED PARTIES.
- d) THE CUMULATIVE LIABILITY OF ETS, ITS AFFILIATES, AND THIRD PARTY VENDORS FOR ALL LOSS AND DAMAGE WHATSOEVER AND HOWSOEVER ARISING RELATED TO THE AGREEMENT OR ANY UNDERLYING TRANSACTION SHALL NOT EXCEED THE AMOUNTS PAID BY CLIENT TO ETS DURING THE SIXTY DAYS PRIOR TO THE WRITTEN NOTIFICATION TO ETS OF THE CLAIM.
- e) IF DATA BACKUP AND/OR PROTECTION SERVICES ARE INCLUDED, ETS WILL MAKE REASONABLE COMMERCIAL EFFORTS TO TEST DATA BACKUP AND RECOVERY ON A PERIODIC BASIS, BUT CAN MAKE NO GUARANTEE THAT ANY DATA WILL BE RECOVERABLE, AND CLIENT ASSUMES THE RISK OF ALL DATA LOSS.
- f) ETS EXPRESSLY DISCLAIMS ANY AND ALL LIABILITY FOR ANY CLAIM FOR INJURIES OR DAMAGES RELATED TO THE USE OF SOFTWARE.
- g) CLIENT AGREES THAT ANY CAUSE OF ACTION IT MAY BRING ARISING OUT OF OR RELATED TO ANY PRODUCT OR SERVICE MUST COMMENCE WITHIN SIX MONTHS AFTER THE CAUSE OF ACTION ACCRUES OR THE CAUSE OF ACTION IS PERMANENTLY BARRED.
- h) NEITHER ETS NOR ITS VENDORS ASSUME ANY RESPONSIBILITY FOR CLIENT’S OR OTHER END USERS’ USE OR MISUSE OF INDIVIDUALLY IDENTIFIABLE INFORMATION OR OTHER INFORMATION TRANSMITTED, MONITORED, STORED, OR RECEIVED WHILE USING THE PRODUCT AND THE MATERIALS WITHIN THE PRODUCT.
- i) IN NO EVENT SHALL ANY LIABILITY OF ETS, ITS AFFILIATES, OR THEIR THIRD PARTY VENDORS, EXCEED THE LIABILITY OF ANY VENDOR AS PROVIDED FOR IN ITS RESPECTIVE END USER LICENSE AGREEMENT (“EULA”), AS INCORPORATED INTO THE AGREEMENT, AND ETS SHALL BE A THIRD-PARTY BENEFICIARY OF ANY AND ALL SUCH EULAs.
- 10) **Limited Warranty.** CLIENT UNDERSTANDS THAT ITS USE OF THE HARDWARE, SOFTWARE AND SERVICES WILL DETERMINE IN LARGE PART THE HARDWARE, SOFTWARE AND SERVICE’S EFFECTIVENESS, AND REPRESENTS THAT IT HAS HAD SUFFICIENT OPPORTUNITY TO REVIEW THE HARDWARE, SOFTWARE AND SERVICES IN THEIR CURRENT FORM, SEEK REFERENCES FROM OTHER CLIENTS AND OBSERVE THE HARDWARE, SOFTWARE AND SERVICES IN USE, INCLUDING FOR ITS SUB-SPECIALTY OR OTHER, SIMILAR SPECIALTIES. WHETHER OR NOT CLIENT HAS AVAILED ITSELF OF SUCH OPPORTUNITIES, CLIENT REPRESENTS THAT IT IS SATISFIED THAT THE HARDWARE, SOFTWARE AND SERVICES MEET ITS SPECIFIC NEEDS, AND HEREBY SPECIFICALLY WAIVES ANY AND ALL RIGHTS OF RESCISSION OR CLAIMS

UNDER THE NEVADA DECEPTIVE TRADE PRACTICES ACT (“NDTPA”), OTHER SIMILAR STATUTES. ALL HARDWARE, SOFTWARE, PRODUCTS, SERVICES AND GOODS PROVIDED BY ETS AND/OR ITS VENDORS ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. ETS WARRANTS ONLY THAT IT WILL USE COMMERCIALY REASONABLE EFFORTS TO PROVIDE SERVICES AS OUTLINED HEREIN; THIS WARRANTY IS THE ONLY WARRANTY MADE BY ETS TO CLIENT. ETS MAKES AND CLIENT RECEIVES NO OTHER WARRANTY, EXPRESS OR IMPLIED. ANY AND ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE EXPRESSLY DISCLAIMED AND EXCLUDED. ETS DOES NOT REPRESENT THAT THE SYSTEM, PRODUCT, SERVICES OR GOODS WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE, SERVICES OR HARDWARE WILL BE UNINTERRUPTED OR ERROR FREE. WITHOUT ANY LIMITATION, NEITHER ETS NOR ITS LICENSORS WARRANT, GUARANTEE, OR AGREE TO ENSURE THAT CLIENT'S USE OF THE SOFTWARE, SERVICES OR HARDWARE WILL COMPLY WITH APPLICABLE LAWS, AND CLIENT ACKNOWLEDGES AND AGREES THAT IT IS CLIENT'S SOLE AND EXCLUSIVE OBLIGATION TO ENSURE THAT ITS USE OF THE SOFTWARE, SERVICES OR HARDWARE COMPLIES WITH ALL APPLICABLE LAWS.

11) Client Supplied Items. ETS is not responsible for providing maintenance for any Client Supplied Items, or any System issues that result therefrom, even if ETS referred or recommended the source of such Client Supplied Items. Client acknowledges and agrees that it has an affirmative obligation to ensure that any Client Supplied Items meet the then-current ETS Equipment Specifications, as may be amended from time to time (see <https://etsworks.com/container/documents>), and that if the Client Supplied Items do not meet all approved specifications, ETS is not obligated to provide any support and Client may be required to purchase additional hardware, software, and/or ISP bandwidth in order to have the System run properly. In the event that Client Supplied Items do not meet specifications, Client shall be responsible for any costs or expenses (as Additional Charges) associated with (i) any additional support provided by ETS that may have resulted from such Client Supplied Items, (ii) any efforts by ETS to determine whether Client Supplied Items meet the specifications, and (iii) the purchase, configuration, and installation of additional hardware, software, networking or ISP Broadband required to meet specifications.

12) Client's Additional Responsibilities.

a) For implementations and training of any product or service, any failure by Client to meet agreed milestones or to attend training may substantially delay Client's Go-Live date or otherwise hinder performance, including their ability to meet governmental or other contractual requirements. In the event Client does not Go-Live within 30 days of an executed COF, unless solely the fault of ETS as provided by Notice from Client, the implementation will be considered complete for all purposes herein, and MSC will continue be charged as if Go-Live had been completed. In such instance, depending on the circumstances and at ETS's sole discretion, Client may be charged for an additional future implementation.

b) Client shall take reasonable steps to ensure the security of its hardware, network, software and Client Data. Client shall be responsible for System and network password management and for ensuring that no virus is loaded onto the System as a result of Client's action (or inaction). Unless otherwise specifically included as part of IT and/or Security Services (defined below), Client is solely responsible for the selection, maintenance, and update of its own antivirus and other System protection in its locations.

c) Client is responsible for reporting all suspected software bugs, training deficiencies, enhancement requests, etc. through the then supported ETS reporting channel, (i.e., currently "<https://etsworks.com/contact/>").

13) Indemnification and Legal Fees. To the fullest extent possible, Client agrees to indemnify, defend, and hold ETS, its vendors, employees, agents and independent contractors harmless from and against any and all claims, demands, losses, damages, costs, judgments, expenses, or liabilities (including reasonable legal fees) arising in whole or in part from, relating in whole or in part to, caused in whole or in part by, or alleged or claimed to be caused in whole or in part by: (a) Client's act or omission to act, including those acts or omissions of Client's employees or agents; (b) the violation of any law, regulation, or ordinance by Client, its employees or agents; and (c) any injury.

14) Client Data. Client owns its own data. ETS is not the custodian of Client data, and Client agrees that in the event ETS receives a request from a Client for access to electronic Protected Information of the patron, Client will (i) provide such access to the patron directly, upon Notice from ETS or (ii) in the event ETS maintains such electronic Protected Information in its possession and under its control, provide assistance to ETS as necessary (including monetary or otherwise) to facilitate such provision of Protected Information to the patron. Notwithstanding, to the extent not prohibited by law, and consistent with Section 2 herein, ETS has the right to temporarily suspend Client's access if Client has not complied with the terms of this Agreement; any such right shall be extinguished upon Client's performance of all of its duties herein, including payment of all amounts due (including future amounts due) under this Agreement. Subject to HITECH, the Interoperability Rules and other privacy laws, and notwithstanding any terms of any Business Associate Agreement to the contrary, ETS may access and use such data for the purpose of complying with its responsibilities herein, monitoring Client performance, conducting data analytics and/or otherwise as reasonable or necessary for ETS's proper management and administration.

15) Non-Hire; Non-Circumvention. During the period of the Agreement and for a period of three (3) year following any termination thereof, Client shall not, directly or indirectly: (a) hire, solicit, or encourage to leave ETS' employment, any employee, consultant, agent or contractor of ETS; (b) hire, solicit or engage any such employee, consultant, agent or contractor who has left ETS' employment or contractual engagement within one year of such employment or engagement; or (c) purchase (other than directly through ETS) any product or service provided under this Agreement, directly or indirectly, from any vendor (or reseller of such vendor) that is then or has been within the preceding year contracted with ETS.

16) Non-Assignment. Client may not assign or transfer the Agreement or any of its rights or obligations hereunder without Notice of prior written consent of ETS. It is understood that ETS may subcontract or assign this Agreement, in whole or in part, or some or all of its duties hereunder, by providing Client with written Notice of such assignment.

17) Governing Law and Dispute Resolution.

- a) This Agreement is governed by and is to be construed and interpreted in accordance with the laws of the State of Nevada. Without regard to any choice of law or conflict of law provisions or principles, only Nevada law shall govern any dispute arising from or in any way related to this Agreement, any of its terms, or the Parties' negotiations and/or interactions leading to the execution of this Agreement.
- b) Dispute Resolution. Prior to commencement of any action or invocation of any dispute resolution procedures (except for Monetary Breach), Notice of default and opportunity to cure must have first been provided, which was then not reasonably cured. If the parties should then have a dispute directly or indirectly arising from or relating to this Agreement or the Parties' respective rights and duties under the Agreement, the Parties will resolve such dispute in the following manner:
- i) If not resolved by good faith negotiations between the parties and/or their designated representatives within thirty (30) calendar days after either party transmits written Notice from the other party setting forth such difference or dispute, any dispute between the Parties shall be escalated to mediation as provided in (b) below.
 - ii) Upon expiration of the time period in paragraph i) of this Section 18(b) and absent written agreement by the Parties to extend that time period, the Parties shall submit their dispute to any mutually acceptable mediation service located in Las Vegas, Nevada. The Parties will request mediation by providing to the mediation service a joint written request for mediation, setting forth the subject of the dispute and the relief requested. The Parties shall cooperate with one another in selecting a mediation service and shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings to occur in Las Vegas, Nevada. Client's corporate representative (in addition to any outside legal counsel) shall travel to Las Vegas, Nevada, to attend the mediation in person. The Parties further agree that all offers, promises, conduct, and statements, whether oral or written, made during the course of the mediation by any of the Parties, their agents, employees, experts, and attorneys, and by the mediator and any employees of the mediation service, are confidential, privileged, and inadmissible for any purpose, including impeachment, in any litigation, arbitration, or other proceeding involving the Parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.
 - iii) Each of the Parties acknowledges that a failure to cooperate and participate in the mediation required under Section 18(b) would cause irreparable harm to the other Party for which monetary damages would not provide an adequate remedy. Accordingly, each of the Parties agrees that if either of the Parties fails to cooperate or participate in the mediation required under Section 18(b), then, in addition to any and all other rights and remedies that may be available, the other Party shall be entitled to pursue and obtain equitable, injunctive, and/or interim relief compelling the Party to cooperate and participate in mediation in Las Vegas, Nevada. Such relief may be sought and entered or awarded exclusively in the following venues: a state or federal court located in Las Vegas, Nevada, or during an arbitration initiated as provided in this Section 18(b). The Parties agree that a Party seeking equitable and/or injunctive relief from a court or an arbitrator under this paragraph iii) of Section 18(b) shall not be required to post any form of bond or security in order to obtain such relief. As set forth in Section 18(a), and without regard to any choice of law or conflict of law provisions or principles, Nevada law shall apply. In any proceeding under this paragraph iii) of Section 18(b), Client agrees to submit to the jurisdiction of the courts of Nevada and agrees that an arbitrator may order the Client to appear for mediation in Las Vegas. Client agrees to mediate in Las Vegas, Nevada, without regard to the merits of the dispute, including the Parties' claims or amounts at issue. Should either of the Parties pursue and obtain relief awarded by a court or an arbitrator under this paragraph iii) of Section 18(b), that Party shall be entitled to an award of its reasonable attorneys' fees and expenses incurred obtaining such relief. The Parties agree that the court or arbitrator is authorized to enter an award of such fees and expenses immediately and without awaiting entry of a final order. Relief sought or obtained hereunder shall not limit or otherwise restrict the scope of disputes to be arbitrated.
 - iv) If the Parties cannot resolve the dispute for any reason, including, but not limited to, the failure of either of the Parties to agree to comply with the mediation requirement or to agree to any settlement proposed by the mediator, then upon expiration of sixty (60) days from the date on which Notice under paragraph i) of this Section 18(b) above was transmitted, either of the Parties may submit the dispute to be finally settled by arbitration to be held in Las Vegas, Nevada, as provided in paragraphs v) – ix) of this Section 18(b).
 - v) The arbitration will be conducted by one arbitrator. The Parties will attempt to select a single arbitrator by mutual agreement. If they are unable to do so within thirty (30) days after the initiating the arbitration proceeding, the Parties may request the appointment of a neutral arbitrator. The arbitration shall be administered by the American Arbitration Association. The rules of arbitration shall be the Commercial Arbitration Rules of the American Arbitration Association, except as modified herein or by any other instructions that the Parties may agree upon at the time, except that each of the Parties shall have the right to conduct discovery in any manner and to the extent authorized by the American Arbitration Association. If there is any conflict between those rules and the provisions of this Agreement, the provisions of this Agreement shall prevail. No Party will undertake any proceeding designed to divest an arbitrator of jurisdiction.
 - vi) The arbitrator's decision shall provide a reasoned basis, including express and detailed findings of fact and conclusions of law on all issues raised at the arbitration for the resolution of each dispute and for any award. The arbitrator shall not have power to award any form of damages in excess of either actual compensatory damages or the contractual damages available under any terms of this Agreement or any other documents; except with respect to statutory damages for non-payment, issuing a worthless check, or otherwise causing payment to ETS to be stopped or returned. In no event shall ETS's liability exceed any limitation of liability contained in this Agreement or any document between Client and ETS. The arbitrator shall not multiply actual damages or award punitive damages, except that the arbitrator may multiply and/or award statutory damages (including multiplied damages) for non-payment, issuing a worthless check, or otherwise causing payment to ETS to be stopped or returned.
 - vii) The award rendered by arbitration shall be final and binding upon the parties, and judgment upon the award shall be entered in a state or federal court located in Las Vegas, Nevada, which shall be the sole and exclusive venue for entry of such judgment and any post-judgment proceedings. In connection with such judgment and/or post-judgment proceedings, as set forth in Section 18(a) and without regard to choice of law or conflict of law provisions that would result in the application of another law, Nevada law shall apply to any

dispute under this Section 18(b). Client agrees to submit to the jurisdiction of the courts of Nevada.

- viii) Each of the Parties acknowledges its breach or threatened breach of any of its obligations under this Agreement would cause irreparable harm to the other Party for which monetary damages would not be an adequate remedy. Accordingly, each of the Parties agrees that in the event of a breach or a threatened breach by such party of any such obligations, the other Party shall, in addition to any and all other rights and remedies that may be available to them with respect to such breach, be entitled to equitable relief, including a temporary restraining order, an injunction, specifically as determined by the arbitrator without any requirement to post bond. In addition, the arbitrator may, at the request of a Party, order provisional or conservatory measures (including, without limitation, preliminary injunctions to prevent breaches of the Agreement). Nothing in this Section 18(b) will prevent any Party from obtaining relief in the form of provisional or conservatory measures (including, without limitation, preliminary injunctions, specific performance to prevent breaches, and an order compelling arbitration) in a state or federal court located in Las Vegas, Nevada, which shall be the sole and exclusive forum and venue for such relief; provided, however that no Party will undertake any proceeding designed to divest an arbitrator of the arbitrator's jurisdiction. As set forth in Section 18(a) and without regard to choice of law or conflict of law provisions that would result in the application of another law, Nevada law shall apply to any dispute under this Section. Client agrees to submit to the jurisdiction of the courts of Nevada.
- ix) **Waiver of Jury Trial and Class Action and Multi-Party Waiver.** THE PARTIES IRREVOCABLY AGREE THAT ALL DISPUTES ARISING FROM OR RELATED TO THIS AGREEMENT WILL BE FINALLY AND EXCLUSIVELY SETTLED BY ARBITRATION. EACH PARTY HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LEGAL REQUIREMENTS, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT. ANY ARBITRATION UNDER THIS SECTION 18(b) OR ANY COURT TRIAL (WHETHER BEFORE A JUDGE OR A JURY) WILL TAKE PLACE ON AN INDIVIDUAL BASIS WITHOUT RESORT TO ANY FORM OF CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION, OR TO ANY REPRESENTATION AS OR BY A PRIVATE ATTORNEY GENERAL (THE "CLASS ACTION AND MULTI-PARTY WAIVER"). THIS CLASS ACTION AND MULTI-PARTY WAIVER PRECLUDES ANY PARTY FROM SERVING AS A REPRESENTATIVE OR BEING REPRESENTED IN ANY CLASS, REPRESENTATIVE, OR COLLECTIVE ACTION, AND FROM SERVING AS OR BEING REPRESENTED BY A PRIVATE ATTORNEY GENERAL, REGARDING ANY CLAIM ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PARTIES' RESPECTIVE RIGHTS AND OBLIGATIONS UNDER THE AGREEMENT. REGARDLESS OF ANYTHING ELSE IN THIS SECTION 18(b), THE VALIDITY AND EFFECT OF THIS CLASS ACTION AND MULTIPARTY WAIVER MAY BE DETERMINED ONLY BY A COURT AND NOT BY AN ARBITRATOR. THE PARTIES ACKNOWLEDGE THAT THIS CLASS ACTION AND MULTI-PARTY WAIVER IS MATERIAL AND ESSENTIAL TO THE ARBITRATION OF THEIR DISPUTES AND IS NOT SEVERABLE FROM THEIR AGREEMENT TO ARBITRATION. IF THIS CLASS ACTION AND MULTI-PARTY WAIVER IS LIMITED, VOIDED, OR FOUND UNENFORCEABLE, THEN THE PARTIES' AGREEMENT TO ARBITRATE SHALL BE NULL AND VOID WITH RESPECT TO SUCH PROCEEDING, SUBJECT TO ANY PARTY'S RIGHT TO APPEAL THE LIMITATION OR INVALIDATION OF THIS CLASS ACTION AND MULTI-PARTY WAIVER. THE PARTIES ACKNOWLEDGE AND AGREE THAT UNDER NO CIRCUMSTANCES WILL A CLASS ACTION BE ARBITRATED.
- c) If any litigation or other court action, arbitration or similar adjudicatory proceeding is commenced by any Party to enforce its rights under this Agreement against any other Party, all fees, costs and expenses, including, without limitation, reasonable attorneys' fees and court costs, incurred by the prevailing Party in such litigation, action, arbitration or proceeding shall be reimbursed by the losing Party; provided, that if a Party to such litigation, action, arbitration or proceeding prevails in part, and loses in part, the court, arbitrator or other adjudicator presiding over such litigation, action, arbitration or proceeding shall award a reimbursement of the fees, costs and expenses incurred by such Party on an equitable basis, as determined in the arbitrator or adjudicator in their sole discretion.

18) **"Notices"**. All communications or Notices required or permitted by the Agreement shall be sufficiently given for all purposes hereunder if given in writing and delivered (i) personally to a signatory hereof, (ii) by United States mail, return receipt requested, (iii) by document overnight delivery service or (iv) by facsimile, provided the sender delivers a confirmation copy as otherwise permitted of such facsimile within three (3) business days thereafter. All Notices delivered in accordance with this Section shall be sent to the appropriate address or number, as set forth below, or to such other address or to the attention of such other person as the recipient Party has specified by prior written Notice to the sending Party, and shall be effective upon its delivery to the addressee or three (3) business days after it is sent or dispatched, whichever occurs earlier. Notices shall be delivered, if to ETS, to the attention of **CONTRACT NOTIFICATION, 2300 W Sahara Ave Ste 800, Las Vegas, NV 89129** and if to Client, at the email or physical address on file with ETS. **Any notice of default or non-renewal sent by Client that is not sent in strict compliance with this Section 19, and specifically referencing this Section 19, will not be considered as Notice under this Agreement.**

19) **Severability**. Each provision of the Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Agreement.

20) **Modification and Amendments**. ETS may from time to time modify these ETS Standard Terms & Conditions and either supply Client with a revised copy or post a copy of the amended ETS Standard Terms & Conditions at <https://etsworks.com/container/documents>. If Client does not agree to (or cannot comply with) the ETS Standard Terms & Conditions as amended, Client must advise ETS of such by providing official Notice (pursuant to Section 19) of the specific Section change(s) contested on or before the later of (a) the Effective Date of these terms and conditions, or (b) five days from the date the new ETS Standard Terms & Conditions are posted by ETS. Upon ETS receipt of such timely Notice, ETS may elect to continue with the prior version of the ETS Standard Terms & Conditions, or provide Client with the option to terminate the Agreement early pursuant to the immediately previously existing ETS Standard Terms & Conditions. Client will be deemed to have accepted the revised ETS Standard Terms & Conditions as amended upon continued use of the Software or Services for at least five days after any amendments or revisions are posted, without having provided any Notice as required by this Section. Neither (a) adding any additional products and services nor (b) making grammatical or

numbering changes to these ETS Standard Terms & Conditions shall be considered a modification hereof, so long as such addition or change does not materially impact Client's then existing rights or obligations, and shall therefore not require any notice. In the event a pre-existing COF or other document references a specific section by number, such reference shall be adjusted accordingly. No other modification or amendment by the Client or any representative of ETS to this Agreement, in whole or in part, is authorized or valid unless such modification or amendment is set forth in a written document executed by an authorized officer of each of the Parties. Unless specifically released by signed writing of a duly appointed officer of ETS, all signed Personal Guarantees apply for the entire duration of the Term, including any renewals, re-contracts and extensions; any newly executed Personal Guarantee does not replace prior Personal Guarantees, but is in addition to such prior Personal Guarantee(s).

21) Entire Agreement and Client's Non-Reliance on Extrinsic Matters. The Agreement (including, without limitation, any Order Forms, Schedules and Addendums) constitutes the entire understanding of the Parties with respect to the subject matter hereof and there are no restrictions, promises, warranties, covenants or undertakings other than those expressly set forth or referred to herein. The Agreement supersedes all prior negotiations, agreements and undertakings between the Parties (including any predecessor companies acquired by ETS) with respect to such subject matter, including (a) all terms and conditions and (b) with respect to any specific Items purchased; but does not supersede the remaining expiration or renewal date for Items previously purchased from a predecessor company unless provided for on a COF with Quote Type "CCTX-ETS" or "Renewal". No course of prior dealing may modify, supplement, or explain any terms used in this Agreement or any term in any document incorporated into the Agreement. The Agreement may be executed electronically or in one or more counterparts and by scan or facsimile, each of which shall be deemed an original. True photocopies shall be deemed as effective as the original signatures. In entering into this Agreement, Client has not relied upon or been induced by any statement or representation by ETS, ETS' representatives, or any other party other than the written terms contained in this Agreement and the documents expressly referenced in this Agreement.

22) Additional Acts. Each party promises and agrees to execute and deliver any additional documents and instruments and to perform any acts which may be necessary or reasonably required in order to give full effect to the Agreement. ETS reserves the right to audit all products and services for compliance; in the event that any audit uncovers that product(s) or service(s) have been used by unauthorized Providers or Users, or have otherwise been undercharged, ETS may retroactively charge (and Client shall pay) for such product(s) or service(s) from the time of initial use as Additional Charges.

23) No Third Party Beneficiaries. The Agreement is not intended to and shall not be construed to give any person or entity, other than the Parties hereto, any interest, rights, or remedies (including, without limitation, any third party beneficiary rights) in connection with the Agreement or any provisions contemplated herein.

24) Material Changes. Notwithstanding anything herein to the contrary, the terms and conditions in the Agreement are subject to periodic review and may be revised by ETS in the event that Client exceeds the average devices to user ratio, support cases or calls exceed the ETS average duration or frequency, or a significant change in any insurance, tax, vendor terms, CPI, third party reimbursement, or other regulations, laws, policies or procedures which materially and adversely affect the ability of ETS to provide services hereunder or otherwise render performance by ETS difficult, unprofitable, or burdensome. Likewise, products may be substituted for like products which, in ETS' sole discretion, are as good or better. In the event of any such change in any pricing or product substitution, Client may terminate such product or service only within 30 days of providing Notice thereof as its sole remedy, and hold ETS harmless from any claims, actions, losses or damages arising from or relating to such termination.

25) Relationship of Parties. ETS, in furnishing Services to Client under the Agreement, is acting only as an independent contractor and shall have the exclusive control of the manner and means of performing the work contracted for hereunder. ETS does not undertake by the Agreement or otherwise to perform any obligations of Client, whether regulatory or contractual, or to assume any responsibility for Client's business or operations. Personnel supplied by ETS hereunder, whether or not located on Client's premises, are ETS employees or agents and shall not represent themselves to be otherwise. Nothing contained in the Agreement shall be construed to create a joint venture or partnership between the Parties.

26) Construction. The language used in the Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and the Parties agree that no term of this Agreement shall be construed against any Party under any circumstances. Any reference to any federal, state, local, or foreign statute or law shall be deemed also to refer to all rules and regulations promulgated thereunder, unless the context requires otherwise. Headings are for convenience only and are not intended either to interpret any provisions of this Agreement or to create any right or remedy.

27) Authority. Each of the Parties hereto represents to the other that such party has full power and authority to execute, deliver and perform the Agreement, and that the individual executing the Agreement on behalf of the party is fully empowered and authorized to do so. The Parties acknowledge that they have freely negotiated and executed this Agreement without duress after a sufficient opportunity was provided for all Parties to seek and obtain review of the Agreement by legal counsel of their choosing. Client expressly authorizes ETS, subject to restrictions pursuant to HIPAA, to (a) monitor and record all telephonic, internet chat sessions, and other like conversations for the purpose of training, performance monitoring, and documenting such conversations in its business records; and (b) to install remote agents and extract relevant data on any Devices used for Services.

28) Waiver. The failure of either of the Parties to enforce any provision of the Agreement shall not operate as, or be construed to be, a waiver of that provision or of the Parties' rights in connection with any subsequent breach of the same or any other provisions of the Agreement. ETS does not waive any breach and/or default (including a Monetary Breach) unless an officer of ETS expressly acknowledges such waiver in writing. Unless confirmed in writing by an officer of ETS, any written waiver by ETS does not constitute a waiver of any subsequent breach and/or default (including a Monetary Breach). No delay or omission by ETS in enforcing its rights or remedies under the Agreement shall waive or impair ETS's rights and remedies under the Agreement or otherwise available at law.

29) Schedules. ETS and Client each agree to perform certain obligations and be bound by all of the terms and conditions outlined in the COFs, agreements, amendments, policies, and schedules as may be modified by ETS from time to time at <https://etsworks.com/container/documents>. The terms and conditions of such additional COFs, agreements, policies and schedules including any applicable EULA, SLA, ETS Travel Policy, ETS System Requirements, ETS HIPAA Business Associate Agreement ("BAA"), and EDI Transaction Agreement (if applicable) are hereby incorporated into and made a part of the Agreement. Any conflict between these Terms and the terms of those documents shall be resolved in favor of these Terms. All of vendor's rights under any applicable EULA are assigned jointly to ETS and such vendor. In the event that Client requests ETS to execute an

additional custom BAA, the parties agree by their continued relationship that any such custom BAA will incorporate the following language quidem ipso jure, notwithstanding anything in such custom BAA to the contrary: “Except as otherwise required by law as interpreted in its most narrow interpretation, nothing in this Business Associate Agreement shall require any actions or standards of Business Associate, or its subcontractors, that are more restrictive or burdensome to Business Associate than that which is required under the Agreement, including Business Associate’s incorporated standard Business Associate Agreement (“BAA”), available at <https://etsworks.com/container/documents>. Any ambiguity or conflict between these Terms and Business Associate’s Agreement, including its standard BAA, shall be interpreted and construed in favor of the Agreement, including the incorporated standard BAA.” For avoidance of doubt, the provisions of the ETS HIPAA Business Associate Agreement, so long as they meet or exceed the minimum required provisions, shall supersede any and all provisions of any custom BAA, notwithstanding any language to the contrary contained in such custom BAA.

30) **Confidentiality.** Client agrees that this Agreement (including all related pricing, Schedules, Orders, COFs and Amendments) and all additional agreements and written correspondence with ETS are confidential (collectively, “**Confidential Information**”). Any disclosure of Confidential Information by Client which is not otherwise required by court order is prohibited and considered to be a material breach of this Agreement. Both parties agree that before posting or otherwise making public any disparaging remarks or comments about the other, including but not limited to the use of social media, such party shall have first exhausted the agreed Dispute Resolution process herein.

31) **Additional Definitions.** “**Additional Charges**” means charges for services provided that are either specifically identified as Additional Charges or not otherwise included in a COF; Additional Charges will be billed at ETS then standard rates. “**Affiliates**” means any person, firm, corporation, association, organization, or unincorporated trade or business that, now or hereafter, directly or indirectly, controls, is controlled by, or is under common control with ETS, including without limitation, any subsidiary of ETS. “**CCA**” means a Credit Card Authorization form for credit card charges pursuant to a valid merchant agreement. “**Client Order Form**”, which may also be referred to as “**COF**”, “**Order**,” or “**Quote**” (all four terms are interchangeable), means the form signed by the Client outlining specific Software and/or Services purchased. “**Client Supplied Items**” include any and all software, hardware, equipment, networking, and ISP Broadband/ or other connectivity channels purchased by the Client other than through ETS. “**CPI**” is the greater of 5% per year or the annual percentage change in the Consumer Price Index, as published by the US Department of Labor on its website www.bls.gov, for all urban consumers. “**ETS**” or “**ETS Works**” means Empowering Technology Solutions, LLC and its Affiliates. “**DDA**” means a Direct Debit Authorization form for ACH debits. “**Devices**” means any System with a currently supported Operating System/Firmware, including but not limited to Personal Computers, Servers, Security Appliances, Firewalls, Wireless Directors/Managers, Web Filter Appliances, PBXs, Backup Appliances, Plotter Directors, Fax Appliances/Machines, etc. Multifunction devices are charged per function. Devices are further defined in the IT Services (“**ITS**”) section. “**End User License Agreement**” or “**EULA**” means an agreement between either ETS or one of its third-party vendors that applies directly to Client and in some cases, Client’s patrons and customers. In some cases, the EULA may also be referred to as “**Terms of Service**” (“**TOS**”) or “**Terms of Use**” (“**TOU**”), which shall have the same meaning as EULA for purposes of this Agreement. Client agrees that ETS is entitled to all rights as if it were the third party vendor under all EULAs, TOSs, and TOUs, and notwithstanding anything to the contrary contained therein, is specifically included as a third party beneficiary of each. “**Engineer**” means an ETS employee or independent contractor who has Engineer or Project Manager in their job title, or any manager of such positions performing substantially the same work. “**Go-Live**” means the first date that the System, a Device, or Service is used for any operations of the Client. “**Item**” means a particular product or service that is represented by a separate line item or SKU on a COF, Order, Quote, SOW or invoice. “**MSC**” means Monthly Service Charge, and may also just be referred to as Monthly Fees, Monthly or Per Month when accompanied by a dollar amount. “**Maintenance**” or “**Assurance**”, when used in conjunction with software, shall mean periodic updates and hotfixes as provided by the software vendor. “**Minimum Fee**”, shall mean the Minimum as identified in the COF, or in the absence of that, the average monthly amount billed during the previous three (3) months. “**Service(s)**” means the services provided pursuant to this Agreement. “**Software**” is as further defined in this Agreement, including the respective EULA for each software vendor or product. “**Statement of Work**” or “**SOW**” means a more specific embodiment of duties and responsibilities as therein outlined between and among ETS, Client and any third parties; anything not specifically included within the SOW is considered to be out of scope. “**System**” means the embodiment of the hardware, software, and services provided by ETS under the Agreement. “**UFC**” means Up Front Charge. “**Unlimited**” training and support means that there is no additional charge (except no shows), but is not the equivalent of “on demand” training and is not a source of data entry. “**User**” or “**End User**” means any person who access the System or Services. All training and support requests are subject to advance notice; scheduling and lead times are based on resource availability at the time.

Product Specific Terms & Conditions. To the extent any of the following terms and conditions conflict with any other terms and conditions of these Terms, the following applicable terms and conditions shall control solely as it applies to the applicable Hardware, Service or Software.

32) **Consulting, Implementation and Training Services** - If the executed COF including consulting, implementation, or training (including implementation or training as part of any other Service herein), the following additional terms and conditions apply:

a) Pricing and Payment:

- i) Rates are based on volume commitment, payment terms, and resource availability.
- ii) **Implementation Services.** Implementation services shall be purchased (or included) in full day increments of eight (8) hours each, unless otherwise expressly agreed to in writing. Training, implementation and consulting services include hours spent conducting any customization, on or off-site training, and for implementation management, coordination and communication.
- iii) Travel, expenses, and taxes (if applicable) are additional. Client shall pay ETS for all Services and related expenses within 10 days of invoice (unless otherwise stated on the COF or SOW), failure of which shall be considered a Monetary Breach. In the event of termination by ETS for default by Client for any reason, or expiration of time without having used all the Minimum, the Deposit and any amounts paid shall be forfeited, whether or not services were performed, notwithstanding any other terms or provisions elsewhere. **All unused training days expire 4 months from the date purchased unless otherwise agreed in advance writing.**
- iv) **Consulting and Training Services.** Consulting and Training Services Days are billed in eight-hour full day increments except for remote

training, which can be used in one hour increments; time not used is forfeited and does not accrue, unless expressly agreed to otherwise in writing. All work will be done during normal business hours (8:00 AM - 5:00 PM local time). Work performed at other times, if done at the Client's specific written request, may be billed 1.5 times the normal billing rate. If onsite, Client will provide ETS with reasonable access to all network Devices as needed and adequate space and electrical connections for all equipment and any such other items and needs as outlined in the COF or SOW. Travel time beyond one hour each way, is billed at 50% of otherwise applicable rates, plus expenses.

- b) Separate or Additional Training and Consulting may require Deposit(s) (as stated on the COF or SOW), which if applicable are due in advance and are non-refundable.
- c) All training requests must be submitted electronically, and will be handled on a first come, first served basis, subject to resource availability. Training will be provided online, at ETS offices, or onsite in Client's office, as reasonably determined by ETS.
- d) Schedule changes or cancellations require a minimum two-week (10 business day) advance written notice. In the event that Client cancels any scheduled time with less than ten (10) business days' written notice, unless as a result of a Force Majeure event, then Client shall be responsible for paying for any non-refundable expenses incurred, plus 50% of the scheduled time.
- e) ETS will use reasonable efforts to provide training plans and/or class syllabi in advance of all training or make them readily available online and at its sole option, require a signed training checklist and/or conduct post-training testing, to confirm that the attendees received and/or understand the planned training.
- f) All estimated days, completion and delivery dates are approximate. In the event that the actual days exceed the estimate, ETS shall notify Client, at which time the Client may decide to terminate the Order at that point, paying only for the days already ordered, or agree to the extended days
- g) ETS shall not be in default or otherwise liable for any delay in or failure of its performance under this Agreement if such delay or failure arises as a result of a Force Majeure event or otherwise by any reason beyond its reasonable control, however such delay will extend any Expiration Dates by a corresponding amount of time. In the event that any deposit or estimated hours are not used prior to their expiration, such rates may no longer be applicable and the Deposit shall be forfeited with no further liability by ETS; any additional hours will require a new Order and payment.
- h) For On-Site Consulting Services, Client shall provide a safe working environment for ETS team members and an environment where all individuals are treated with respect and dignity.

33) Hardware, Third Party Software, and Third-Party Software Licenses - If the executed COF includes in any form the sale or third-party lease of hardware, or license of third party software, the following additional terms and conditions apply: ETS sells and conveys to Client all of its rights, licenses, title, and interest in the computer system hardware, third-party licenses and/or third party software that is specified in the Order (the "Product") in return for the total payment by Client of the amount specified on the Order (the "Purchase Price").

- a) Unless subject to a Hardware Payment Plan, 100% of the Purchase Price is due at the time of Order execution, and is refundable by ETS only in the event of non-delivery of the Product, unless such non-delivery is due to Client's actions or refusal to accept delivery, in which case the Purchase Price is payable in full. All hardware and software sales are subject to Section 3 (Taxes, Travel and Shipping).
- b) Client is responsible for the Monthly Service Charges (MSC), payable as invoiced; MSC is subject to increase at least annually. If the MSC is blank or zero, then Maintenance and Support related to the Product is not included.
- c) Any third party software included on the Order is owned by the respective software company, and only a license thereto is conveyed. Client agrees to be bound by any and all terms of the software license agreement, as if Client were a direct Client from the software company.
- d) Client acknowledges that all hardware and software sold, licensed, conveyed or transferred hereunder are sold, licensed, conveyed or transferred (as the case may be) "AS IS", and ETS makes no express or implied warranties of any type or kind. All hardware contained herein may contain original manufacturer warranties, but none from ETS. Any extended service plans or extended warranties ("ESP's") are subject to the terms of such ESP, and are strictly between Client and the issuer of such ESP. Specifically, ETS makes no representation or warranty that any hardware, software, service, ESP or other asset sold, licensed or transferred hereunder will perform in the manner for which it is intended and **HEREBY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE**. All other limitations of liability or warranty contained herein also apply.
- e) ETS shall not be responsible or liable for maintenance and upkeep of the Hardware of Third-Party Software unless otherwise included through Additional Services.
- f) Hardware Payment Plan
 - i) Subject to approval by ETS, Hardware may be purchased with a Payment Plan Agreement ("PPA") for a term not less than three (3) months and not to exceed thirty-six (36) months.
 - ii) The total Sales Tax due will be collected at the time of purchase. Up to one (1) Hour of initial remote configuration will be included per device purchased with a payment plan, PPA Hardware configuration hours are nontransferable to any other service including IT Services Remote/Onsite support.
 - iii) Client may prepay the remaining outstanding payments at any time with no prepayment penalty.

- iv) The PPA does not include any annual or monthly subscriptions. If one is required, it will be sold separately in a minimum of 12-months term and will auto renew for a subsequent 12-months until the device is decommissioned.

- 34) **Hosting Services** – If the executed COF includes private cloud hosting in any form (**not including Microsoft Azure, Amazon AWS, or similar third party hosting vendors, except as provided in 40(q)**), the following additional terms and conditions apply
- a) Hosting Services will be billed at 50% of the rate on the COF from Effective Date until the “Go Live Date” (which shall be the date that Hosting begins in a production environment), at which time 100% billing starts. The Term for the COF shall be automatically extended from the Go Live Date.
 - b) Datacenter Facility. “ETS Datacenter” shall mean ETS’s data facilities.
 - c) “Hosting Services” shall collectively mean the Virtualized Hosted Servers, Data Storage, Bandwidth and Network Services.
 - d) Support Hours for Hosting shall be 9 a.m. to 6 p.m. EST on weekdays, except for Holidays, for non-critical issues and 24x7x365 for critical issues, or as otherwise stated on the Service Level Agreement (“SLA”).
 - e) Client shall provide ETS with a written list of Users and the level of security to set up Hosting Services. Client shall promptly notify ETS whenever a User is to be added or removed. Client shall be responsible for all of the acts or omissions of authorized Users and any unauthorized Users who gain access by use of any password, identifier or log-on received or obtained, directly or indirectly, lawfully or unlawfully, from Client or any authorized User.
 - f) Compensation. By contracting for Hosting Services, Client shall pay a fee equal to the amount specified in the COF to be paid monthly on or before the 1st of the month for which they apply.
 - i) Unless otherwise stated in the Agreement, Hosting pricing includes a maximum ratio of 5 Users and 50 GB of storage for each tenant. Additional Charges apply for greater than 5 Users or 50GB per tenant, and may be charged retroactively upon audit at the then standard monthly rate per additional User plus additional storage (or any portion thereof) per provider. Hosting Services pricing does not include RDP or other connectivity software, which if requested will be billed as an Additional Service.
 - ii) Hosting pricing does not include any VPN or interface setup or maintenance, which if requested, will be charged as Additional Services, will require a BAA from the respective vendor, and may require proof of cyber liability insurance from the respective vendor before being approved. If any third party vendor requires access to ETS servers, ETS may impose reasonable limitations and safeguards applicable to such access as necessary in ETS’ sole discretion to protect the confidentiality, integrity and availability of ETS systems and data.
 - iii) Unless otherwise specified, during the Term of Hosting Services, ETS may increase Hosting Service fees upon ninety (90) days prior written notice.
 - g) Bandwidth Overage Charges. In the event, Client exceeds the Bandwidth in any given month, Client agrees to pay ETS for such excess usage at the then current rate. Client shall not be responsible for excess bandwidth usage from abnormal spikes in traffic due to denial of service attacks or defective switches. Normal bandwidth growth over time due to system, user, or bandwidth growth is billable by ETS and to be paid by Client.
 - h) The Hosting Services COF creates a limited and non-transferable license to use the Hosting Services. The parties specifically agree that in the event the COF is terminated, the license is terminated, and ETS may take immediate possession of the Hosting Services. Under no circumstances must ETS be required to initiate any legal action to regain possession of the Virtualized Servers.
 - i) Equipment. All servers, other hardware equipment and operating system licenses located in Datacenter or in ETS’s possession shall at all times remain the property of ETS and are not subject to customer demands.
 - j) In the event Client independently purchases the required hardware and/or third party software needed to operate the Hosted Services, Client understands and acknowledges that ETS does not make any representation on, and provides no warranty on any hardware and third party software not sold or managed by ETS. Any problems or issues dealing with the hardware, the operating system software and/or third party software provided by Client is outside the scope of any supported services provided by ETS under this Agreement.
 - k) Hosting includes secure data hosting, 99.99% Uptime (as more specifically defined in the SLA), and daily backups. Notwithstanding periodic backups, loss of data is always possible. ETS will use its reasonable commercial efforts to provide backup services pursuant to the SLA, but does not guarantee data recovery or availability.
 - l) Optional Disaster Recovery (“DR”) services are available as Additional Services. Disaster Recovery (“DR”) services will be included only if purchased as a separate line item on a COF. DR services are not a guaranty and, loss of data is always possible. ETS will use its reasonable commercial efforts to provide disaster recovery services pursuant to the SLA, but does not guarantee data recovery or availability.
 - m) ETS does not support local “thin client” environments in a hosted solution. To the extent that Client maintains a thin client environment, Client is solely responsible for all thin client maintenance, including Software upgrades and error detection and analysis for any errors that arise that may potentially be caused by (even if not conclusively resulting from) such thin client environment.
 - n) Unless IT and/or Security Services Support is contracted with ETS, Client agrees that it has an in-force and effective agreement to cover all required software licenses, including Maintenance and support, and ETS has no responsibility whatsoever for any software updates or maintenance. Any services provided by ETS, other than those specifically provided for pursuant to this Section, unless specifically included on an executed COF, will be billed as Additional Services. If Client does not maintain hosted Software (either through ETS Software Maintenance or otherwise) to within two prior versions back, ETS may, at its discretion, update the Software to the current version and charge

such upgrade to Client as an Additional Charge.

o) Hosting Administrative Rights

i) Administrative Rights may be contracted for and purchased separately on a COF and will grant you administrative rights to Client's hosted servers on Company's data center, where the administrative rights ("Administrative Rights") include, but are not limited to, active directory administrative privileges (including critical Window services such as DNS, DHCP, Domain Security Policy, Group Policy, etc.), SQL Server DBA privileges and application administrative privileges. In requesting or accepting these Administrative Privileges Client acknowledges the following:

- (1) **Shared Responsibility:** Client agrees and accepts that the Availability, Performance, Security and Manageability of Client's Hosted Servers shall be a shared responsibility between Client and ETS. Client agrees to cooperate with ETS in adhering to administrative policies and procedures related to the management and administration of the Hosted Servers. Client further agrees that the active directory objects (including but not limited to organizational units, security groups and group policy objects, but excluding user and printers) shall be an integral component of ETS' monitoring, accounting and auditing functions and shall not be modified by Client without ETS' express written consent.
- (2) **Availability:** Granting Administrative Privileges to anyone beyond ETS' may preclude ETS from meeting any availability representations or terms of any applicable Availability Guarantee. Client agrees that ETS shall not be accountable for any breaches to any such availability representations or terms of any applicable Availability Guarantee in the event Client's acts or omissions contributed to the breach event.
- (3) **Performance:** Administrative Privileges granted to Client may preclude ETS from providing acceptable performance levels of the Hosted Servers. Client agrees ETS shall not be accountable for performance degradation to the extent Client's acts or omissions contributed to the degradation. Client further agrees that additional fees may be charged in the event ETS needs to remediate performance degradation caused by Client's acts or omissions.

p) **Security & Liability:** Granting Client Administrative Rights has the potential for misuse of authority, propagating access rights to others, and accidental proliferation of privileged and protected information. Client agrees to indemnify and hold ETS harmless in the event Client's acts or omissions cause or contribute to any breach of security (including but not limited to unauthorized access to protected information). At the termination of any hosting services, Client will be provided options for data retrieval at then current prices, which options may include (subject to technological ability to complete at ETS sole discretion):

i) a provision of full data backup, including the backup files in their native format (no deconversion shall be included) for a \$1,500 flat fee (Client is responsible for providing a HITECH-compliant, secure, encrypted portable drive or disk subject to ETS specifications, together with a pre-addressed, prepaid shipping label or envelope for return)

q) **All data retrieval options require advance payment in full of any amounts due under the Agreement through the end of the Term. Additional charges may apply from third party vendors for data access, which will be provided at ETS' cost. ETS will permanently destroy its copy of all Client Data within 30 – 60 days following termination.**

r) Microsoft Azure, Amazon AWS, and similar third party hosting vendors' hosting terms are covered under the respective End User License Agreements. Azure, AWS, and similar third party hosting vendors' usage over the agreed amount will be billed as Additional Charges.

35) **IT Services ("ITS")** – If the executed COF includes IT Services in any form (as defined below), or with respect to subsection (a) below, no IT Services is included at all, the following additional terms and conditions apply:

a) **Basic Managed IT** includes any program that is not specifically designated in the COF as titled below, or if no IT Services is included at all. No monitoring is included; standard hourly rates apply (currently \$200) for Remote and Onsite Support (plus travel, if on site). No discount is offered on Hardware. Upon Client's request, network assessment services may be provided at ETS's discretion.

b) Legacy Services (for existing contracts only; no longer offered)

i) **Bronze Care** Monthly Support Program includes:

- (1) ETS Security & Optimization Suite
- (2) Up to one (1) hour a month per client of remote virus and malware management and remediation
- (3) Bronze level discounted hourly rates for Remote or Onsite Support.
- (4) Applicable Bronze discount on Hardware

ii) **Silver Care** Monthly Support Program includes:

- (1) Bronze Care benefits, plus
- (1) Tier 2 Server Backup Protection
- (2) Unlimited* Remote IT Technical Support
- (3) Silver level priority After Hours Support (Remote Only)
- (4) Silver level priority and discounted hourly rates for Onsite Support

- (5) Hardware and software Configuration for hardware and software purchased from ETS
 - (a) Configuration for hardware and software purchased from a third party is available at standard hourly rates
- (6) Vendor and warranty management assistance included for hardware purchased from ETS
- (7) Applicable Silver discount on Hardware
- iii) **Gold Care** Monthly Support Program includes:
 - (1) Silver Care benefits, plus
 - (2) Gold level priority Support
 - (3) Gold level priority After Hours Support
 - (4) Periodic Strategic Review
 - (5) Onsite Support. Customer will receive priority Onsite Support when needed.
 - (6) Applicable Gold discount on Hardware
- iv) **Per User Program Agreements:** “Bronze”, “Silver”, and “Gold” Care pricing includes a maximum ratio of 1.5 Devices for each licensed User (inclusive). Additional charges apply for greater than 1.5 Devices per User, and may be retroactively charged as Additional Charges upon audit.
- v) **Per Device Program Agreements:** “Bronze”, “Silver”, and “Gold” Care pricing is charged on a per “Device” basis, and may be retroactively charged as additional upon audit.
- vi) 100% of all Devices with Approved Operating Systems at all locations under management or control of the Client must be included; Devices not covered will be retroactively added as Additional Charges upon audit.
- vii) “Unlimited” support is limited to covered Users and Devices, and is subject to additional hourly charges if the hours per user/device exceed the average for all Clients by more than 20%.
- viii) At ETS sole discretion, an unattended access remote program(s) may be installed and maintained by ETS on all Client servers and end point Devices that are supported under “Bronze”, “Silver”, and “Gold” Care.
- c) **INSPIRE Services (available 1-1-2023)**
 - i) **INSPIRE Tailormade Services (TMS)** - If the executed Program Agreement or COF includes “Tailormade” “TM”, or “TMS” in any form, the description of the product will be described in total, including what is included in the services, and can only be changed during a renewal period.
 - ii) **INSPIRE Security Services**
 - (1) ETS Premium Security & Optimization Suite
 - (2) Standard Security Identity and Access Management
 - (3) Standard Phishing and Security Awareness Training
 - (4) Standard Third Party Security Assessments
 - (5) Up to one (1) hour a month per client of remote virus and malware management and remediation
 - (6) INSPIRE Security Services level discounted hourly rates for Remote or Onsite Support.
 - (7) INSPIRE Security Services level discount on Hardware
 - iii) **INSPIRE Business Services**
 - (1) INSPIRE Security Services benefits, plus
 - (2) Tier 2 PC Backup
 - (3) Tier 2 Server Backup
 - (4) Hardware and software Basic Remote Configuration for hardware and software purchased from ETS
 - (a) Configuration for hardware and software purchased from a third party is available at standard hourly rates
 - (5) Vendor and warranty management assistance included for hardware purchased from ETS
 - (6) Unlimited* IT Services Support
 - (7) Unlimited* Remote Compliance Services Support
 - (8) INSPIRE Business Services level discounted hourly rates for Pro Services support including all scoped Projects

(9) INSPIRE Business Services level discount on Hardware

iv) INSPIRE Enterprise Services

- (1) INSPIRE Business Services benefits, plus
- (1) Premium Security Identity and Access Management
- (2) Premium Phishing and Security Awareness Training
- (3) Premium Third Party Security Assessments
- (4) Unlimited* Priority IT Services Support
- (5) Unlimited* Compliance Services Support
- (6) Unlimited* Pro Services Support
- (7) vCIO Services including quarterly and annual executive reviews, as determined in ETS sole discretion
- (8) INSPIRE Enterprise Services level discounted hourly rates for all scoped Projects
- (9) INSPIRE Enterprise Services level discount on Hardware
- (10) INSPIRE Enterprise Services level discount on technical staff augmentation services (minimum of 12-month term)

v) INSPIRE Sensor Shield

- (1) On-prem virtual or physical sensor for ETS approved legacy gateway MDR integration

vi) INSPIRE Gateway Shield

- (1) ETS required Security appliance per site ETS Premium Security & Optimization Suite

vii) INSPIRE Enterprise Shield

- (1) ETS required Security appliance per site ETS Premium Security & Optimization Suite
- (2) ETS required Security LAN infrastructure per site ETS Premium Security & Optimization Suite
- (3) ETS required Security WLAN infrastructure per site ETS Premium Security & Optimization Suite

viii) **Per User Program Agreements:** “Security”, “Business”, “Enterprise” and “Tailormade” Services pricing includes a maximum ratio of 1.5 Devices for each licensed User (inclusive). Additional charges apply for greater than 1.5 Devices per User, and may be retroactively charged as Additional Charges upon audit.

ix) **Per Device Program Agreements:** “Security”, “Business”, “Enterprise” and “Tailormade” Services pricing is charged on a per “Device” basis, and may be retroactively charged as additional upon audit.

x) 100% of all Devices with Approved Operating Systems at all locations under management or control of the Client must be included; Devices not covered will be retroactively added as Additional Charges upon audit.

xi) “Unlimited” support is limited to covered Users and Devices, and is subject to additional hourly charges if the hours per user/device exceed the average for all Clients by more than 20%.

xii) At ETS sole discretion, an unattended access remote program(s) may be installed and maintained by ETS on all Client servers and end point Devices that are supported under “Security”, “Business”, and “Enterprise” Services.

d) Any Support provided for products or services not purchased from ETS but were recommended or for which a Quote was provided but not contracted, will not be included as part of any package and will be charged at the standard pro services rate as an additional charge.

e) Additional IT Program Definitions

i) **After Hours Support** – All coverage is during standard business hours, defined by ETS as 8:00 AM – 8:00 PM Eastern time Monday through Friday (excluding ETS holidays). After hours remote support (and in case of severe emergencies, on-site support) is available at no additional charge except for Basic and Bronze level services, Client will be charged for After Hours Support at 150% of the standard hourly rates.

ii) Device Definitions

- (1) Device - Desktop PC, Laptop PC, Chromebook, Tablet, Security Appliance, Firewall, Gateway Host, Smart/Intelligent Switch, Network Attached Storage, Wireless Infrastructure Device (WAP, WAM, WAG), PBX, Server, Virtual Machine (appliance, Sensor, Firewall, Gateway, PC and Server)
- (2) Item- Printer, Fax Machine, non-standard IP device, Medical Device

iii) **ETS Security & Optimization Suite**, including Corporate Grade Antivirus, Corporate Grade Antispyware, Windows and Antivirus

Patch Management, includes reasonable commercial efforts to provide the following:

- (1) Performance, Availability & Predictive Failure Monitoring – ETS will utilize a Desktop/Server Security Suite monitoring system designed to track the availability and performance of covered critical networking components, including covered servers, and managed networking gear (e.g. routers, firewalls, managed switches, etc.). The monitoring system will provide the ETS Help Desk with real time alerts that will be responded to under the terms of this program. The system will also allow for the periodic production of reports which will be made available to the Client.
 - (2) Patch Monitoring & Management - ETS will utilize a Desktop/Server Security Suite which will monitor the operating system patch levels of covered systems that run Approved Operating Systems and are connected to the network. This includes servers, desktop workstations, and laptop/notebook computers. This system also allows ETS to deploy patches utilizing strategic timing based on best practices. ETS is also able to monitor and manage patch levels of Microsoft Office applications, and certain critical Microsoft back office server based applications such as Exchange and SQL Server.
 - (3) Virus Definition Monitoring & Management - ETS will utilize a system that monitors antivirus definition levels of all known systems.
 - (4) Client agrees to use only the ETS Security & Optimization Suite during the term that this product is included pursuant to any duly authorized COF, to the exclusion of all other similar programs.
- iv) **ETS Premium Security & Optimization Suite**, includes enterprise grade endpoint detection and response, enterprise grade anti-ransomware, exploit prevention, managed detection response, patch management including windows, hardware, software and security, includes reasonable commercial efforts to provide the following:
- (1) Threat Detect Engines - Extensible query engines used for deep learning and predictions including: Deep Packet Inspection, Encrypted Payload Analytics, Domain Generation Algorithms and Session Risk Analytics
 - (2) Managed Detection and Response (MDR) - Elite team of MDR threat hunters and response experts who take targeted actions on your behalf to neutralize even the most sophisticated threats
 - (3) Network Detection and Response (NDR) - Monitors network traffic to identify suspicious network flows, allowing MDR experts to identify: Unprotected Devices, Rouge Assets, Insider Threats and Zero-Day Attacks laterally. *Sensor, either virtual or physical, is required and is charged as additional hardware upon request or recommendation*
 - (4) Endpoint Detection and Response (EDR) - Automatically detect and prioritize potential threats and quickly see where to focus attention and know which machines may be impacted
 - (5) Extended Detection and Response (XDR) - Go beyond endpoint by incorporating cross-product data sources for even more visibility
 - (6) Sandboxing - Virtually Inspecting all end user, end device and end policy executable tasks to confirm requested tasks can be fully executed securely with no adverse effects.
 - (7) Anti-Ransomware - Ransomware file protection, automatic file recovery, and behavioral analysis to stop ransomware and boot record attacks
 - (8) Deep Learning Technology - Artificial intelligence that detects both known and unknown malware without relying on signatures
 - (9) Exploit Prevention - Deny attackers by blocking techniques used to distribute malware, steal credentials, and escape detection
 - (10) Active Adversary Mitigations - Persistence prevention on machines, credential theft protection, and malicious traffic detection
 - (11) Device Encryption - Protect computers and data with full disk encryption and share sensitive files confidentially with password protected HTML wrapping
 - (12) **Breach Prevention Warranty – Breach Protection Warranty covers up to \$1 million in response expenses for qualifying customers. The software manufacture will provide this limited warranty for all INSPIRE “Security”, Business” and “Enterprise” Services subscriptions under contract, in good standings and not in default with ETS. The MDR product of the ETS Premium & Optimization suite must be the currently supported version and is correctly installed and fully operational on the Client’s managed endpoints (Devices). ETS and Client acknowledges and agrees to have read, understands and to be bound by the warranty terms and conditions outlined in “Sophos_BPWMSPe” that is available online at <https://etsworks.com/container/documents>, as may be reasonably modified from time to time. ETS will update “Sophos_BPWMSPe” once a quarter (first weeks of January, April, July and October) and it is the Clients responsibility to review as they see fit.**
- v) Hosted Email SAAS Protection (Microsoft 365 and Google Workspace) - Automated, Continuous Backups for protecting OneDrive, SharePoint, Teams, Gmail, Google Contacts and more with 3x daily, automated backups or perform additional backups as needed, at any time
- vi) Email Protection - Protects incoming mail traffic, end users and critical data from malware, malware free phishing and impersonation attempts. Protect outgoing email traffic with encryption and a secure repository with end user portal access (*Requires Microsoft 365 Business Premium licensing to unlock some features)
- vii) Email and Collaboration Suite Data Loss Prevention - Advanced AI analytics and toolsets that identify, mark and protect files containing confidential, financial, and personally identifiable information, including but not limited to; credit card numbers, social security numbers,

and bank routing numbers. This will eliminate accidental sharing for both in and outbound email traffic.

- viii) Secure Identity and Access Management (IAM)
 - (1) Standard – The implementation and management of credential management policies with automated password rotation and resets for elevated accesses credentials
 - (2) Enterprise – Full encompassing utility that will secure and manage all end user credentialing with Two-Factor Authentication, Single sign-On, a Secure Password Vault, Dark Web exposure analytics and protection, and automated password rotation and resets
- ix) Phishing and Cybersecurity Training
 - (1) Standard – Automated annual training and awareness campaigns with engaging content
 - (2) Enterprise – Automated weekly and annual training, awareness campaigns with engaging content, user friendly portal, customizable materials with reporting, and quality kits and video updates to stay on top of the current threat landscape
- x) Third Party Security Assessments
 - (1) Standard – Internal Penetration test, Internal and External Vulnerability Scan, Identification of personally identifiable information. Will be ran once a year on all protected infrastructure and a predefined selection of Devices, no more than 2 per protected infrastructure or 6 total whichever is greater.
 - (2) Enterprise – Internal Penetration test, Internal and External Vulnerability Scan, Identification of personally identifiable information, identify changes in groups, M365 analysis and *Fulfills insurance requirements*. Will be ran once a quarter on all protected infrastructures and Devices
- xi) **Hardware and Software Configuration** – “Basic Remote Configuration” labor for the following equipment is included under the price of the “Silver” and “Gold” care, INSPIRE “Business” and “Enterprise” Services programs for the following new or replacement equipment purchased from ETS (or its predecessor companies): personal computers (desktops, workstations, laptops, tablets), standard general office software (Microsoft office software, pdf viewing software, internet browsers, cloud infrastructure connectors, file compression and/or extraction software, media players, manufacture maintenance suites, vpn/broker software, runtime applications and video conferencing software) on covered personal computers. Remote configuration labor on new equipment to prepare it for Client usage will be typically accomplished at ETS offices prior to the equipment being shipped to Client premises. If needed, onsite installation labor provided by ETS will be provided as Onsite labor as covered under the specific Program. Basic Remote Configurations typically include: Device firmware/driver updates, security updates, operating system core updates, bloat/adware removal, the installation of the ETS remote monitoring and management software, locally installed mass storage encryption, and the installation of the ETS security suite. All other required client configuration items not listed above will be considered a Pro Service and billed under those terms. Remote configuration labor is not included for the following equipment: servers, phone systems, purchased or leased department- level or higher equipment such as copy machines, any equipment which requires unique certification or training outside of standard IT practices, any software on these types of equipment, any Line of Business applications as described below and office-wide network infrastructure upgrades. Remote configuration labor for any new or non-covered equipment will be billed at discounted onsite labor rate defined on the IT Services Pricing Guide.
- xii) **Hardware and Software Procurement** – ETS will provide advice and recommendations for hardware and software to meet Client’s existing or new requirements. ETS will provide reasonable commercial efforts to procure hardware and software with optimal sourcing from all major hardware manufacturers, at market rates or better. Hardware and software cost is not covered under this program. For new hardware or software computers installed in excess of the total Devices then being paid under device-based plans, Client will be charged for full MSC for the month in which the device was installed and through the remainder of the contract period, unless subsequently adjusted pursuant to the terms of this Agreement.
- xiii) **Network Assessment Services** – May be provided by ETS with any IT or Security service, or upon request by any ETS Client. In the event that such Network Assessment Services are provided, Client agrees that ETS has the right to install a remote agent on Client’s equipment and to extract relevant data. Client further agrees that they are responsible for providing access to all of its equipment in order to make such Network Assessment Services accurate.
- xiv) **Onsite Support** – only offered in the ETS Standard Territory. The ETS Standard Territory automatically includes a 50- mile radius from any of the following locations: Las Vegas NV, Bloomington IL, Chicago IL, and Los Angeles CA, as may be updated from time to time in the Company Travel Policy. Basic and Bronze Services level programs may receive Onsite Support as and when available, at standard Onsite hourly rates. Silver Services level programs may receive Onsite Support at the Silver Services discounted rates, respectively. Gold level programs and INSPIRE IT Services Clients with Prepaid Onsite Hours will receive priority Onsite Support when needed at no additional charge (subject to plan hours). Costs for travel & lodging (if needed) apply per the ETS Travel Policy.
- xv) **Proactive System Health Monitoring** – ETS will utilize a Desktop/Server Security Suite which will monitor computers and servers for common problems such as impending hard drive failures, enabling ETS Engineers to use reasonable commercial efforts to resolve many such problems before they cause unexpected and extended downtime. Any such Security Suite will be governed by the terms of such software manufacturer’s license agreement, which is available upon request.
- xvi) **Periodic Strategic Review / Virtual CIO/CISO (VCIO/VCISO) Services** – Periodic calls will be held at Client’s reasonable request to review monitoring reports and service requests, discuss priorities for the following period, and to assess the overall satisfaction of the services being provided.

- xvii) **Remote IT Technical Support** – Systems or End User problems or issues that involve covered systems, assuming the Client has met all expectations and requirements contained herein, and assuming the nature of the issue is not listed as an exclusion, will be handled remotely in the most appropriate and expedient manner, and are included in the price of the Silver, Gold, and INSPIRE IT Services programs. Remote services included under Bronze IT do not roll over if not used during any calendar month.
- xviii) **System Administration** – Basic remote system administration is included as part of the Silver, Gold, and INSPIRE IT Services programs. Basic system administration tasks include such actions as resetting passwords, assisting with basic shared folder creation and the associated permissions, creating and removing Users from the User directory, adding a printer to an existing workstation, minor software updates, etc.
- xix) **System Maintenance** – Basic remote automated maintenance tasks are included as part of the Silver, Gold, and INSPIRE IT Services programs.
- xx) **Temp File and Internet Debris Clean-up** – ETS will utilize a Desktop/Server Security Suite which is designed to monitor and automatically clean up temporary files and internet browser cache to keep systems running smoothly and efficiently.
- xxi) **Other Services – Not Covered under any ETS Program; Available as an Additional Service**
- (1) **Website Maintenance** – Not a covered service under any ETS programs. Where provided as an Additional Service, ETS will perform basic text and photo updates on the covered site. This program will not cover graphic design or database programming. Client must provide FTP access to allow ETS to perform site updates. This program does not cover website hosting fees. Domain registration and/or maintenance is a separate service, if offered, and does not include any Website Maintenance.
 - (2) **Google Apps / Microsoft365 (fka Office365) / Cloud Email** – Not a covered service under any ETS programs. Where covered as an Additional Service, ETS will perform administrative duties for the company account, including adding or removing Users. This program does not cover license or access fees for Google Apps or similar Cloud email solution. Client must provide administrative access to allow ETS to administer the account. Any additional Users will be billed in arrears and subsequent MSC adjusted accordingly.
 - (3) **Onsite / Offsite Data Backup Monitoring and Maintenance** – Not a covered service under any ETS programs. Where covered as an Additional Service, ETS will perform basic monitoring and maintenance of this solution. Covered maintenance tasks may include the following in regard to the backup solution only and not the Devices being backed up, up to a maximum of one (1) hour per Client per month (additional hours will be charged as Additional Charges): troubleshooting and resolving backup errors and failed backups, reinstalling backup software on the local machine, clearing old backups per the retention policy, coordinating with Client to ensure desired files are backed up, and performing periodic test restores of files to ensure data integrity. All Offsite Backup plans require a minimum 12 months. Where a backup device is provided, it is the property of ETS and must be returned upon termination of the service, or will be billed at the then replacement cost as an Additional Charge. **Client shall not introduce or maintain any primary data source on the backup device; it is for backup purposes only. In the event that Client introduces any primary data onto the backup device, ETS may delete and destroy such data at its sole discretion, and Client assumes all liability related thereto.**
 - (a) **Tier 1:** (Network Storage or cloud application w/Cloud Repository): client will designate a folder structure, cloud application account and User hierarchy that will be accessible only via a LAN connection or cloud application connector. Once established, the data will be saved local via a shared network path or cloud application connector and then securely mirrored in a cloud repository with a 1-year retention. *File existence verification only*
 - (b) **Tier 2:** (Full Local Image w/Cloud Repository): Core Files - Client will designate core files that will be backed up via a nightly full image backup. Core System: Client will designate a system that will be backed up via a weekly full image backup. Both core backups will then be securely mirrored in a cloud repository with a 1 year retention *File existence and local image continuity verification only* *A locally encrypted mass storage device is required for the tier 2 solution*
 - (c) **Tier 3:** (Full Image w/Cloud Virtualization): Client will designate a system (PC Only) that will be backed up via a daily full image backup. Backed up Images will then be securely mirrored to a Cloud Replication image server with a 1 year retention *Replicated Image continuity with cloud virtual machine boot up verification only*
 - (d) **Tier 4:** (Full Image w/Cloud Virtualization): Client will designate a system that will be backed up via a daily full image backup. Backed up Images will then be securely mirrored to a Cloud Replication image server with a 1 year retention *Both local and replicated Image continuity with cloud virtual machine boot up verification only* *A local micro appliance is required for the tier 4 solution**One micro appliance per device being backed up*
 - (i) **Additional Agents:** Agent-based appliances (SXA-) are charged per installed agent , and may be retroactively charged as Additional Charges upon audit. Client has 30-days, after the additional agent was originally installed, to request the removal of the agent and the complete destruction of all its replicated data. After the 30-days the Client will be responsible for 2-months of pre-defined services and 3 hours of pro-services
 - (e) **Tier 5:** (Full Image w/Local and Cloud Virtualization) Client will designate a system/s that will be backed up via a daily full image backup. Backed up Images will then be securely mirrored to a Cloud Replication image server with a 1 year retention *Both local and replicated Image continuity with local/cloud virtual machine boot up verification* *A local appliance is required for the tier 5 solution*
 - (4) **Hardware setup and configuration** – Setup and Configuration of any hardware or equipment not purchased from ETS will be

charged at the applicable labor rate as an Additional Service.

- (5) **Other Equipment or Services** – Any equipment or services stated on the IT Services Pricing Guide that are not otherwise specifically included, are excluded, and available as an Additional Service.

f) **Exclusions / Additional Conditions**

- i) **Onsite Support** – Systems or End User problems or issues which cannot be handled remotely, at ETS determination, will be handled at Client office locations in the most appropriate and expedient manner at the Onsite hourly labor rate for the respective Program.
- ii) **Pro Services Work** – Pro Services work is defined as any service not specifically included above and not required to maintain the functionality of covered equipment during the course of typical daily operations within existing Client office locations, whether such service is performed remotely or on site. Examples of such project work include, but are not limited to: physical movement of equipment within an office or between offices, installation of storage area networks, and Client staff training on hardware and software purchased from ETS. Unless included in IT Services Projects, projects are outside the scope of this program and as such will be quoted and invoiced separately as an Additional Service, if offered by ETS.
- iii) **Application Software** – Line of business applications such as accounting packages, CRM software, PM/EMR/EHR software, ERP software, etc. that are not specifically included herein are excluded.
- iv) **Hardware Manufacturer Warranty** – All hardware covered under this program must be under hardware manufacturer basic warranty, paid for by the Client, to ensure ETS has access to up to date drivers and firmware as needed for appropriate system maintenance and security, and to ensure malfunctioning hardware parts can be efficiently replaced by the manufacturer in a timely manner. Under such basic hardware manufacturer warranty, the manufacturer will supply the replacement parts; ETS will provide onsite labor at discounted rate as defined on IT Services Pricing Guide to uninstall malfunctioning parts and install manufacturer-supplied replacement parts. Any work done on hardware that is out of warranty will be billed at standard hourly rates, notwithstanding that such labor might be otherwise included in an Unlimited Plan or otherwise. ETS will perform annual audits of covered equipment to identify out-of-warranty equipment for resolution via replacement or extended warranty purchase, however, such audit shall not be a condition to Client’s responsibility to maintain such warranties. All Hardware is subject to the ETS Standard Terms & Conditions relating to Hardware.
- v) **Software Support** – All software covered under this program must have basic support from the software manufacturer to ensure ETS access to the current software bug fixes and security patches. Such basic software support is often provided free by software vendor, if not and such support is required to address an issue, this support from the software vendor will be paid for by the Client separate from this program. ETS will perform annual audits of covered equipment to identify out-of-warranty equipment for resolution via replacement or extended warranty purchase, however, such audit shall not be a condition to Client’s responsibility to maintain such purchased support. All software is subject to the ETS Standard Terms & Conditions relating to third party software.
- vi) **Hardware Replacement Cost** – Hardware replacement strategy is handled on a case-by-case basis and as such, the hardware and software cost associated with hardware replacement falls outside this program, unless explicitly included. Hardware replacement can take the form of warranty, extended warranty, manufacturer’s support contract, ETS Hardware-as-a-Service (“HaaS”) and/or INSPIRE Shield Services Contract, onsite spare, or purchase as needed. Hardware support options will be discussed as part of the Audit deliverables to ensure an appropriate hardware replacement strategy exists for all covered equipment.
- vii) **Consumables and Cabling** are excluded, including but not limited to toner, paper, fuser, and scanner refresh kits.
- viii) **Backup Tape Rotation** – If applicable, labor to perform onsite tape rotation and offsite transit and storage of tapes are excluded and are specifically the responsibility of the Client.
- ix) **Antivirus / Antispyware Software** – Client agrees to utilize the ETS-provided Desktop/Server Security Suite, which includes antivirus / antispyware software, remote support and system health monitoring capabilities, automated patch management and automated virus definition management, on all covered servers and computers.
- x) **Internet Service Fees** – Client will purchase and provide ongoing internet access to covered systems at Client expense. Client will ensure covered systems are at the minimum accepted level under the requirements for the combination of all software applications and other ISP usage, is turned on and connected to the Internet to allow ETS remote access for support purposes.
- xi) **Security Appliance Management** – All IT Services Programs require that all client internet traffic be routed through an approved Security Appliance and that ETS be granted administrative rights to manage the appliance. All remote Users must have an approved Security Appliance or a data traversing management software.
- xii) **Unattended Access Remote Program** – All IT Services are subject to the Client maintaining an unattended access remote program as directed by ETS on all Client servers and end point devices that are supported by the IT Services.
- xiii) **Outdated Operating Systems** – Only Devices with Approved Operating Systems may be connected to the network and will be covered. Any labor and materials that are necessary to bring current Devices with non-approved (outdated) operating systems, or resulting from such Devices, will be billed at current rates, notwithstanding any plan coverage to the contrary. All non-approved Devices will be subject to a \$300 monthly fee that will be retroactively charged upon audit. Approved Operating Systems are subject to change, but currently include but not limited to Microsoft Windows 8.1, 10, 11, Server 2012R2, 2016, 2019, 2022 Mac OS, Sierra+, Server 5, VMWare 7+, SonicWALL 7.5+, Cisco ASA 8.4+, Sophos UTM 9+, XG 16+, Ruckus Unleashed, and Ubiquiti airOS *+. **All Outdated Operating Systems may cause Client to be disqualified from the Breach Prevention Warranty.**
- xiv) **Unqualified Devices** – Only Devices that have been procured, secured, and approved by ETS can be connected to the network and will be

covered. Client Shall not introduce or maintain an Unqualified Device without consulting ETS. ETS may help setup an Unqualified Device at its sole discretion, but Client assumes all liability related thereto. Any labor and materials that are necessary to secure an Unqualified Device, or resulting from such Devices, will be billed at current rates, notwithstanding any plan coverage to the contrary. All Unqualified Devices will be subject to a \$300 monthly fee that will be retroactively charged upon audit. Unqualified Devices are subject to change, but currently include but not limited to all consumer, gaming, opensource: personal computers, workstations, servers, mass storage devices, gateways, vpns, firewalls, routers, wireless access points, and switches. **All Unqualified Devices may cause Client to be disqualified from the Breach Prevention Warranty.**

xv) **Responsibilities upon Termination** – Upon termination of any applicable IT Services, all security credentials shall remain the property of ETS until such time as all balances due under the Agreement (including renewal if terminated less than 90 days prior to any Renewal date) are paid in full. Client understands and acknowledges that their failure to make payments as due may result in service interruption, for which Client is solely responsible.

g) The use of the terms “Standard”, “Deluxe”, “Professional”, “Premier”, “Premium”, “Enterprise” and similar terms are specific to ETS only, and not necessarily indicative of any similarly named term with respect to third party hardware, software, or devices, unless specifically noted otherwise.

36) **Security Risk Assessment (“SRA”)** - If the executed COF includes SRA in any form, the following additional terms and conditions apply:

- a) Unless specifically included on the COF, SRA is not included in any Services.
- b) If included, SRA services (as outlined below) will be provided during each Calendar Year for which (a) the SRA was initially ordered, provided that there was an Up-Front fee paid, or (b) 12 months’ MSC has been paid or agreed to be paid, and there has been no default or late payments by Client, or (c) a full year of MSC has been paid in advance.
- c) Subject to the terms contained herein, if “Annual SRA” subscription, feature or add-on has been ordered on the COF, the following services are included:
 - i) Annual comprehensive HIPAA Security Risk Assessment tool, including: Satisfy Meaningful Use Requirement – Core Objective – Protect electronic health information (*to conduct or review a security risk assessment of the certified EHR technology*), Live Risk Assessment Interview (Online Meeting), Live Risk Assessment Review (Online Meeting), Additional Security Recommendations, HIPAA Compliance Snapshot, Executive Summary Report, Detailed Findings Report, and Threats Analysis / Risk Determination
 - ii) On-Demand HIPAA Security Training, including: Engaging Training Videos, Compliance Testing, Employee Certificates, Administrator Training Reports, New Hire Training, and Security Tips and Reminders
 - iii) Use of Compliance Portal, including: Employee Access to Security Policies and Procedures, Business Associate Tracking, Security Incident Module, Server Room Access Tracking, Disaster Recovery Plan Storage, Articles and Reference Materials, and Contracts and Document Storage
 - iv) 19 Customized Security Policies and Procedures, including: Videos Explaining Security Policies, Sample Business Associate Agreement, Sample Notice of Privacy Practices, Other Sample Templates
- d) If requested, ETS may be able to provide Client with access to purchase additional Cyber Insurance through its vendor. It is the Client’s responsibility to retain evidence of any insurance policies purchased and work directly with those institutions.

37) **Security Awareness Training (“SAT”)** - If the executed COF includes SAT in any form, the following additional terms and conditions apply:

- i) Unless specifically included on the COF, SAT is not included in any Services.
- ii) If included, SAT services (as outlined below) will be provided during each Calendar Year for which (a) the SAT was initially ordered, provided that there was an Up-Front fee paid, or (b) 12 months’ MSC has been paid or agreed to be paid, and there has been no default or late payments by Client, or (c) a full year of MSC has been paid in advance.
- iii) Subject to the terms contained herein, if “Security Awareness Training” subscription, feature or add-on has been ordered on the COF, the following services are included:
 - (1) Monthly Phishing Campaigns and Periodic Dark Web Scans provisioned and evaluated by the Cybersecurity team at ETS.
 - (2) On-Demand Security Training, including: Engaging Training Videos, Compliance Testing, Employee Certificates, Administrator Training Reports, New Hire Training, and Security Tips and Reminders
 - (3) Use of Compliance Portal, including: Employee Access to Security Policies and Procedures, Business Associate Tracking, Security Incident Module, Server Room Access Tracking, Disaster Recovery Plan Storage, Articles and Reference Materials, and Contracts and Document Storage
- iv) 19 Customized Security Policies and Procedures, including: Videos Explaining Security Policies, Sample Business Associate Agreement, Sample Notice of Privacy Practices, Other Sample Templates
- b) In the event that the number of Client’s employees exceeds the maximum number included in the purchased package, Client will be required to purchase a higher level package that includes the correct number of employees, and pay the differential to bring them to the eligible package from the time of first charge, with such payment to be made prior to the time of the SRA. Failure to upgrade to the appropriate package will render the Client ineligible for any SRA or SAT, and all payments made will be forfeited with no refund.
- c) **It is Client’s sole responsibility to ensure that Client is in compliance with HIPAA and all other applicable local, state, and federal**

laws and regulations. The SRA and SAT do not take the place of Client’s diligence and responsibility for compliance, and is only a tool to provide assistance in such compliance. ETS shall have no liability to Client for any loss occasioned by Client’s conduct or the conduct of Client’s officers, agents, contractors or employees. In no event shall ETS be liable to Client for direct, indirect, incidental or consequential damages, it being understood and agreed that Client hereby expressly waives any and all claims against ETS for any loss, cost, damages or liability that may be incurred by Client as a result of ETS’ acts or failures to act hereunder.

Change Log:

Change Date:	Type of Change	Section Changed	Who Changed
May 8 th of 2023	Change	35,E,XXI,3,A	Justin Montalto
January 30 th of 2024	Change	35,F,XXI	Justin Montalto
January 30 th of 2024	Addition	35,F,XIV	Justin Montalto