

The purchase of Third Party Products associated with this order is governed by the Master Services Agreement by and between ECI and Client. If Client has not executed a Master Services Agreement the below terms shall apply.

MASTER SERVICES AGREEMENT

1. DEFINITIONS.

1.1 In this Agreement, the following definitions shall have the respective meanings set forth below, unless the context otherwise requires:

- “Access Credentials” means any user name, identification number, password, license or security key, security token, PIN, or other security code, method, technology, or device used, alone or in combination, to verify an individual's identity and authorization to access and use the ECI Services.
- “Action” means any claim, action, cause of action, demand, lawsuit, arbitration, inquiry, audit, notice of violation, proceeding, litigation, citation, summons, subpoena, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity, or otherwise.
- “Affiliate” means any Person or any other Person that directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Person. The term “control” (including the terms “controlled by” and “under common control with”) means the direct or indirect power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract, or otherwise.
- “Authorized Persons” means Client’s employees, consultants, contractors, and agents (a) who are authorized by Client to access and use the ECI Services under the rights granted to Client pursuant to this Agreement and any SOW, and (b) for whom access to the ECI Services has been purchased hereunder.
- “Basic Support Services” means (i) basic computer and user troubleshooting; (ii) backup, general administration and security for computer systems; (iii) internal personnel moves, adds, and changes for all user accounts and related hardware and software; (iv) support of employee personal computers brought in from offsite as needed, as approved by Client management; (v) provision of additional ECI staff as needed for specific expertise; (vi) telephony support as needed; and (vii) coordination and management of all third-party technology vendors as they relate to Management and Consulting Services.
- “Business Continuity Plan” means a written document addressing ECI operations that memorializes business continuity and disaster recovery plans necessary to restore ECI operations and deliver ECI Services to its clients, including those to be provided pursuant to this Agreement, vital records protection, testing plans, the identification of alternative service providers in given markets, and for alternative means of transmitting and processing data, off-site back-up of critical data files, program information, software, documentation, forms and supplies.
- “Business Days” means Monday through Friday of each calendar week, excluding holidays observed by the New York Stock Exchange.
- “Client Confidential Information” means Confidential Information owned, possessed or processed by Client or a Client Affiliate, including specifically all Personal Data of which ECI may obtain knowledge of or access to in connection with or as a result of ECI's relationship with Client. Client Confidential Information includes without limitation: (i) business and other information concerning Client, Client's Affiliates or their respective customers and prospective customers, (ii) all non-public, personally identifiable financial information, including information required to be protected by Regulation S-P under the Gramm-Leach-Bliley Act of 1999, as amended, (iii) Protected Data, and (iv) the terms of this Agreement and each SOW. Client Confidential Information will in no event include ECI Confidential Information or ECI Proprietary Materials, or ECI's generally applicable know-how, show-how, skills or expertise, without regard to whether the same is embodied in Client Confidential Information or Client Proprietary Methods.
- “Client Proprietary” means Client’s programming, design methods and techniques, including, but not limited to, development

<u>Methods</u>	documents, tools, electronic design formats and programming or system structures, and other methods, techniques and know-how, which Client used or developed prior to the date of this Agreement or which it develops during the Term without ECI assistance, including any modifications and improvements thereto.
<u>“Confidential Information”</u>	any information regarding a Disclosing Party not generally known to Persons not associated with that Disclosing Party, including (i) business and all other information concerning the Disclosing Party’s customers and prospective customers, (ii) all Protected Data; (iii) all materials and documents associated with this Agreement provided to Client for the purposes of Client’s consideration of utilizing ECI’s Services of any type, specifically including, but not limited to, pricing information, business practices, systems and plans, financial results and consulting documents; and (iv) any other materials, information or documentation that a Party appropriately marks or identifies as confidential; provided, however, that Confidential Information shall not include any information or materials which: (i) are or come to be in the public domain during the Term or thereafter, provided that such information or materials are not in the public domain as a consequence of disclosure by either Party in violation of this Agreement; (ii) are received by the recipient from a third party without a restriction. Confidential Information may be written, oral, recorded, or maintained on other forms of electronic media. Without limiting the foregoing, all of ECI’s materials and Proprietary Methods are the Confidential Information of ECI and the financial terms and existence of this Agreement are the Confidential Information of each of the Parties.
<u>“Client Data”</u>	means information, data, and other content, in any form or medium, that is collected, downloaded, or otherwise received, directly or indirectly from Client or an Authorized User by or through the ECI Services or that incorporates or is derived from the Processing of such information, data, or content by or through the ECI Services. For the avoidance of doubt, Client Data does not include Resultant Data and any other information reflecting the access or use of the ECI Services by or on behalf of Client or any Authorized User.
<u>“Documentation”</u>	means any manuals, instructions, or other documents or materials that the ECI provides or makes available to Client in any form or medium and which describe the functionality, components, features, or requirements of the ECI Services or ECI Materials, including any aspect of the installation, configuration, integration, operation, use, support, or maintenance thereof.
<u>“Disclosing Party”</u>	has the meaning ascribed to it in Section 6.6 of this Agreement.
<u>“ECI Confidential Information”</u>	means Confidential Information owned, possessed or processed by ECI or an ECI Affiliate, or relating to personnel of ECI, ECI Affiliate, or any of its Suppliers, including specifically all personal data of which Client may obtain knowledge of or access to in connection with or as a result of ECI’s relationship with Client, including (i) the ECI Software, in object code and, if provided or derived, source code form, and any related technology, idea, algorithm or information contained therein, including without limitation any trade secrets related to any of the foregoing, and all documentation of ECI Software; (ii) the terms of this Agreement and each SOW; (iii) for the purposes of Client’s consideration of utilizing ECI’s services of any type, specifically including pricing information and consulting documents; (iv) all ECI Proprietary Methods; and (v) any other materials, information or documentation that ECI specifically marks or identifies as confidential.
<u>“ECI Network”</u>	means ECI’s networks, systems, hardware, services and other assets by which it delivers or otherwise provides ECI Services to its clients.
<u>“ECI Materials”</u>	means the ECI Services, Documentation, and ECI Systems and any and all other information, data, documents, materials, works, and other content, devices, methods, processes, hardware, software, and other technologies and inventions, including any deliverables, technical or functional descriptions, requirements, plans, or reports, that are provided or used by ECI or any subcontractor in connection with the ECI Services or otherwise comprise or relate to the ECI Services or ECI Systems. For the avoidance of doubt, ECI Materials include Resultant Data and any information, data, or other content derived from ECI’s monitoring of Client’s access to or use of the ECI Services, but do not include Client Data.
<u>“ECI Proprietary Methods”</u>	means ECI’s programming and design methods and techniques, including, but not limited to, development documents and tools, electronic design formats and programming or system structures, and other methods, techniques and know-how, which ECI used or developed prior to the date of this Agreement or which it develops during the course of performance of its duties hereunder, including any modifications and improvements thereto.
<u>“ECI Services”</u>	means each ECI Service identified as such in a SOW, as from time to time amended (some SOWs may identify multiple ECI Services).
<u>“ECI Systems”</u>	means the information technology infrastructure used by or on behalf of ECI in performing the ECI Services, including all computers, software, hardware, databases, electronic systems (including database management systems), and networks, whether operated directly by ECI or through the use of third-party

services.

<u>“Employee Hour”</u>	means each hour of time spent by an ECI employee in connection with the performance of ECI Services for the benefit of Client, including all Help Desk Services and time “on-site” (including actual travel time unless Client’s Service Location is within the limits of the metropolitan area of the ECI office serving Client); provided, however, that the limits of any metropolitan area shall not be greater than [50] miles from the location of the ECI office serving Client.
<u>“Event of Insolvency”</u>	means: (i) any case or proceeding under the bankruptcy, insolvency or equivalent laws of any country; (ii) suffering the appointment of a court-appointed receiver, liquidator, assignee, trustee, custodian, or similar official for all or any part of a Party’s property; (iii) making an assignment for the benefit of creditors; or (iv) taking corporate action in furtherance of any of the foregoing.
<u>“Expenses”</u>	means and includes all shipping, rigging and other destination charges incurred in connection with the delivery of ECI Services, all travel-related expenses of ECI personnel, including any and all appropriate meal and lodging costs, incurred during the course of the provision of any ECI Services; including, with respect to work conducted outside of Normal Business Hours, expenses for taxis, car services, meals and, if needed, hotels.
<u>“Force Majeure”</u>	means actions beyond a Party’s reasonable control, including but not limited to acts of God, fire, flood, passage of Law or any action taken by a governmental or public authority, including imposing an embargo, export or import restriction, quota or other restriction or prohibition or any complete or partial government shutdown, or national or regional shortage of adequate power or telecommunications or transportation, war, embargoes, strikes, work stoppages, insurrection, delays of suppliers or subcontractors, riot, terrorism, civil disturbance and computer hardware failures.
<u>“Hardware”</u>	means all physical computer system supplies and equipment owned, used, or installed by or on behalf of Client, or containing data of Client, including but not limited to end-user hardware (workstations, monitors, printers, etc.) and network hardware (uninterruptible power supplies, servers, routers, firewalls, and network switches, etc.).
<u>“Help Desk Services”</u>	means services provided by ECI’s manned Help Desk, which are accessible twenty-four (24) hours per day, seven (7) days per week by telephone or email.
<u>“Information Security Plan”</u>	means a written data security plan, which contains elements required by applicable law and regulation pertaining to the security of information systems and information security policies and practices.
<u>“In-Service Date”</u>	means the date defined in a PCF and/or SOW; provided, however, in the event such date is not defined in a PCF and/or SOW, “In-Service Date” shall mean the earlier of (i) the date on which Client commences use of the ECI Services or (ii) the date on which ECI notifies Client that ECI Services or Third Party Products are installed and in good working order.
<u>“Initial Term”</u>	means, with respect to any SOW, the period identified as such in that SOW and, if none, has the meaning set out in Article 10 of this Agreement.
<u>“Intellectual Property” and “Intellectual Property Rights”</u>	means any and all known or hereafter known tangible and intangible (i) rights associated with works of authorship throughout the universe, including copyrights, moral rights, and mask-works; (ii) trademark, domain name, and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, inventions, algorithms and other industrial property rights; (v) all other intellectual and industrial property rights (of every kind and nature and however designated), including logos, “rental” rights and rights to remuneration, whether arising by operation of law, contract, license, or otherwise, and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues hereof now or hereafter in force (including any rights in any of the foregoing) and all tangible manifestations of any such rights. For purposes of this Agreement, “ECI’s Intellectual Property Rights” includes Supplier Software.
<u>“Losses”</u>	means any and all losses, damages, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable attorneys’ fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
<u>“Management and Consulting Services”</u>	means (i) assisting the designated Client contact in reviewing new technology applications and systems configuration; and (ii) scheduling the use of, and providing recommendations for, changes and additions to the computer systems.
<u>“Non-Public Personal Information”</u>	has the meaning given that term in the Gramm-Leach-Bliley Act of 1999 and the rules and regulations thereunder.
<u>“Normal Business Hours”</u>	means, on Business Days, 7:00 A.M. through 7:00 P.M., in the Eastern and Central (US) time zones; and 6:00 A.M. through 6:00 P.M., in the Pacific and Mountain time zones, as determined by reference to the time zone in which the Client’s Service Location is located.

<u>“Overtime Rate”</u>	means one hundred and fifty percent (150%) of ECI’s hourly rate calculated in a SOW, as from time to time amended, and if no rate is so identified, at the rate then generally quoted by ECI to its clients for such work conducted outside of Normal Business Hours on a T&M Rate basis.
<u>“Overtime Service”</u>	means ECI Services (excluding Help Desk Services) requested or required by Client and performed outside of the Normal Business Hours.
<u>“Person”</u>	means any individual, corporation, partnership, joint venture, limited liability entity, governmental authority, unincorporated organization, trust, association or other entity.
<u>“Personal Data”</u>	means information that Client provides or for which Client provides access to ECI, or information which ECI creates or obtains on behalf of Client, in accordance with this Agreement that: (i) directly or indirectly identifies an individual (including, for example, names, signatures, addresses, telephone numbers, email addresses, and other unique identifiers); or (ii) can be used to authenticate an individual (including, without limitation, employee identification numbers, government-issued identification numbers, passwords or PINs, user identification and account access credentials or passwords, financial account numbers, credit report information, student information, biometric, genetic, health, or health insurance data, answers to security questions, and other personal identifiers). Client’s business contact information is not by itself Personal Data.
<u>“Policy”</u>	means ECI’s Acceptable Use Policy, as from time to time published on the Internet at www.eci.com/about_us/eciinternetusepolicy.html .
<u>“Privacy Laws”</u>	means Regulation S-P under the Gramm-Leach-Bliley Act of 1999, as amended; the UK Data Protection Act 1998, as amended, and 16 C.F.R. 313.3(n), the European Privacy Laws (as defined), the Hong Kong Personal Data (Privacy) Ordinance, Chapter 486 Laws of Hong Kong, as amended, the Singapore Personal Data Protection Act 2012, and all other applicable laws, regulations and other legal requirements designed for the protection of Personal Data, or other information similarly protected under any applicable privacy and/or data protection acts, regulations, rulings, laws, statutes and other laws for the protection of such data.
<u>“Project Completion Form (“PCF”)”</u>	means the document to be delivered by ECI upon substantial completion of Project Work, if and as required by a SOW.
<u>“Project Manager”</u> ,	means the primary point of contact identified to ECI by Client on each SOW as being responsible for, and authority to assure, full compliance by Client with each SOW and having full authority to resolve all issues regarding that SOW.
<u>“Project Work”</u>	means ECI consulting services and other specific service requests to ECI by Client, including but not limited to relocations, project management, coordination of Third Party Product installations, upgrades of Client’s information and/or technology systems and remote-site set-ups, that are determined by ECI in its reasonable discretion to be beyond the scope of the ECI Services of an existing SOW.
<u>“Protected Data”</u>	means Personal Data, Sensitive Personal Data, Non-Public Personal Information and other non-public, personally identifiable financial information of the party or in the party’s control required to be protected by any of the Privacy Laws and the rules and regulations thereunder.
<u>“Purchase Order” or “PO”</u>	means any document or other communication so designated as prepared by ECI pursuant to which ECI is to sell and/or deliver certain enumerated Third Party Products.
<u>“Quote”</u>	means a document so designated as prepared by ECI with respect to the acquisition by Client of certain enumerated Third Party Products.
<u>“Rate Adjustment”</u>	means the greater of (i) three percent (3%), or (ii) one percent (1%) above the percentage change in the Consumer Price Index for All Urban Consumers (<i>CPI-U</i>) for the twelve (12) month period immediately prior to delivery of the invoice for the first month of any Renewal Term.
<u>“Receiving Party”</u>	has the meaning ascribed to it in Section 6.6 of this Agreement.
<u>“Regulator”</u>	means any data protection authority or other regulatory, governmental, supervisory authority or self-regulating agency or body with authority over all or any part of: (a) the provision or receipt of the ECI Services; (b) the Processing of Personal Data in connection with the ECI Services; or (c) ECI’s or Client’s business or personnel relating to the ECI Services.
<u>“Renewal Term”</u>	has the meaning set out in Article 10 of this Agreement.
<u>“Resultant Data”</u>	means the data and information related to Client’s use of the ECI Services that is used by ECI in an aggregate and anonymized manner, including to compile statistics and performance information related to the provision and operation of the ECI Services.

<u>“Sale of the Company”</u>	means the consummation of (i) the dissolution or liquidation of ECI, (ii) the sale of all or substantially all of the assets of ECI to an unrelated Person, (iii) a merger, reorganization or consolidation pursuant to which the stockholders of ECI's outstanding voting power immediately prior to such transaction do not own a majority of the outstanding voting power of the surviving or resulting entity (or its ultimate parent, if applicable), (iv) the acquisition of all or a majority of the outstanding voting equity of ECI in a single transaction or a series of related transactions by a Person or group of Persons, or (v) any other acquisition of the business of ECI, as determined by its Board.
<u>“Sensitive Personal Data”</u>	has the meaning given to that term in the Privacy Laws.
<u>“Set-up Fee”</u>	means, with respect to any SOW, the payment identified as such in that SOW, if any, as from time to time amended.
<u>“Software”</u>	means any computer programs, applets, scripts, macros and program code that control system processing and content formatting, including all modifications and improvements thereto and derivative works made therefrom.
<u>“Statement of Work” or “SOW”</u>	means any statement of work that (i) references this Agreement; (ii) is signed by authorized representatives of both Parties; and (iii) identifies the ECI Services to be provided by ECI and the fees for such ECI Services. All Statements of Work shall be governed by and construed in accordance with the terms of this Agreement. A SOW may be, but is not required to be, designated as a “Continuing Services SOW,” “Project Work SOW” or “Third Party Product SOW.” For purposes of this Agreement, all Purchase Orders are SOWs.”
<u>“Supplier”</u>	means each and every manufacturer, distributor, licensor, assignor and/or provider of any Third Party Products recommended, sold, re-sold or delivered to Client by ECI, or other licensor, assignor or provider of any Software, Hardware, materials or other service utilized by Client, or utilized or delivered by ECI in the performance of ECI Services.
<u>“Supplier Software”</u>	means Software contained in any Third Party Product obtained by Client by or through ECI or its Suppliers.
<u>“T&M Rate”</u>	means the rate established in a SOW, or, in the absence of such a designation, the hourly rate then being charged by ECI to its clients generally for the efforts of its technicians, as from time to time agreed by the Parties and amended.
<u>“Term”</u>	has the meaning set out in Article 10 of this Agreement.
<u>“Termination Date”</u>	means, with respect to any SOW, the final date ECI Services are provided in accordance with Section 10.3.
<u>“Third Party Products”</u>	means services directly or indirectly performed by Parties other than ECI, and all Hardware, Software (in any form), documentation, deliverables and supplies regardless of whether such items or services are purchased through, delivered by or installed by ECI.

2. DELIVERY OF ECI SERVICES.

2.1 ECI shall provide to Client the ECI Services as agreed in each executed SOW and this Agreement, provided that Client's resources necessary to complete the ECI Services are available at all scheduled times.

2.2 The Parties agree that any change or need for additional ECI Services, and any configuration of remote locations and/or installation of remote location Hardware or Software not specified in an existing SOW shall require an additional or revised SOW executed by both Parties.

2.3 Unless otherwise specifically addressed in an applicable SOW, ECI is not required to maintain or repair any portion of the ECI Services provided under a SOW once the ECI Services have been successfully completed as provided herein or in that SOW. ECI is required to make only commercially reasonable efforts to troubleshoot non-ECI supplied, configured, sourced and/or maintained Hardware, Software and/or networks/services, if necessary in the course of performing ECI Services.

2.4 ECI may increase the amounts due under any SOW in the event that:

2.4.1 labor, through no fault of ECI, must be conducted and/or completed outside of, or Client requires ECI Services outside of, Normal Business Hours; or

2.4.2 rates, through no fault of ECI, are changed by ECI's Suppliers prior to or during the term of a SOW. ECI will provide at least thirty (30) days' notice of any such rate changes, provided that ECI may increase its rates only by the

amount of such Supplier's increase in rates; provided further that if such increase exceeds five percent (5%) of the amount then payable for such SOW by Client, Client shall have the right to reject such change by notice to ECI given with such initial thirty (30) day notice period, in which event ECI shall have the option to continue the SOW at a increase limited to five percent (5%).

In the event of any increase under clause 2.4.1, Client will be notified of any and all cost increases and Client shall have a right of approval prior to the work being initiated. Client agrees and acknowledges that if such approval is not granted timely, ECI's performance of the ECI Services may be withheld (or performed only during Normal Business Hours until such approval is granted).

3. CLIENT AGREEMENTS.

3.1 Client will assign one (1) Project Manager with respect to each SOW. The timely and proper provision and completion of the ECI Services for the amount set forth in any SOW is based upon Client's timely performance of the following obligations at its own expense, the failure of which may result in delays of performance or ECI's request for additional fees:

3.1.1 Client's building and premises at which ECI Services will be performed will have (a) proper facilities, with construction (if any) complete, (b) all appropriate electrical, telecommunications, network/station cabling, secure storage, supplemental power and supplemental cooling solutions will be on-site, available, and will meet or exceed the specifications set forth in an applicable SOW or, if none, ECI's reasonable specifications and (c) an environment that is free of all hazardous materials (e.g. asbestos) and any hazardous condition that affects ECI's performance of the ECI Services, and secure, dust free, properly cooled; and otherwise fulfills the conditions and requirements set forth in the SOW or, if none, ECI's reasonable specifications, or if none are provided in the SOW or as ECI's reasonable specifications, then industry standards;

3.1.2 Client is responsible for providing and maintaining all Hardware, Software, cabling and other equipment necessary for full performance by ECI, unless other arrangements specifically have been made to acquire any necessary Hardware and/or Software from ECI in a separate SOW. All non-ECI supplied products, software and services will be on-site, in working condition, properly licensed, and will meet or exceed the specifications set forth in an applicable SOW or, if none, ECI's reasonable specifications or if none are provided in the SOW or as ECI's reasonable specifications, then industry standards;

3.1.3 Client will provide such after-hours and weekend building access for ECI employees and agents, and shall provide adequate free working space and such other facilities as may reasonably be necessary for the performance of the ECI Services; and

3.1.4 ECI shall be given: (a) timely access to all necessary resources of Client, including access to qualified personnel to facilitate ECI's performance of its obligations under this Agreement as specified in each SOW or otherwise made known by ECI on a timely basis; (b) Client's assistance with application testing to ensure all applicable functionality tests; and (c) if necessary, access to user names, passwords and installed applications by workstation (*including any market data services*) to facilitate functionality testing.

3.2 Client agrees that if ECI is prevented from performing any work or is required to perform additional work as a result of Client or its agents otherwise failing to meet its responsibilities set forth herein or in the applicable SOW, including but not limited to delays in the availability of Client's personnel; access to Client's facilities, user names, passwords or installed applications; delivery of Third Party Products; or the configuration of the site at which ECI Services are to be provided, Client shall pay ECI for any work time lost or additional work performed on a T&M Rate basis at ECI's then-current rates. If Client fails to provide ECI with at least ten (10) days' notice of any such delay, then Client shall pay ECI the then applicable per diem rate for each employee or contractor assigned to provide the ECI Services for each day that such employee was to be assigned to Client.

3.3 If Client is unable or unwilling to have any ECI Services performed, or Third Party Products installed on the originally scheduled installation date, ECI may initiate billing for Third Party Products or ECI Services hereunder as of the date installation was scheduled. If Client delays delivery or installation by more than, or cannot reach agreement with ECI for a later date less than, thirty (30) days from the originally scheduled date, ECI may declare the SOW to be in breach or continue the SOW and charge Client the ECI prices or charges in effect on the actual date of delivery or installation, or partial installation, if greater.

4. COMPENSATION AND PAYMENTS.

4.1 The amounts due under any SOW, including the Set-up Fee(s), shall be as set forth in that SOW, and be payable within fifteen (15) days following Client's receipt of the related invoice. Amounts identified as "monthly installments" or "monthly recurring charges" for any ECI Services that are to be delivered over time shall be payable monthly in advance of the month in which the ECI Services are to be provided or performed; provided, however, in the event an SOW provides that such "monthly installments" are billed in arrears, then the amounts identified as "monthly installments" or "monthly recurring charges" shall be payable monthly on the last day of each month. All additional amounts due of any kind or nature, including those for Overtime Services, T&M and Expenses, shall be billed monthly in arrears and be payable within fifteen (15) days of receipt. Overtime Services shall be subject to a minimum charge of two (2) hours at the Overtime Rate.

4.2 In addition to all other amounts due to ECI hereunder, Client shall be responsible for and pay all means, value-added,

sales, use, excise, property, withholding and other taxes, duties and assessments of any governmental or regulatory authority which may be imposed upon or arise in connection with this Agreement, any ECI Services or any Third Party Products provided hereunder, excluding, however, any based upon ECI's income. Such taxes shall be separately itemized on each invoice, indicating the tax and the amounts against which such tax was calculated.

4.3 Client shall pay all invoices by ACH. Unless otherwise noted in writing by ECI, such payments shall be directed to:

Account Name: Eze Castle Integration, Inc.
Bank Name: CIBC Bank USA
Address: 120 South LaSalle
Chicago, IL 60603
ABA #: 071006486
Account Number: 0002680157
Swift ID: PVTBUS44

4.4 Client does not have the right to set off counterclaims against any sums due to ECI under this Agreement.

4.5 If and to the extent that any SOW refers to the execution of a PCF as a condition of payment, the PCF shall be deemed accepted if Client has commenced the use of the functionality(ies) provided, or Client fails to respond with proper objections to the PCF within five (5) Business Days of receipt thereof.

4.6 All payments due for over 30 days shall accrue interest and be compounded at the rate that is the lower of (i) one and one half percent (1.5%) per month, or portion thereof, or (ii) the maximum amount allowed by law from the date first billed. In the event of any failure to pay any amount within thirty (30) days of the date due:

4.6.1 ECI may, without prejudice to its remaining rights, suspend performance of ECI Services until all amounts due are received by ECI. All charges continue to accrue and remain payable in full throughout any such period of suspension.

4.6.2 Client shall also pay ECI, upon demand, all reasonable expenses incurred by ECI to collect any amount due to it or to enforce any other right of ECI, hereunder, including but not limited to costs, disbursements, and reasonable attorneys' fees, whether or not litigation is commenced, in addition to all other rights and remedies available to ECI.

4.7 In the event of any good faith dispute concerning the amounts due to ECI or any part thereof, Client shall pay any undisputed amounts to ECI, withhold the disputed balance and give notification of such a dispute to ECI within twenty (20) days of the receipt of the payment request or invoice. ECI shall continue to perform its duties under this Agreement while it investigates such dispute and provides a response within a reasonable time. If the dispute (or any portion) is resolved in favor of ECI, Client must pay the disputed amount within ten (10) Business Days of receipt of ECI's response. If all amounts found due by ECI are not paid within ten (10) Business Days of receipt of ECI's response, ECI may, without prejudice to its remaining rights, exercise its rights under clauses 4.6.1 and 4.6.2. Client shall have the right, at all times after giving timely notice of a dispute, to pay any invoice under protest and continue the dispute in accordance with Section 14.9, in which event ECI shall have no right to suspend. If the dispute is resolved in favor of Client, then all related payments made under protest shall be reimbursed by ECI to Client.

4.8 In the event that the aggregate monthly installments or monthly minimum charges invoiced to Client relating to all active Continuing Services SOWs between ECI and Client do not equal or exceed \$2,500 for any given month, then the monthly installments or monthly minimum charges invoiced to Client for such month shall be \$2,500.

5. INTELLECTUAL PROPERTY.

5.1 As between the Parties, all of Client's Intellectual Property and all of Client's Intellectual Property Rights shall be and remain the sole and exclusive property of Client. It is expressly understood that no title to or ownership of such property or rights is transferred to ECI under this Agreement. Notwithstanding the foregoing, Client grants ECI a non-exclusive, royalty-free, non-sublicensable, limited license to use Client's Intellectual Property Rights to the limited extent necessary to provide the ECI Services during the Term. Upon ECI's request and at Client's expense, Client shall provide ECI access to all such Client Intellectual Property. ECI shall make no other use of any Client Intellectual Property Rights.

5.2 As between the Parties, all of ECI's Intellectual Property and all of ECI's Intellectual Property Rights shall be and remain the sole and exclusive property of ECI. It is expressly understood that no title to or ownership of such property or rights is transferred to Client under this Agreement. Notwithstanding the foregoing, ECI grants Client a non-exclusive, royalty-free limited license to use the ECI Intellectual Property Rights to the extent necessary to receive the ECI Services during the Term. The Parties expressly recognize that no Third Party Product, media of any type or Intellectual Property Rights are "works made for hire".

5.3 Client is solely responsible for the accuracy of the all graphics images, text and other content published on Client's website, both intranet (if any) and on the World Wide Web, including, descriptive claims, warranties and guarantees. Client represents and warrants to ECI that none of such materials infringe or violate any right of any third party, and that it has full authority and title to use and publish the same. Client shall indemnify, defend and hold harmless ECI from and against any Losses arising

from any Action by any party alleging that any of such content infringes upon or violates any right of any third party, constitutes a contract that has been or is subject to breach, or gives rise to any claim of any kind.

5.4 Each party agrees to inform the other immediately of any infringement or other improper Action with respect to its Intellectual Property Rights (where the other is utilizing such rights), the other's Intellectual Property as stated herein, or the Intellectual Property Rights of any Supplier that comes to its attention.

Internet:

5.5 Client shall not resell or make available any Internet connected ECI Service to third parties without the prior written consent of ECI. Client shall use all internet connected ECI Services only in accordance with ECI's then current Policy. Without limiting its other rights hereunder: ECI reserves its right to modify the Policy from time to time and at any time upon ten (10) days' notice to Client announced in the Policy at www.eci.com/about_us/eciinternetusepolicy.html, and/or delivered as provided in Section 14.16 below, ECI further is authorized and at all times shall have the right to disconnect Client from any and all ECI Services that are connected to the internet with or without notice if ECI determines such action is necessary in order to protect ECI, the ECI Network, other ECI clients or the rights of any third party; and to take any and all appropriate measures (traffic filtering, traffic shaping and DNS blacklisting) against all illegal activities and those engaging in such activities, including but not limited to: "hackers," "email spammers", or any action which may cause limitation of access or interference to websites or servers, and the distribution of materials infringing on the intellectual property rights of third parties. In the event of any disconnection, ECI shall advise Client of the fact and reasons therefor no later than promptly after the disconnection. The disconnection may continue until such time as ECI determines such action is no longer necessary, at which time ECI shall re-establish the connection. All efforts of ECI with respect to the disconnection and any subsequent reconnection shall be billed to Client at ECI's then current T&M Rates.

5.6 ECI represents and warrants to Client that ECI (a) will use commercially reasonable efforts to ensure Client will not receive from ECI, knowingly, any virus, worm, trap door, back door, timer, clock, counter or other limiting routine, instruction or design, or other malicious, illicit or similar unrequested code, including surveillance software or routines which may, or are designed to, permit access by any Person, or on its own, to erase, or otherwise harm or modify any Client system or Client Intellectual Property, and (b) has the right to grant to Client the rights set forth in this Agreement. Except for the foregoing, ECI MAKES NO WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, with regard to the quality, content, accuracy, validity or legality of the data, programs, graphical images and other information that are available using any Software or any internet access supplied.

Third Party Products:

5.7 The decision to acquire Third Party Products is Client's, even if ECI assists Client to identify, evaluate and select such Third Party Products, and/or if Client buys any such Third Party Products through or from ECI. Client assumes entire responsibility for obtaining, maintaining and complying with all Software licenses required for Client's needs except as otherwise specifically set forth in an applicable SOW with reference to this Section 5.7. All Third Party Products that constitute Software or otherwise contain Intellectual Property Rights of any kind are subject to the license (if any) delivered by the Supplier and to this Agreement, and Client shall assure ECI is granted all rights needed to fulfill its obligations hereunder. In the event that the terms of this Agreement conflict with the terms of any license packaged with the Third Party Products, the terms of the license accompanying the Third Party Products shall govern. Each Supplier shall have the benefit of Client's covenants contained in this Section 5.7 and Section 5.8 below with respect to such Supplier's Software.

5.8 Client shall not acquire any claim to title to, or ownership of, any Supplier Software, all of which, as between the Parties, shall remain with ECI and/or its Suppliers. Use of Supplier Software on multiple processors is prohibited unless otherwise permitted by the applicable SOW or agreed to in writing by ECI and its Supplier. Client shall not take any steps, such as reverse assembly or reverse compilation, to derive a source code equivalent of the Supplier Software or to develop other Software. Client will ensure that its employees and all users of all Supplier Software licensed under this Agreement comply with these terms and conditions.

6. CONFIDENTIALITY.

6.1 ECI shall hold in confidence for the sole benefit of Client, and will not directly or indirectly reveal, report, publish, disclose, use or transfer to any Person other than Client, its employees, or ECI's employees, representatives, and Suppliers, in all cases only to the extent required in the course of exercising ECI's rights and performing ECI's Services hereunder, all of Client's Confidential Information. Notwithstanding the foregoing, (a) ECI is specifically authorized and required to comply with the Data Processing Addendum found at eci.com/cdocs/ecilegaldocumentation.html (Passcode DPAECI) (which terms and conditions shall be incorporated herein by reference), and (b) ECI is permitted to disclose Client's Confidential Information to ECI's employees, representatives, and Suppliers in all cases only to the extent required in the course of exercising ECI's rights and performing ECI's Services hereunder, as well as to those recipients or categories of recipients identified in the Data Processing Addendum found at eci.com/cdocs/ecilegaldocumentation.html (Passcode DPAECI) (which terms and conditions shall be incorporated herein by reference), to the extent such disclosure is permitted thereunder.

6.2 Client shall hold in confidence for the sole benefit of ECI and will not directly or indirectly reveal, report, publish, disclose, use or transfer to any Person other than to ECI, or Client's employees or representatives in all cases only to the extent required in the course of exercising Client's rights and performing Client's duties hereunder, all of ECI's Confidential Information. For the purposes hereof, the Supplier Software, in object code and, if provided or derived, source code form, and any related technology,

idea, algorithm or information contained therein, including, but not limited to, any trade secrets related to any of the foregoing, and all documentation of Supplier Software shall be considered ECI Confidential Information. Notwithstanding the foregoing, Client may refer to the existence of this Agreement in response to operational due diligence inquiries of its customers and potential customers and required regulatory filings. Each Supplier shall have the benefit of Client's covenants contained in this Section 6.2 with respect to such Supplier's Software.

6.3 Notwithstanding the provisions of Section 6.1 and 6.2, neither Client Confidential Information nor ECI Confidential Information shall include, and restrictions with respect to such Confidential Information shall not apply to, any information or materials which: (i) are already known by the Receiving Party at the time of receipt; (ii) are or come to be in the public domain during the Term or thereafter, provided that such information or materials are not in the public domain as a consequence of disclosure by the Receiving Party in violation of this Agreement; (iii) are received by the Receiving Party from a third party without a restriction on disclosure or use; or (iv) are independently developed by the Receiving Party without use of, access or reference to the Disclosing Party's Confidential Information or violation of this Agreement.

6.4 ECI and Client each acknowledge and agree that use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent measures taken to prevent unauthorized disclosure, and illegally gain access to Confidential Information. Accordingly, neither party can or does (and nothing in this Agreement is intended to) guarantee the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

6.5 Each of Client and ECI further agrees that upon termination of this Agreement, all notes, documents, records and any other written, printed or recorded materials which are then in its possession or control and which contain any Confidential Information of the other, shall be destroyed or delivered to the other. Notwithstanding the foregoing, each party may retain a copy of the other's Confidential Information to the extent it reasonably needs to do so in order to comply with, or to demonstrate its compliance with, this Agreement or any applicable law or regulation. To the extent that Confidential Information is electronically stored, such electronically stored Confidential Information shall be deleted, but destruction of the media shall not be required. Notwithstanding the return or destruction of the Confidential Information, the Parties shall continue to be bound by their obligations hereunder with respect to Confidential Information.

6.6 In the event that a subpoena or other legal process in any way concerning the Confidential Information is served upon a party in possession of the other's Confidential Information (a "Receiving Party"), the Receiving Party shall notify the owner (the "Disclosing Party") immediately and shall cooperate with the Disclosing Party in any lawful effort by the Disclosing Party to contest the legal validity of such subpoena or other legal process at the Disclosing Party's sole expense, in obtaining a protective or similar order with respect thereto, and the Parties shall cooperate in good faith regarding the timing and the content of any such disclosure and exercise commercially reasonable efforts to minimize the disclosure of Confidential Information. Provided that Receiving party is otherwise in compliance with this Agreement, all time, costs and expenses incurred by the Receiving Party in providing such cooperation (including its reasonable attorneys' fees) and in responding to such service shall be charged to and payable by Disclosing Party on demand.

6.7 The Parties acknowledge that at times and from time to time, Protected Data may be contained in data transmitted by Client to ECI and ECI Affiliates or made accessible to ECI and ECI Affiliates by Client or Client Affiliates. Client acknowledges that granting ECI the right to access, process and transmit Protected Data may require permissions and/or filings in certain countries. Client represents and agrees that, as between the Parties, Client is and shall be responsible for obtaining any necessary consents or permissions from any data subjects, government office, regulatory offices and/or organization required in order to allow ECI and ECI Affiliates the right(s) to receive, access, process, and transmit the Protected Data in order for ECI to provide the ECI Services in accordance with the Privacy Laws applicable. Further, if Client or any Client Affiliate provides ECI or an ECI Affiliate with access to Protected Data, or transmits Protected Data to ECI or an ECI Affiliate, then Client or Client Affiliate shall have all necessary and appropriate consents, notices, and mechanisms in place entitling it to do so, and for ECI and ECI Affiliates to access, use and transmit such Protected Data as needed in order for ECI to fulfill its obligations and provide the ECI Services to Client for the purposes and duration of this Agreement. Client acknowledges and agrees that, subject to the Data Processing Addendum found at eci.com/cdocs/ecilegaldocumentation.html (Passcode DPAECI) (which terms and conditions shall be incorporated herein by reference), Personal Data that ECI processes on Client's behalf may be transferred to, and stored and processed in, the United States or any other country in which ECI or ECI Affiliates or their respective Sub-Processors maintain facilities, including the United Kingdom, Hong Kong Special Administrative Region of the People's Republic of China ("Hong Kong"), and the Republic of Singapore ("Singapore"). Client hereby appoints and authorizes ECI to perform any such transfer of Personal Data to any such identified country and to store and process Personal Data in order to provide the ECI Services, and as may be further set forth in the Data Processing Addendum. ECI and ECI Affiliates will abide by the requirements of the Privacy Laws, as applicable, regarding such transfers of Personal Data from the United States, the United Kingdom, the EU and the EEA and/or their member states, Hong Kong, Singapore, India, and The Philippines.

6.8 NOTWITHSTANDING THE PROVISIONS OF THIS ARTICLE 6 TO THE CONTRARY, AND SUBJECT TO THE DATA PROCESSING ADDENDUM FOUND AT [ECI.COM/CDOCS/ECILEGALDOCUMENTATION.HTML](http://eci.com/cdocs/ecilegaldocumentation.html) (PASSCODE DPAECI) (WHICH TERMS AND CONDITIONS SHALL BE INCORPORATED HEREIN BY REFERENCE), EACH PARTY (A "SUBJECT") UNDERSTANDS AND AGREES THAT THE OTHER MAY, AND IN ITS DISCRETION SHALL, COOPERATE FULLY WITH ALL FEDERAL LAW ENFORCEMENT OR FINANCIAL AGENCY INVESTIGATIONS AND PROSECUTIONS, INCLUDING ALLOWING SUCH AUTHORITIES ACCESS TO ANY DATA, COMPUTER FILES, ELECTRONIC MAIL MESSAGES, AND USAGE AND TRAFFIC PATTERNS OF THE SUBJECT IN ITS POSSESSION. EACH PARTY UNDERSTANDS AND AGREES

THAT SUCH COOPERATION AND ACCESS MAY BE AFFORDED WITHOUT NOTICE, UPON REQUEST FROM THOSE CONDUCTING SUCH INVESTIGATIONS/PROSECUTIONS THAT THE SUBJECT OF SUCH A REQUEST NOT BE NOTIFIED. ALL TIME, COSTS AND EXPENSES INCURRED IN PROVIDING SUCH COOPERATION (INCLUDING ITS REASONABLE ATTORNEYS' FEES) SHALL BE CHARGED TO AND PAYABLE BY THE SUBJECT ON DEMAND.

6.9 The Parties acknowledge that any use or disclosure of the Disclosing Party's Confidential Information in a manner inconsistent with the provisions of this Agreement may cause the Disclosing Party irreparable damage for which remedies other than injunctive relief may be inadequate, and both Parties agree that the Disclosing Party may request injunctive or other equitable relief seeking to restrain such use or disclosure. The terms and provisions of this Article 6 shall survive any termination of this Agreement, for any reason, for a period of seven (7) years.

7. ECI WARRANTIES AND REPRESENTATIONS.

7.1 ECI's warrants that it will provide the ECI Services in a professional and workmanlike manner consistent with industry standards. To assert any claim under this Section 7.1, Client must notify ECI of the fact of any defect or a breach of such warranty in writing within forty-five (45) days after the alleged breach. Client's exclusive and sole remedy for any breach of this shall be, at ECI's option, either (a) to re-perform such ECI Services, or (b) to provide Client a refund for the defective portion of the ECI Services.

7.2 The Parties agree that ECI is not a manufacturer, distributor or the Supplier of any of the Third Party Products. All warranties with regard to Third Party Products (if any) are made ONLY by the Supplier of each Third Party Product. ECI will pass through all manufacturers' and other Suppliers' warranties to Client to the extent permitted by such Supplier. Client agrees that it will not assert any such claim against ECI arising out of the use or purchase of, or otherwise in connection with, a Third Party Product.

7.3 ECI makes no representation as to system performance, throughput or uptime except as specifically set forth in this Agreement or an applicable SOW. Client acknowledges and understands that errors may occur during the provision of ECI Services. ECI does not warrant uninterrupted or error-free operation of Third Party Products or ECI Services, nor does ECI warrant that any Third Party Products or ECI Services will prevent, and ECI will not be responsible for, unauthorized use (or charges for such use) of common carrier telecommunication, data services or facilities accessed through or connected to Third Party Products. No failure of a Third Party Product will affect Client's obligations to ECI.

7.4 ECI shall maintain and comply with an Information Security Plan that addresses: (i) the security, integrity and confidentiality of Personal Data; (ii) any anticipated threats or hazards to the security or integrity of such Personal Data; (iii) unauthorized access to or use of such Personal Data; and (iv) the proper disposal of such Personal Data.

7.5 ECI shall maintain a corporate Business Continuity Plan for its business operations. ECI shall review and test its Business Continuity Plan on at least an annual basis. ECI shall ensure that changes to its Business Continuity Plan are commercially reasonable and do not materially reduce the effectiveness of such plan.

7.6 ECI makes no representation that the service levels (if any) of any Supplier will be maintained for the entirety of the Term of any particular SOW, as such services are subject to the terms offered from time to time by ECI's Suppliers. If there are any such changes during the Term, it will become binding on Client provided that ECI has provided Client with thirty (30) days' notice and the opportunity to cancel the applicable SOW in lieu of accepting such change. If Client cancels the applicable SOW within such thirty (30) days due to such change, no penalties under Section 11.2 shall apply.

7.7 THE EXPRESS WARRANTIES SET FORTH HEREIN (INCLUDING SECTION 7.2) ARE THE ONLY WARRANTIES MADE BY ECI, ON BEHALF OF ITSELF AND ITS AND SUPPLIERS, AND ARE IN LIEU OF ALL OTHER EXPRESS OR IMPLIED WARRANTIES FROM ECI, ITS AFFILIATES, LICENSORS AND SUPPLIERS. EXCEPT AS EXPRESSLY SET OUT IN THIS ARTICLE 7, TO THE EXTENT PERMITTED BY APPLICABLE LAW, THE ECI SERVICES ARE PROVIDED "AS IS" AND ECI HAS NOT AND SHALL NOT BE DEEMED TO HAVE MADE ANY REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, IN ANY PROVISION OF THIS AGREEMENT, IN ANY SOW, OR IN ANY OTHER COMMUNICATION OR WRITING ON BEHALF OF ITSELF OR ITS SUPPLIERS, INCLUDING, BUT NOT LIMITED TO, ANY OTHER REPRESENTATION OR WARRANTY AS TO THE CONDITION, MERCHANTABILITY, SATISFACTORY QUALITY, TITLE, NON-INFRINGEMENT, DESIGN, OPERATION, FITNESS FOR A PARTICULAR PURPOSE OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE IN CONNECTION WITH ANY OF THE HARDWARE, SOFTWARE, THIRD PARTY PRODUCTS, AND/OR THE PERFORMANCE OR NON-PERFORMANCE OF ECI SERVICES SUBJECT TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO THE QUALITY, CONTENT, ACCURACY, VALIDITY, ADEQUACY, COMPLETENESS OR CORRECTNESS OR RESULTS OF THE ECI SERVICES, OR THAT THEY WILL ALWAYS BE AVAILABLE, TIMELY OR UNINTERRUPTED, OR MEET ALL OF CLIENT'S REQUIREMENTS, AND ECI FURTHER DISCLAIMS ALL STATUTORY REPRESENTATIONS OR WARRANTIES OF A SIMILAR NATURE TO THE MAXIMUM EXTENT PERMITTED BY LAW.

8. INDEMNIFICATION.

8.1 **ECI INDEMNIFICATION.** ECI shall indemnify, defend, and hold harmless Client and Client's officers, directors, employees, agents, and permitted assigns (each, a "Client Indemnitee") from and against any and all Losses incurred by Client

resulting from any Action by a third party (other than an Affiliate of a Client Indemnitee) that Client or an Authorized User's use of the Services (excluding Client Data and Third-Party Products) in accordance with this Agreement infringes or misappropriates such third party's Intellectual Property Rights. The foregoing obligation does not apply to the extent that the alleged infringement arises from:

8.1.1 Third-Party Products or Client Data;

8.1.2 Client's misuse of ECI Materials provided to Client in connection with this Agreement;

8.1.3 Modification of ECI Materials other than: (i) by or on behalf of ECI, or (ii) with ECI's written approval in accordance with ECI's written specification;

8.1.4 Failure to timely implement any modifications, upgrades, replacements, or enhancements made available to Client by or on behalf of ECI; or

8.1.5 Act, omission, or other matter described in Sections 8.2.1, 8.2.2, 8.2.3 or 8.2.4, whether or not the same results in any Action against or Losses by any ECI Indemnitee.

8.2 CLIENT INDEMNIFICATION. Client shall indemnify, defend, and hold harmless ECI and its Affiliates, and each of its and their respective officers, directors, employees, agents and assigns (each, an "ECI Indemnitee") from and against any and all Losses incurred by such Client Indemnitee resulting from any Action by a third party (other than an Affiliate of an ECI Indemnitee) that arise out of or result from, or are alleged to arise out of or result from:

8.2.1 Client Data, including any Processing of Client Data by or on behalf of ECI in accordance with this Agreement;

8.2.2 any other materials or information (including any documents, data, specifications, software, content, or technology) provided by or on behalf of Client or any Authorized User, including ECI's compliance with any specifications or directions provided by or on behalf of Client or any Authorized User to the extent prepared without any contribution by ECI;

8.2.3 allegation of facts that, if true, would constitute Client's breach of any of its representations, warranties, covenants, or obligations under this Agreement; or

8.2.4 gross negligence or more culpable act or omission (including recklessness or willful misconduct) by Client, any Authorized User, or any third party on behalf of Client or any Authorized User, in connection with this Agreement.

8.3 INDEMNIFICATION PROCEDURE. Each Party shall promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to Section 8.1 or Section 8.2, as the case may be. The Party seeking indemnification (the "Indemnitee") shall cooperate with the other Party (the "Indemnitor") at the Indemnitor's sole cost and expense. The Indemnitor shall promptly assume control of the defense and shall employ counsel of its choice to handle and defend the same, at the Indemnitor's sole cost and expense. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing. The Indemnitor shall not settle any Action on any terms or in any manner that adversely affects the rights of any Indemnitee without the Indemnitee's prior written consent, which shall not be unreasonably withheld or delayed. If the Indemnitor fails or refuses to assume control of the defense of such Action, the Indemnitee shall have the right, but no obligation, to defend against such Action, including settling such Action after giving notice to the Indemnitor, in each case in such manner and on such terms as the Indemnitee may deem appropriate. The Indemnitee's failure to perform any obligations under this Section 8.3 will not relieve the Indemnitor of its obligations under this Section 8, except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure.

8.4 MITIGATION. If any of the ECI Services or ECI Materials are, or in ECI's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party Intellectual Property Right, or if Client's or any Authorized User's use of the ECI Services or ECI Materials is enjoined or threatened to be enjoined, ECI may, at its option and sole cost and expense:

8.4.1 Obtain the right for Client to continue to use the ECI Services and ECI Materials as contemplated by this Agreement;

8.4.2 modify or replace the ECI Services and ECI Materials, in whole or in part, to seek to make the ECI Services and ECI Materials (as so modified or replaced) non-infringing, while providing equivalent features and functionality, in which case such modifications or replacements will constitute ECI Services and ECI Materials, as applicable, under this Agreement; or

8.4.3 by written notice to Client, terminate this Agreement and require Client to immediately cease any use of the ECI Services and ECI Materials, or any specified part or feature thereof.

8.5 SOLE REMEDY. THIS SECTION 8 SETS FORTH CLIENT'S SOLE REMEDIES AND ECI'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE ECI SERVICES AND ECI MATERIALS

OR ANY SUBJECT MATTER OF THIS AGREEMENT INFRINGES, MISAPPROPRIATES, OR OTHERWISE VIOLATES ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY.

9. LIMITATIONS OF LIABILITY.

9.1 TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES SHALL ECI OR ANY OF ITS AFFILIATES, SERVICE PROVIDERS OR SUPPLIERS BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ITS SUBJECT MATTER UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) LOSS OF PRODUCTION, USE, BUSINESS, REVENUE, OR PROFIT OR DIMINUTION IN VALUE; (b) IMPAIRMENT, INABILITY TO USE OR LOSS, INTERRUPTION OR DELAY OF THE SERVICES; (c) LOSS, DAMAGE, CORRUPTION OR RECOVERY OF DATA, OR BREACH OF DATA OR SYSTEM SECURITY; (d) COST OF REPLACEMENT GOODS OR SERVICES; (e) LOSS OF GOODWILL OR REPUTATION; OR (f) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES, REGARDLESS OF WHETHER SUCH PERSONS WERE ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE, AND NOTWITHSTANDING THE FAILURE OF ANY AGREED OR OTHER REMEDY OF ITS ESSENTIAL PURPOSE.

9.2 IN NO EVENT WILL THE COLLECTIVE AND AGGREGATE LIABILITY OF ECI AND ITS LICENSORS, SERVICE PROVIDERS, AND SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY SOW, WHETHER ARISING UNDER OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, INDEMNIFICATION OBLIGATIONS SET FORTH IN SECTION 8, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED 100% OF THE TOTAL AMOUNTS PAID TO ECI UNDER THE SOW OF WHICH THE BREACH OR LOSS OCCURRED IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

9.3 Client shall not be entitled to set off against any sums owing by it to ECI or any other Party under this Article 9 or in connection with this Agreement.

10. TERM AND TERMINATION.

10.1 This Agreement will be in effect from the Effective Date set forth on the first page of this Agreement and continue until all SOWs have expired or terminated in accordance with the provisions of this Article 10. Each SOW forms part of and is deemed to be incorporated in this Agreement; but the termination of any SOW shall not terminate this Agreement or any other SOW unless otherwise provided herein.

10.2 The "Initial Term" of any ECI Service provided under a SOW executed pursuant to this Agreement shall be for the period set forth in the SOW, or if none, one (1) year commencing on the In-Service Date. If a SOW is designated a Continuing Service SOW the ECI Service shall automatically renew for successive one (1) year terms as of each anniversary of the In-Service Date (each a "Renewal Term"), unless either Party provides written notice of termination at least sixty (60) days' prior to the end of the then current Term of its decision not to renew the SOW. For purposes of the Agreement and any SOW, the Initial Term and any/all subsequent Renewal Terms shall be collectively referred to as the "Term." At the beginning of each Renewal Term of any SOW, the fees for such Renewal Term shall increase by the Rate Adjustment.

10.3 This Agreement shall terminate upon the expiration of the Term of the most recently executed SOW, to the extent that no other SOW is contemplated to be entered into between the Parties, and each SOW shall individually terminate upon the expiration of the Term of each individual SOW. This Agreement and any or all SOWs (as determined by the Party making the termination election) may be sooner terminated as follows:

10.3.1 By ECI, if Client fails to pay any amount as and when due or within ten (10) Business Days thereafter;

10.3.2 By either Party, if the other Party is in default of any other provision of this Agreement or a SOW and such default is not cured within thirty (30) days after notice of default is given to the other Party;

10.3.3 By ECI, if statutory, judicial, regulatory, rate or tariff changes make it impossible or commercially impractical, in ECI's commercially reasonable sole discretion, to continue to provide any or all of the ECI Services; or

10.3.4 By ECI, if the aggregate monthly amount invoiced to Client across all SOWs does not exceed \$2,500; or

10.3.5 By either Party in accordance with Section 14.4.

10.4 This Agreement and all SOWs shall immediately terminate if either Party commences or becomes the subject of any Event of Insolvency, in which event the Party experiencing such an Event of Insolvency shall immediately give notice of such event to the other Party. Whether or not such notice is given, the other Party shall have the right, at any time following the occurrence of any Event of Insolvency and without prejudice to any other rights it may have, to terminate this Agreement, to the fullest extent permitted under applicable law, effective immediately upon giving notice to the Party experiencing such an Event of Insolvency.

11. RIGHTS AND DUTIES ON TERMINATION.

11.1 In all events of the termination of this Agreement and/or any SOW, all amounts owed to or earned by ECI under this Agreement or such SOW, as applicable, through the Termination Date shall be immediately due and payable, and ECI may cease performance of all ECI Services under this Agreement, or such SOW, as applicable, without liability to Client. Any prepayments by Client to ECI shall be credited to the amounts due to ECI under this Agreement, with the excess (if any) refunded to Client.

11.2 In addition to its rights under Section 11.1, in the event of the termination of this Agreement or any SOW due to Client's breach or default under this Agreement or any SOW, or an Event of Insolvency of Client, Client promptly shall pay ECI:

11.2.1 A fee equivalent to ECI's obligation to all Suppliers for amounts, if any, due by reason of cancellation and/or termination charges related to ECI Services provided or that were to be provided to Client and any other applicable charges of Suppliers to be incurred by ECI for the remainder of the unfulfilled Term if not otherwise reflected in the amounts payable under 10.2 and 11.1.

Neither the exercise of nor the failure to exercise any such right or to give a notice of a claim will constitute an election of remedies or limit ECI in any manner in the enforcement of any other remedies that may be available to it.

11.3 Any termination of a SOW or this Agreement will take effect without prejudice to any rights of Client or ECI which may have accrued up to or as at the date of termination, but such termination will not affect the continuation of obligations and liabilities intended by this Agreement (whether expressly or by implication) to survive any such termination. Any work performed by ECI shall not constitute the waiver of any rights or remedies which have accrued or may accrue in favor of either Party in consequence of a breach of any of the provisions of this Agreement or to which either Party is otherwise entitled, nor shall it defeat the prior termination of this Agreement by either Party.

11.4 At any termination of a SOW or this Agreement, Client shall continue to have a non-exclusive, royalty-free, irrevocable license to use, but not to sell, distribute or modify, any Intellectual Property Rights provided by ECI specifically and exclusively for Client in the provision of the ECI Services to the limited extent necessary to enable Client to receive services substantially similar to the ECI Services on termination of this Agreement. ECI may retain a copy of any Intellectual Property Rights provided by Client during the Term, to the extent it reasonably needs to do so in order (i) to comply with, or to demonstrate its compliance with, this Agreement or any applicable law; and/or (ii) to adhere to its generally applicable back-up and archival procedures.

11.5 For a period of sixty (60) days following a termination of this Agreement, if requested by Client, ECI shall make commercially reasonable efforts to provide termination assistance to Client so as to allow Client to continue to receive services similar to the ECI Services without interruption or adverse effect and to facilitate the orderly transfer of the ECI Services to Client or its designee ("Termination Assistance"). ECI shall be entitled to: (a) receive a security deposit against the last invoice for such work, and (b) to invoice Client on a weekly basis for such work on a time and materials basis at the then T&M Rate, and Client shall pay such invoices within ten (10) days of receipt. ECI has no obligation to provide Termination Assistance if ECI terminates this Agreement under Sections 10.3.1 or 10.3.2 above, or if the Agreement is terminated pursuant to Section 10.4 above.

12. EMPLOYEES.

12.1 ECI shall have the right to determine which of its employees, agents, representatives or permitted subcontractors shall be assigned to perform ECI Services under this Agreement. However, subject to scheduling and staffing considerations, ECI will use commercially reasonable efforts to honor Client's request for specific individuals, if any, identified in a SOW. Client may request removal and replacement of any ECI's employees, agents, representatives or permitted subcontractors at any time for any reasonable and lawful cause, and ECI, if it agrees that such request may be lawfully fulfilled, shall endeavor to promptly replace such person with a new employee, agent, representative or permitted subcontractor that is reasonably acceptable to Client.

12.2 Inasmuch as ECI relies on, and is making available to Client, the expertise and talents of its employees and consultants, Client covenants, agrees and undertakes (for itself and on behalf of its Affiliates) with ECI (for itself and on behalf of its Affiliates) that Client will not, without the prior written consent of ECI, directly or indirectly solicit, attempt to solicit, entice away, engage or employ, or hire or attempt to hire any person who at any time is or has been employed by ECI or its Affiliates in the provision of the whole or any part of the ECI Services at any time during the Term and until the expiration of twelve (12) months following the earlier of: (a) the termination and payment in full of all amounts due under all agreements between ECI and Client (as confirmed by ECI's written receipt of such amounts from Client); or (b) the termination of such individual's or entity's employment or engagement. The Parties acknowledge that this provision is material to the terms of this Agreement. Notwithstanding the foregoing, in the event that Client, directly or indirectly, solicits, entices away, employs or hires any person employed by ECI during the term of this Agreement within such twelve (12) month, then Client shall pay ECI fifty percent (50%) of such person's salary paid by ECI during employee's last twelve (12) months as an employee of ECI.

12.3 Notwithstanding any degree of supervision exercised by either Party over employees of the other, in no circumstance shall the relationship of employer and employee to be deemed to arise between either Party and any employee of the other.

13. SECURITY.

13.1 CLIENT CONTROL AND RESPONSIBILITY. Client has and will retain sole responsibility for: (a) all Client Data, including its content and use; (b) all information, instructions, and materials provided by or on behalf of Client or any Authorized User in connection with the ECI Services; (c) Client's information technology infrastructure, including computers, software, databases, electronic systems (including database management systems), and networks, whether operated directly by Client or through the use of third-party services ("Client Systems"); (d) the security and use of Client's and its Authorized Users' Access Credentials; and (e) all access to and use of the ECI Services and ECI Materials directly or indirectly by or through the Client Systems or its or its Authorized Users' Access Credentials, with or without Client's knowledge or consent, including all results obtained from, and all conclusions, decisions, and actions based on, such access or use.

13.2 ACCESS AND SECURITY. Client shall employ all physical, administrative, and technical controls, screening, and security procedures and other safeguards necessary to: (a) securely administer the distribution and use of all Access Credentials and protect against any unauthorized access to or use of the ECI Services; and (b) control the content and use of Client Data, including the uploading or other provision of Client Data for processing by the ECI Services.

14. MISCELLANEOUS.

14.1 INDEPENDENT CONTRACTOR. The Parties are, and have contracted with each other as, independent contractors. Neither Party undertakes by this Agreement, or otherwise, to perform any obligation of the other. In no way is one Party to be construed as an agent or acting as an agent of the other in any respect.

14.2 PUBLICITY. Each Party agrees that it will not, without the prior written consent of the other in each instance, refer to the existence of this Agreement, or use the name, trade name, trademark or service mark of the other Party or represent directly or indirectly that any Third Party Product or any service provided by such Party has been approved or endorsed by the other Party in any press release, advertising, or materials distributed to prospective customers. Notwithstanding the forgoing, Client grants ECI the right to include Client's name in ECI's marketing materials published through any medium including, but not limited to, ECI's website, press releases and case studies issued by ECI.

14.3 NONDISPARAGEMENT. During the term of this Agreement, neither Party shall make, publish or communicate to any Person or in any public forum any comments or statements (written or oral) that denigrate or disparage, or are detrimental to, the reputation or stature of the other Party or its businesses, or any of its employees, directors or officers. This provision shall survive termination of this Agreement.

14.4 FORCE MAJEURE. Neither Party shall be liable for any failure to perform or delay in the performance of, any of its obligations under this Agreement during any period in which such failure to perform arises directly or indirectly out of an event of Force Majeure, provided that the Party experiencing the Force Majeure shall notify the other Party of such delay as soon as commercially practicable and use commercially reasonable efforts to minimize the adverse effect of such events. If such failure exceeds or is reasonably likely to exceed a cumulative period of thirty (30) days, the Party capable of performing may terminate the affected SOW immediately without further liability.

14.5 WAIVER. No waiver of any agreement, term, condition or provision of this Agreement shall be effective or binding unless made in writing and delivered to the Party hereto whose non-performance has been waived. The waiver of any act or failure to act on any one occasion shall not constitute a waiver of that act or failure to act on any other occasion. The failure or delay of either Party hereto to enforce any of its respective rights under this Agreement shall not be deemed a waiver or modification of this Agreement and the Parties hereto may at any time and at their own expense, seek legal or equitable relief to enforce any or all of their respective rights hereunder. Any prior failure to enforce, or delay in the enforcement of, such rights shall not constitute a defense in any such legal or equitable proceeding. All of a Party's rights and remedies, whether evidenced hereby or by any other agreement, instrument or paper, shall be cumulative and may be exercised separately or concurrently.

14.6 COUNTERPARTS. This Agreement may be executed in multiple counterparts, each of which shall be an original, but which together shall constitute one and the same instrument.

14.7 ASSIGNMENT. No right or interest in this Agreement, nor any of the duties undertaken, may be assigned by either Party without the prior written approval of the other, which approval shall not be unreasonably withheld. Any attempted assignment or delegation in contravention of this provision shall be void and ineffective; provided, however, that ECI may assign this Agreement and any SOW hereunder to a third party in connection with a Sale of the Company.

14.8 SURVIVABILITY. Any provision hereof that requires or reasonably contemplates the performance or existence of obligations by either Party after termination or expiration of this Agreement shall survive such termination or expiration.

14.9 DISPUTE RESOLUTION. Notice of any dispute arising from or in connection with this Agreement must be given within six (6) months of the event or facts giving rise such dispute or claim, and in no event may any legal action or suit, or other proceeding (an "Action") be commenced later than twelve (12) months after the occurrence of the alleged breach. In the event of a dispute, the Parties shall meet to discuss the dispute no later than fifteen (15) days after a Party gives written notice to the other Party that such a dispute exists. Such meeting may be held telephonically if travel is impractical for either Party. The Parties shall make a good faith effort to resolve any dispute within forty-five (45) days of the date of such notice before commencing any Action, except that each Party shall have the right of immediate specific performance, injunction or other equitable remedy in the event of

a breach or threatened breach of this Agreement for which damages at law may be an inadequate remedy

14.10 GOVERNING LAW. This Agreement shall be governed and interpreted in accordance with the laws of the [Commonwealth of Massachusetts], without regard to its principles of conflict of laws. Any Action arising out of, related to, or brought in connection with this Agreement or the negotiation, execution or performance of this Agreement (including any claim or cause of action based upon, arising out of or related to any representation or licensor as an inducement to enter into this Agreement) or the services to be provided hereunder shall be brought and maintained in, and the Parties consent to the exclusive jurisdiction of the federal and state courts located in, Suffolk County, Massachusetts.

14.11 ENTIRE AGREEMENT. This Agreement and any SOW referencing this Agreement constitute the entire and complete understanding between the Parties and supersedes all prior and contemporaneous verbal and written agreements, communications and representations relating to the subject matter hereof. Its terms can be modified only by an instrument in writing signed by both Parties. All additional and conflicting terms and conditions presented with or in any communication other than a SOW (including but not limited to Client's Purchase Orders), are hereby rejected and shall be deemed *null* and *void* to the extent that they recite any terms other than price and quantity specified.

14.12 WAIVER OF JURY TRIAL. The Parties hereby agree to waive their respective rights to a jury trial of any Action related to or arising out of this Agreement. The scope of the waiver is intended to be all encompassing of any and all disputes that may be filed in any court and that relate to the subject matter herein, including but not limited to, the scope of this Section 14.12, and all contract claims, tort claims, breach of duty claims and all other common law and statutory claims. The Parties each acknowledge that each Party has already relied on the waiver in entering into this Agreement and that each will continue to rely on the waiver in their related future dealings. In the event of litigation, a redacted copy of this Agreement may be filed as written consent to a trial by court.

14.13 SEVERABILITY. If any provision of this Agreement or any SOW is adjudged by any court or arbitration board of competent jurisdiction to be invalid or unenforceable, then such provision shall be modified to the extent possible and necessary to preserve the original intentions of the Parties, and the validity or enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

14.14 INTERPRETIVE MATTERS AND DEFINITIONS. Unless the context otherwise requires, (a) all references to Section or Article numbers or any SOW without further designation shall be construed as a reference to the Section or Article of this Agreement or the SOW so numbered as the same may be amended from time to time; (b) "or" is disjunctive but not necessarily exclusive; (c) words in the singular include the plural and vice versa, and words importing the masculine gender shall include all other genders; (d) the headings in this Agreement and in each SOW are for convenience only, and shall not be taken into account in the interpretation of this Agreement or any such SOW; (e) if a period of time is specified and it dates from a given day or the day of an act or event, it shall be calculated exclusive of that day; (f) any phrase introduced by the terms "including", "include", "includes", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding or following those terms; and (g) any matter involving fees, costs or expenses that are "subject to the approval of Client," or to be "approved by Client," or are otherwise subject to similar language shall be interpreted to require that Client either (i) grant such approval in a timely manner, or (ii) allow ECI to alter its performance dates or otherwise adjust to the additional fees, costs or expenses that were the subject of such request, in a manner that allows ECI to complete the project and earn the fees set forth in the applicable SOW. No provision of this Agreement will be interpreted in favor of, or against, either of the Parties hereto by reason of the extent to which either such Party or its counsel participated in the drafting thereof or by reason of the extent to which any such provision is inconsistent with any prior draft hereof or thereof.

14.15 MUTUAL REPRESENTATION OF AUTHORIZATION. Each of ECI and Client represents and warrants to the other that the execution and delivery by it of this Agreement and each SOW, and the performance by it of its obligations hereunder and thereunder, have been duly authorized by all requisite action, and that this Agreement constitutes its legal, valid and binding obligation, enforceable in accordance with its terms, except insofar as enforceability may be limited by applicable bankruptcy, insolvency, reorganization, moratorium, or similar laws of general application affecting enforcement of creditors' rights.

14.16 NOTICES. Any notice, request, demand or consent required or permitted to be given hereunder shall be in writing on Client or ECI letterhead, respectively, and delivered: by hand, by a reputable next day courier, by first class mail, postage prepaid, or by electronic mail, to: If to ECI: Eze Castle Integration, Inc., 55 Court Street, Suite 520, Boston, Massachusetts 02108. Attention: Contracts Department, Email: contracts@eci.com<<mailto:contracts@eci.com>>; and if to Client: as provided on Page 1 of this Agreement. All notices shall be deemed to have been given upon actual receipt or first refusal. Either Party may change its address or facsimile number for notice by giving like notice in accordance with this Section 14.16.

14.17 THIRD PARTY BENEFICIARIES. Except (i) with respect to ECI's Suppliers, who shall be afforded the rights reserved to them in Articles 5, 8 and 10, and (ii) the Data Processing Addendum which shall be for the limited benefit of ECI's Affiliates, the provisions of this Agreement are not intended to be for the benefit of any Person other than ECI and Client.