

# MASTER SERVICES AGREEMENT

This Master Services Agreement (the "**Agreement**") is made and entered into between eTop Technology, Inc. ("**eTop**") and the client that has executed a SOW (hereinafter "**Client**") with eTop and this Agreement shall govern the Services (as defined herein) provided by eTop for the Client as referenced herein and in such SOW.

BY EXECUTING A SOW, CLIENT EXPRESSLY ACCEPTS AND AGREES TO THE TERMS OF THIS AGREEMENT AS OF THE EFFECTIVE DATE SET FORTH IN THE SOW ("**SOW EFFECTIVE DATE**"). IF CLIENT IS AN INDIVIDUAL AGREEING TO THE TERMS OF THIS AGREEMENT ON BEHALF OF THE CLIENT'S LEGAL ENTITY, CLIENT REPRESENTS THAT SUCH INDIVIDUAL HAS THE LEGAL AUTHORITY TO BIND SUCH ENTITY. IF CLIENT DOES NOT AGREE WITH THIS AGREEMENT, CLIENT MUST NOT EXECUTE THE SOW.

ARBITRATION NOTICE: EXCEPT FOR CERTAIN TYPES OF DISPUTES DESCRIBED IN SECTION 17.1, CLIENT AGREES THAT DISPUTES BETWEEN eTop AND CLIENT WILL BE RESOLVED BY MANDATORY BINDING ARBITRATION AND CLIENT WAIVES ANY RIGHT TO PARTICIPATE IN A CLASS-ACTION LAWSUIT AND/OR CLASS-WIDE ARBITRATION.

## 1. SERVICES

1.1. **Services under Statement of Work.** Client is engaging eTop to provide remote and/or on-site information technology solutions, including but not limited to server administration, information technology infrastructure, helpdesk, project implementations, consulting services and related support services ("**Services**") as described in the relevant, duly executed statements of work under this Agreement (hereinafter, "**SOWs**"), and Client is engaging eTop to provide such Services. Neither party will have any obligation with respect to any draft SOW unless and until it is executed by both parties. Except as otherwise provided herein, if any of the terms or conditions of this Agreement conflict with any of the terms or conditions of any SOW, the terms or conditions of such SOW will control solely with respect to the Services covered under such SOW. eTop shall use commercially reasonable efforts to provide Services that are 'current' in the information technology industry; however, Client acknowledges and agrees that information technology generally, eTop's Services, and any equipment used to provide the Services are all parts of a rapidly-evolving industry and may change from time to time and the foregoing is outside of eTop's control.

## 1.2. **Third Party Products.**

(a) Except as expressly set forth in any SOW, eTop has not provided an estimate for, and is not responsible for, the selection or procurement of any hardware, devices or equipment, operating system software, database software, or other third party software, connectivity, data transport, or other IP rights required to perform the Services ("**Third Party Products**"). Client is solely responsible for the selection, procurement, costs, and expenses of acquiring the same, and any other infrastructure required to support Client's use of the Services. Client acknowledges and agrees that eTop is not liable for the performance of any Third Party Products.

(b) In the event eTop procures the installation of Third Party Products, such Third Party Products may be licensed, leased or sold by eTop. Client agrees to provide a suitable operating environment for the Third Party Products and promptly report any faults in or damage to the Third Party Products, any alteration in its performance, or any change in its operating environment that will affect its operation. Client further agrees not to misuse the Third Party Products. Client acknowledges that certain Third Party Products are the property of eTop or if leased by eTop, of the lessors, and the Client will not obscure or remove any labels or markings from such Third Party Products. Risk in the Third Party Products sold to Client, shall pass to the Client on payment of the first payment. The Client undertakes to effect and maintain adequate security measures to safeguard the Third Party Products from access and/or use by any unauthorized person. In the case of damage to or destruction or loss of the Third Party Products, the Client shall reinstate the same (or its equivalent) unless otherwise agreed by the parties and eTop shall not be liable under this Agreement until such Third Party Products are reinstated.

(c) If Client's activities in any way interfere with, disturb and/or disrupt eTop's systems, Services and/or services to other clients, and/or are unlawful as deemed by eTop, in its reasonable discretion, then eTop reserves the right, without prior notice, to suspend Services and/or access to eTop's systems without liability. Any such suspension shall remain in effect until such time as Client is able to demonstrate, in eTop's sole and absolute discretion, that the issue has been cured by Client

1.3. **Service Exclusions.** Unless otherwise set forth in any SOW, Services shall not include the diagnosis and rectification of any fault arising from: (a) use of versions of Third Party Products including the operating system software on Client's desktops, other than those specific by eTop; (b) inadequate training by Client of its personnel on the use of the Services and/or Third Party Products; (c) any use of the Services and/or Third Party Products not in accordance with the

documentation or the operating environment recommended by eTop, or otherwise contrary to eTop's instruction; (d) modifications or enhancements to the Services and/or Third Party, or made without eTop's prior written consent; and/or (e) failure by Client to implement eTop's recommendations or solutions. The Services do not include any legal, regulatory, accounting, or tax advice and Client will rely solely upon its own advisors with respect to any such advice. eTop makes no warranty that the Services will comply with the laws or regulation of Client's jurisdiction.

**1.4. Data Security.** Client acknowledges and agrees that eTop utilizes third-party providers to provide tools or otherwise host and provide the Services including without limitation, firewall and security, email backups, and store Client data and the protection of such data will be in accordance with such third party's safeguards for the protection of the security, confidentiality and integrity of Client's data. Client is responsible for taking appropriate steps to maintain security, protection and backup of any Client data and/or Client Content. Client agrees that eTop will not, and is not required to, monitor or in any way check the content of any data being transmitted by Client or any third party via the Services provided by eTop. Without prejudice to the foregoing, if eTop discovers the transmission of data or other matter relating to data or the use of the Services that is in contravention of any law, regulation, order or other similar rule of any competent authority, eTop may (without any liability or penalty whatsoever) take all action required to ensure compliance with such laws, regulations, orders or rules. Client shall pay for any costs and charges associated with such action. In performance of the Services, it is possible that data files on magnetic media may be destroyed. eTop will use commercially reasonable precautions to avoid destruction of data, but will not be held responsible in the event that such destruction occurs. It will be Client's responsibility to ensure that back-up copies are made on a regular basis and available to eTop in the event of a required reload.

**1.5. Personnel.** eTop shall provide qualified, competent Representatives to perform the Services. No eTop Representative shall be required to perform Services exclusively for Client during the term of this Agreement and/or SOW. eTop shall supervise the performance of the Services and shall be entitled to control the manner and means by which the Services are performed, subject to the terms of this Agreement and/or SOW. Client acknowledges and agrees that eTop may subcontract any of its obligations hereunder.

## **2. CLIENT OBLIGATIONS**

**2.1. General.** During the term of this Agreement, Client shall: (i) provide a suitable operating environment (including without limitation a suitable electrical power supply and maintaining Internet access) and safe workplace for eTop's

Representatives providing Services; (ii) ensure, unless specifically requested by eTop, that no person other than eTop and its authorized Representatives removes, adjusts, repairs, maintains and/or otherwise interferes with any part of the Services; (iii) ensure that no third party uses the Services other than those third parties with whom the Client has a relationship in the ordinary course of its business, and in any event ensuring that any third parties comply with the relevant provisions of this Agreement relating to the Services and its use; (iv) ensure that its network and systems comply with the relevant specifications provided by eTop from time to time; and (v) shall provide eTop with information as may be required by eTop in order to render the Services or as reasonably required in order to perform its obligations under this Agreement. Client further agrees to train Client's employees on all use, operation, backup and recovery procedures.

**2.2. Cooperation.** At all times during the term of this Agreement, Client shall promptly and fully cooperate with eTop, and shall promptly make competent, qualified personnel available to assist and answer questions of eTop, as necessary and appropriate and as reasonably requested by eTop. Client shall make available to eTop, free of charge, all information, facilities and services reasonably required by eTop to enable it to perform the Services. eTop shall bear no liability or otherwise be responsible for delays in the provision of the Services or any portion thereof caused by Client's failure to timely provide information requested by eTop.

**2.3. Use of the Services.** Client is responsible for obtaining, maintaining, and supporting all access, computer hardware, telecommunications capabilities and other equipment and services needed for it to access the Services, including without limitation Internet access. The Client will determine the access controls for its authorized users and will be responsible for activity occurring under Client's account, including without limitation compliance with the terms and conditions set forth in this Agreement and applicable SOW(s). Client shall ensure that its network and systems comply with the relevant specifications provided by eTop from time to time. Client understands and agrees that there may be interruptions to the Services and/or access to Client's account due to circumstances both within eTop's control (e.g., routine maintenance) and outside of eTop's control.

**2.4. Acceptable Use.** Client acknowledges and agrees that Client and its users will abide by the terms and conditions set forth herein. Client is responsible for any and all content, which is displayed, downloaded, uploaded and/or transmitted, through Client's account and/or equipment. Content includes without limitation, home pages, web pages, domain names, e-mail, stored data and any other data stored and/or transmitted through Client's account and/or equipment. Client further agrees not to: (a) seek or attempt to seek access to, test the vulnerability

of, breach the security of or wrongly challenge the authenticator of, any system, software, data or network without prior written consent of eTop; (b) use monitoring and/or crawling technology to impair and/or disrupt any host, system, software, data and/or network; (c) use the Services to violate, exploit, or harm (or attempt any of the foregoing) the legal rights (including the rights of publicity and privacy) of any person or third party; (d) promote any illegal activity, or advocate or assist any unlawful act; (e) stalk, harass, intimidate, or harm any person or third party; (f) track any person or third party without their explicit consent; or (g) act in a manner that could give rise to any civil or criminal liability under any applicable local, state, national or international laws, statutes, ordinances, rules, regulations or ethical codes governing your jurisdiction, including confidentiality, data protection, and IP laws.

**2.5. Compliance with Laws.** Client shall be solely responsible for Client's compliance with all applicable laws and governmental regulations affecting the operation of the business of Client or the Services. Client may not use the Services, other than for Client's own legitimate and lawful business purposes and in a manner that complies with this Agreement and all applicable laws and regulations.

**2.6. Courtesy; Non-Disparagement.** The parties will continuously strive to treat the other with courtesy and respect in all aspects of the business relationship. Client shall not, at any time during the term of this Agreement and thereafter, make statements or representations, or otherwise communicate, directly or indirectly, in writing, orally, or otherwise, or take any action which may, directly or indirectly, disparage eTop or any of their Representative's businesses or reputations. Notwithstanding the foregoing, nothing in this Agreement shall preclude Client from making truthful statements that are required by applicable law, regulation or legal process.

### **3. FEES**

**3.1. Fees.** In consideration of the provision of the Services described herein and/or in any SOW, Client agrees to pay eTop the fees set forth in the duly executed SOW. All fees due and payable by the Client to eTop under this Agreement must be paid in full without any deduction, set-off, counterclaim or withholding of any kind unless required by law and shall be non-refundable unless otherwise determined by eTop in its sole and absolute discretion. The fees reflected in such SOW(s) shall be in U.S. dollars. Any services provided outside of the scope of Services set forth herein and/or in the applicable shall be provided at eTop's then-current rate for such out-of-scope services and shall be due and payable in accordance with the terms and conditions set forth herein.

3.2. **Taxes.** All fees due and payable under this Agreement are exclusive of taxes, which will be added at the prevailing rate from time to time.

3.3. **Expenses; Third Party Fees.** In the event eTop utilizes Third Party Products on Client's behalf or otherwise enters into a subscription or license with such third party providers on Client's behalf, Client agrees it shall remain liable for all such third party expenses, fees, subscription and/or license costs through the remainder of the then-current term of such license and/or subscription. Notwithstanding anything herein to the contrary, in the event third party providers increase their fees for Third Party Products, eTop shall pass on such increase in fees to Client and Client shall pay such fees in accordance with the terms and conditions of this Agreement. Third Party Product fees, reasonable travel and out-of-pocket expenses are not included in the fees set forth in the relevant SOW's and will be invoiced separately.

3.4. **Invoices.** Unless otherwise set forth herein or in the applicable SOW, eTop will provide Client with an invoice for fees that become due hereunder on or before the 25th day of each calendar month and such invoices shall be due and payable by Client on the first day of each calendar month for monthly Services. All other invoices shall be due and payable by Client within fifteen (15) days following receipt of such invoice. Invoices submitted by eTop to Client are deemed accepted and approved unless disputed by Client in good faith in writing to eTop.

3.5. **Payment Account.** Unless otherwise set forth in a SOW, all monthly Services fees shall be deducted from a payment account designated by Client, through automated clearing house ("**ACH**") transfers from the Client's designated operating account. All fees reflected on the applicable SOW shall reflect the discounted fee for payments made via ACH. Client authorizes eTop to automatically charge the payment account for the fees (plus applicable sales tax) as agreed to by the parties in writing without any further authorization from Client. In the event Client elects to proceed with a credit card payment for non-monthly Services, Client's credit card will be debited in the manner authorized for the amount of the payment to eTop, and Client shall forgo any discounted fee for payments made via ACH. eTop shall provide a revised invoice with a breakdown of the total fees due. Client acknowledges that the authorization will remain in effect until Client cancels such authorization by providing written notice to eTop. If Client's payment account on file is closed or the account information is changed, or if, for any reason, a charge is rejected, Client shall immediately update Client's payment account or supply a new payment account, as appropriate. If Client is unable to update its payment account with appropriate information, then eTop will send an invoice to Client detailing the amount due. Client must pay the amount due in full within seven (7) days after the date of the invoice. Client agrees to notify

eTop in writing of any changes to Client's account information or termination of its authorization at least thirty (30) days prior to the next billing date. In the event payment dates fall on a weekend or holiday, Client understands that the payments may be executed on the next business day. Client hereby agrees to undertake any and all required actions, execute any required documents, instruments or agreements, or to otherwise do any other thing required or requested by eTop in order to effectuate the requirements of this Section 3.5.

**3.6. Late Payments.** In the event payment for fees is not made on or before forty-five (45) days following the date such payments are due, eTop may, in its sole discretion, suspend Services upon written notice to Client until payment is made in full without incurring any liability. eTop will give Client two (2) weeks prior notice of its intention to exercise its rights to suspend Services under this Section 3.6. If Client does not make payment on or before thirty (30) days from the date on which such payment is due to be paid, eTop reserves the right, in its sole and absolute discretion, to apply interest calculated at an annual rate of up to ten percent (10%) or the highest rate permitted by law. Such interest shall accrue from the date upon which payment of such sum became due until payment thereof is made in full together with such interest.

**3.7. Pricing Changes.** Notwithstanding anything herein to the contrary, the fees for the Services may be increased by the Company by five percent (5%) over the previous year fees ("Price Increase") upon forty-five (45) days notice (email accepted) ("Notice Period") to Client, unless otherwise set forth in the applicable SOW. Such Price Increase shall become effective at the beginning of each renewal term, except in the event of a Significant Cost Increase, in which case Company shall be entitled to an equitable adjustment to take effect following the Notice Period. "Significant Cost Increase" shall mean an event of any change in applicable law, regulation, third party price increases (i.e., software license, operating system, etc.), rule, order or any other change that materially increases the costs or other terms of delivery of the Services under this Agreement.

#### **4. TERM**

This Agreement is effective as of the applicable SOW Effective Date and will continue until terminated in accordance with Article 5. The Services will commence on the date set forth in the SOW and shall remain in effect until terminated by either party, or as otherwise set forth in the SOW.

#### **5. TERMINATION**

**5.1. Termination for Breach.** If a party materially breaches this Agreement and/or any SOW (the "**Defaulting Party**"), and the Defaulting Party does not cure such

breach within thirty (30) calendar days after its receipt of written notice of material breach, the non-defaulting party may terminate this Agreement and/or the relevant SOW upon written notice to the Defaulting Party. Termination of a SOW and/or this Agreement will be without prejudice to any other rights and remedies that the non-defaulting party may have under this Agreement and/or at law and/or in equity.

**5.2. Termination for Convenience.** Unless otherwise set forth in the applicable SOW, Client may terminate this Agreement by providing thirty (30) days written notice prior to the end of the then current term set forth in the applicable SOW. eTop may terminate this Agreement and/or any SOW hereunder at any time upon thirty (30) days written notice to the Client.

**5.3. Termination for Insolvency.** Either party may terminate this Agreement and SOW(s) in the event the other party becomes Insolvent. For purposes of this Section 5.3, “**Insolvent**” or “**Insolvency**” shall mean a party that makes an assignment for the benefit of creditors, has a receiver, trustee, custodian (or similar party) appointed or designated to administer its affairs or otherwise take control of its assets or business operations, becomes a debtor in a voluntary proceeding under any chapter of the United States Bankruptcy Code or any law or statutory scheme relating to insolvency, reorganization or liquidation, or an involuntary petition in bankruptcy, or other insolvency proceeding is filed against a party and is not dismissed within sixty (60) days thereafter.

**5.4. Effect of Termination.**

(a) In the event of any termination under this Agreement and/or any SOW as a result of Client’s termination in accordance with Section 5.1 (Termination for Breach) or eTop’s termination in accordance with Section 5.2 (Termination for Convenience), upon termination Client will pay all outstanding fees, charges, and expenses incurred through the then-current billing period set forth in the applicable SOW and the Wind-Down Period.

(b) In the event of any termination under this Agreement and/or any SOW as a result of Client’s termination in accordance with Section 5.2 or eTop’s termination in accordance with Section 5.1 or 5.2 , upon termination Client will pay all outstanding fees, charges, and expenses incurred through the end of the then-current term set forth in the applicable SOW and the Wind-Down Period.

(c) Upon any termination of this Agreement and/or a SOW, Client will (i) cease using the Third Party Products, and eTop may remove the Third Party Products (other than Third Party Products to which title has passed) and (ii) Client shall remain responsible and agrees to pay all Third Party Product costs in accordance with Section 3.3 herein. Client grants eTop a license to enter all locations on a reasonable notice to enable eTop to remove Third Party Products, and Client shall



promptly surrender the Third Party Products to eTop in good order and condition as originally delivered, normal wear and tear excepted.

5.4. **Wind-Down.** Any termination date (other than due to Client's breach) shall be extended for a minimum of thirty (30) days following the effective date of termination or any longer timeframe as mutually agreed to by the parties in writing (email accepted) ("**Wind-Down Period**") in order to transition projects or otherwise wind-down the Services assigned to eTop. Client shall continue paying the fees for the Services through the Wind- Down Period.

## 6. CONFIDENTIALITY

6.1. **Confidential Information.** "**Confidential Information**" includes all information related to the business of one party ("Disclosing Party") and any of its affiliates, clients and other third parties, to which the other party ("Receiving Party") has access, whether in oral, written, graphic or machine-readable form, in the course of or in connection with the Services, including without limitation: its business, legal, and operational practices, financial, technical, commercial, marketing, competitive advantage or other information concerning the business and affairs, partnerships and potential partnerships, business model, fee structures, personally identifiable customer or employee information, funding opportunities, metrics, know-how, systems, procedures and techniques that has been or may hereafter be provided or shown to the other party, regardless of the form of the communication and the terms and conditions of this Agreement. The party disclosing Confidential Information shall be referred to herein as the "Disclosing Party" and the party receiving Confidential Information shall be referred to herein as the "Receiving Party." Notwithstanding the foregoing, the term "Confidential Information" will not include any information that identifies or directly relates to natural persons ("Personal Data"), and the terms of this Section and other provisions of this Agreement generally applicable to Confidential Information will not be deemed to apply to Personal Data unless specifically stated otherwise. Each party will exercise commercially reasonable efforts not to disclose any Personal Data to the other party and to restrict the other party's access to its Personal Data. If eTop requires access to Client's Personal Data in connection with the Services, the parties will agree in the applicable SOW on the procedures and obligations of each party with respect to the access, use and protection of such Personal Data.

6.2. **Representatives.** The Receiving Party will keep the Confidential Information confidential, and may disclose the Confidential Information to its officers, directors, employees, agents and subcontractors (and their employees) ("**Representatives**") who have a need to know such Confidential Information

solely in connection with this Agreement. The Receiving Party will cause such Representatives to comply with this Agreement and will assume full responsibility for any failure to comply with the terms of this Agreement. The Receiving Party will not transfer or disclose any Confidential Information to any third party without the Disclosing Party's prior written permission and without such third party having a contractual obligation (consistent with this Article 6) to keep such Confidential Information confidential. The Receiving Party will not use any Confidential Information for any purpose other than to perform its obligations under this Agreement.

**6.3. Exclusions.** Confidential Information does not include information that: (i) is obtained by the Receiving Party from the public domain without breach of this Agreement and independently of the Receiving Party's knowledge of any Confidential Information; (ii) was lawfully and demonstrably in the possession of the Receiving Party prior to its receipt from the Disclosing Party; (iii) is independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (iv) becomes known by the Receiving Party from a third party independently of the Receiving Party's knowledge of the Confidential Information and is not subject to an obligation of confidentiality.

**6.4. Legal Requirements.** If the Receiving Party is requested or required to disclose any of the Disclosing Party's Confidential Information under a subpoena, court order, statute, law, rule, regulation or other similar requirement (a "Legal Requirement"), the Receiving Party will, if lawfully permitted to do so, provide prompt notice of such Legal Requirement to the Disclosing Party so that the Disclosing Party may seek an appropriate protective order or other appropriate remedy or waive compliance with the provisions of this Agreement. If the Disclosing Party is not successful in obtaining a protective order or other appropriate remedy and the Receiving Party is legally compelled to disclose such Confidential Information, or if the Disclosing Party waives compliance with the provisions of this Agreement in writing, the Receiving Party may disclose, without liability hereunder, such Confidential Information solely to the extent necessary to comply with the Legal Requirement.

**6.5. Disclosure.** In the event that the Receiving Party learns or has reason to believe that Confidential Information has been disclosed or accessed by an unauthorized party, the Receiving Party will immediately give notice of such event to the Disclosing Party.

**6.6. Disposition of Confidential Information on Termination.** Upon termination of this Agreement or upon the Disclosing Party's written request, the Receiving Party will return to the Disclosing Party all copies of Confidential Information already in

the Receiving Party's possession or within its control. Alternatively, with Disclosing Party's prior written consent, the Receiving Party may destroy such Confidential Information; provided that the Confidential Information is (i) destroyed in accordance with applicable law, rule or regulation and (ii) is rendered unreadable, undecipherable and otherwise incapable of reconstruction, in which case an officer of the Receiving Party will certify in writing to the Disclosing Party that all such Confidential Information has been so destroyed.

6.7. **Equitable Relief.** Each party acknowledges that a breach of this Article 6 may result in irreparable and continuing damage to the Disclosing Party for which monetary damages may not be sufficient, and agrees that the Disclosing Party will be entitled to seek, in addition to its other rights and remedies hereunder or at law, injunctive or all other equitable relief, and such further relief as may be proper from a court of competent jurisdiction.

## **7. INTELLECTUAL PROPERTY; CLIENT CONTENT**

### **7.1. eTop Trademarks; Ownership.**

a. eTop retains all right, title and interest in and to all trademarks, service marks, and trade names owned or licensed by eTop, and no right, title or interest in or to eTop's trademarks, service marks, or trade names is granted to Client hereunder. All uses of eTop's trademarks, service marks, or trade names shall inure solely to the benefit of eTop or its licensors.

b. Unless otherwise set forth in a SOW, eTop retains all rights, title, interest and ownership of, any and all intellectual property rights with respect to the Services, and any other materials provided or made available to Client by eTop hereunder. Except for the rights expressly granted to Client in this Agreement, all such Services and other materials that are provided or made available, and all work product that is developed, under this Agreement, all modifications, compilations, and derivative works thereof, and all intellectual property rights pertaining thereto, are and shall remain the property of eTop and its respective licensors (and to the extent any rights of ownership in any such materials, works, or rights might, for any reason, otherwise vest in Client, Client hereby assigns such ownership rights to eTop). eTop confirms that it has all the rights necessary to provide the Services described herein and has the ability to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement.

7. 2. **Client Content.** "**Client Content**" means any elements of text, graphics, images, photos, designs, artwork, logos, trademarks, service marks, data, software, and other information, materials and/or content which Client provides in connection with the Services. Client Content excludes any content available in the public domain; and any content owned or licensed by eTop, whether in

connection with providing Services or otherwise. Client hereby grants eTop a worldwide, non-exclusive right and license to reproduce, distribute and display the Client Content solely as necessary to provide the Services. Client represents to eTop and guarantees that all Client Content is owned by Client, or that Client has permission from the rightful owner to use each of the elements of Client Content; and that Client has all rights necessary for eTop to use the Client Content in connection with the Services. Client and its licensors retain title, all ownership rights, and all IP rights, in and to the Client Content, and reserve all rights not expressly granted to eTop hereunder. eTop has no knowledge of the value of Client's Content or of the financial or other consequences of the Client's Content being lost or not properly processed and/or transmitted and it is the Client's responsibility to store and back-up at all relevant times and whenever possible and keep a permanent record of such Client Content processed and/or transmitted via any network.

## **8. REPRESENTATIONS & WARRANTIES**

**8.1. Client Warranties.** Client represents and warrants that it (i) is a duly organized, validly existing and in good standing under the laws of the State of organization; (ii) has the power and authority to enter into this Agreement and SOW(s) and (iii) has not and will not enter into any agreement or perform any act which might contravene the purposes and/or effects of this Agreement.

**8.2. eTop Warranty.** eTop warrants that Services will be performed in a good and workmanlike manner in accordance with applicable industry standards and practices (the "**Service Warranty**"). eTop further represents and warrants that it (i) is a duly organized, validly existing and in good standing under the laws of the State of organization; and (ii) has the power and authority to enter into this Agreement and SOW(s).

**8.3. Disclaimer.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ETOP MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE. THE SERVICES AND MATERIALS ARE PROVIDED BY ETOP ON AN "AS-IS" BASIS. ETOP DOES NOT REPRESENT, WARRANT, AND/OR COVENANT THAT THE SERVICES (INCLUDING, BUT NOT LIMITED TO, ANY REPORTS, ADVICE AND RECOMMENDATIONS, IN ANY FORM) PROVIDED BY ETOP IN CONNECTION WITH THIS AGREEMENT AND/OR SOW, ARE OR WILL NECESSARILY ALWAYS BE COMPLETELY ACCURATE, CURRENT, COMPLETE AND/OR CONTINUOUSLY AVAILABLE. ETOP DOES NOT REPRESENT, WARRANT, OR COVENANT THAT THE SERVICE WILL BE AVAILABLE WITHOUT INTERRUPTION OR TOTALLY ERROR-FREE, OR THAT ALL DEFECTS (INCLUDING,

BUT NOT LIMITED TO, MINOR OR COSMETIC DEFECTS THAT DO NOT SIGNIFICANTLY AND ADVERSELY AFFECT FUNCTIONALITY) WILL BE CORRECTED. ETOPIS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES AND/OR OTHER LOSS AND/OR DAMAGE RESULTINGFROM (A) TRANSFER OF DATA OVER COMMUNICATION NETWORKS SUCH AS THE INTERNET AND/OR (B) INABILITY TO ACCESS AND/OR GET ACCURATE DATA FROM THIRD-PARTY SYSTEMS AND/OR APPLICATIONS THAT THE SERVICES ARE DEPENDENT ON.

**8.4. Exclusive Remedy.** Client's sole and exclusive remedy and eTop's sole and exclusive liability for any breach of the Service Warranty set forth in Section 8.2 shall be for eTop to re-perform the Services at no cost to Client. This sole and exclusive remedy is available only if eTop is promptly notified in writing within thirty (30) days after the performance of such Services that do not conform to the warranty of Section 8.2. For avoidance of doubt, this Section shall not be deemed to limit either party's rights or remedies under any other Section of this Agreement.

**8.5. Security.**

a. Client acknowledges and understands that eTop will provide Services designed to provide Client with certain kinds of network security from outside attempts to breach Client's network. Specifically, eTop will provide Client with a safeguards such as firewalls – designed to filter out certain sources of viruses, malware, and other malicious programs. Upon implementation of eTop's suggestions to Client, software will be installed to facilitate the updating and patching of all programs on Client's network and workstations; and eTop will use commercially reasonable efforts to regularly update Client's anti-virus software so that known security vulnerabilities in said software are remedied when possible. However, Client acknowledges and understands that a majority of security breaches occur as a result of Client's and/or its Representative's negligence and/or third-party(ies) malicious interference with business networks and, therefore, as a result eTop cannot warrant, represent, or guarantee that any of the above-listed network security measures will always maintain administrative, technical, or physical security safeguards which (i) ensure the security and confidentiality of non-public personal information; (ii) protect against threats or hazards to the security or integrity of non-public personal information; (iii) protect against unauthorized access or use of non-public personal information that could result in substantial harm or inconvenience; or (iv) ensure that any Service or Work Product is free from computer viruses or malicious code, at the time of delivery or the Services or Work Product or in the future.

b. Client represents and warrants that it: (i) shall ensure that any computer or computer system that Client uses to access the Services shall have up-to-date

anti-virus software installed and in operation; and/or (ii) all eTop-supplied identification codes and associated passwords shall be kept confidential and secure. If eTop becomes aware of any unauthorized access that compromises the security, integrity or confidentiality of any non-public personal information, eTop will take actions in good faith to assist Client in containing and mitigating such unauthorized access, and as required by law.

## **9. LIMITATION OF LIABILITY**

ETOP'S TOTAL AND CUMULATIVE LIABILITY FOR DIRECT DAMAGES ARISING OUT OF AND/OR IN CONNECTION WITH THIS AGREEMENT AND/OR ANY SOW SHALL IN NO EVENT EXCEED THE FEES PAID BY CLIENT TO ETOP UNDER THE APPLICABLE SOW IN THE SIX (6) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. IN NO EVENT WILL ETOP BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL AND/OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS) EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE PARTIES EACH FURTHER AGREE THAT THE FOREGOING LIMITATION OF LIABILITY IS FAIR AND REASONABLE UNDER THE CIRCUMSTANCES AND IN CONSIDERATION FOR THE SERVICES PROVIDED HEREUNDER. NOTWITHSTANDING THE FOREGOING, NO LIMITATION AND/OR EXCLUSION OF ETOP'S LIABILITY WILL APPLY WITH RESPECT TO ANY CLAIMS ARISING OUT OF AND/OR RELATING TO ETOP'S WILLFUL MISCONDUCT OR GROSS NEGLIGENCE.

## **10. INDEMNIFICATION**

10.1 **Client Indemnification.** Client shall indemnify, defend and hold eTop and its members, trustees, employees, agents, officers and officials harmless from and against any liabilities, losses, costs, damages, demands and expenses, including reasonable attorney fees, ("**Claim**") arising out of, and/or relating to (i) Client's and/or its Representatives acts and/or omissions; (ii) eTop's use of the Client Content constitutes infringement, violation, trespass, contravention or breach in the United States of any patent, copyright, trademark, license or other property or proprietary right of any third party, or constitutes the unauthorized use or misappropriation of any trade secret of any third party; (iii) Client's and/or its Representatives breach of the terms of this Agreement and/or SOW; and/or (iv) Client's failure to use the Services in accordance with the terms and conditions set forth herein and in the applicable SOW.

10.2 **eTop Indemnification.** eTop will indemnify, defend and hold harmless the Client and its members, trustees, employees, agents, officers and officials against any Claim that Client's use of eTop's Services (excluding any Third Party Products)

constitutes an infringement, violation, trespass, contravention or breach in the United States of any patent, copyright, trademark, license or other property or proprietary right of any third party, or constitutes the unauthorized use or misappropriation of any trade secret of any third party. Client acknowledges and agrees that it shall use commercially reasonable efforts to mitigate the costs and expenses related to such claim. The indemnity in this Section 10.2 shall not apply (i) to a Claim arising from any modification of the Services of eTop by the Client or any third party, or from the use of the Services in combination with any other items not provided by eTop, to the extent such modification or use in combination resulted in the Claim unless such modification or use in combination is with eTop's express written consent and/or (ii) if such Claim results from any breach of the Client's obligations under this Agreement, or the use of the Services other than in connection with this Agreement, or in a manner not reasonably contemplated by this Agreement. In the event of a Claim pursuant to this Section 10.2, eTop shall be entitled at its own expense and option to either (i) procure the right for the Client to continue utilizing the Services which are at issue; (ii) modify the Services to render the same non-infringing; or (iii) replace the Services with an equally suitable, functionally equivalent, compatible, non-infringing Service. This Section 10.2 sets forth the Client's sole and exclusive remedy from the Client for any claim, demand, proceeding and/or action by a third party in relation to a Claim.

**10.3. Procedure.** The indemnities set forth herein shall only be given on the condition that (i) the indemnified party gives notice to the indemnifying party of any Claim immediately upon becoming aware of the same; (ii) the indemnified party gives the indemnifying party the sole right to conduct the defense of any claim or action, or the negotiation of any settlement, in respect of a Claim and does not at any time admit liability or otherwise settle or compromise or attempt to settle or compromise the said claim or action except upon the express written instructions of the indemnifying party; and (iii) the indemnified party acts in accordance with the reasonable instructions of the indemnifying party and gives the indemnifying party such assistance as it shall reasonably require in respect of the conduct of the said defense including without prejudice to the generality of the foregoing the filing of all pleadings and other court processes and the provision of all relevant documents. The indemnified party acknowledges and agrees that it shall use commercially reasonable efforts to mitigate the costs and expenses related to such claim. The indemnified party may reasonably participate in such defense, at its sole expense.

## **11. FORCE MAJEURE**

Notwithstanding any other provision of this Agreement, neither party is liable for any failure to perform, or delay in performing, any particular obligations under this Agreement where the failure or delay arises from any cause or causes beyond its reasonable control, including without limitation fire, flood, earthquake, elements of nature, acts of God, communications or computer (software and hardware) services, prevention by restrictions of a legal or regulatory nature from supplying the Services, acts of war, terrorism, strikes (or other labor unrest), riots, civil disorders or rebellions ("**Force Majeure Event**"). In the event of a Force Majeure Event, the parties agree to meet and discuss how to resolve the issue; it being understood that the impacted party shall use commercially reasonable efforts to resume performance as soon as practicable under the circumstances. Either party may terminate this Agreement by giving the other party written notice if the other party fails to perform those obligations for sixty (60) calendar days due to such Force Majeure Event. This Section does not apply to Article 6, or any obligation to pay money, or any obligation that is unaffected by the Force Majeure Event.

## **12. INDEPENDENT CONTRACTOR**

eTop is an independent contractor and will determine the method, details and means of performing the Services. No party shall have the authority to bind, represent or commit the other. Nothing in this Agreement shall be deemed or construed to create a joint venture or agency relationship between the parties for any purpose. Nothing contained herein shall give or is intended to give any rights of any kind to any third persons.

## **13. GOVERNING LAW AND CHOICE OF FORUM**

This Agreement will be governed by, and construed in accordance with, the internal laws of the State of California, without regard to its choice of laws principles. Any action related to and/or arising from this Agreement shall take place exclusively in the San Bernardino County, California and the parties hereby submit to such venue.

## **14. NON-SOLICITATION**

**14.1. Representatives.** During the term of this Agreement and for a period of one (1) year following the effective date of termination, Client shall not, without eTop's prior written consent, directly or indirectly (i) solicit or encourage any eTop Representative to leave the employment or other service of eTop, (ii) interfere with the performance of any such Representatives of their duties for eTop; or (iii) hire such Representative for the purpose of performing professional services from whom such Representative performed for Client during the six (6) month period



prior to the effective date of termination of this Agreement. Notwithstanding the foregoing, Client may hire eTop's Representatives who (i) respond to public advertisements or (ii) have not provided Services to the Client under a SOW for a period of one (1) year or more. In the event of a breach of this Section 14.1, eTop's sole and exclusive liability and Client's sole and exclusive remedy shall be for the Client to pay eTop one hundred percent (100%) of the Representative's then-current annual salary and/or engagement fees.

**14.2 Reasonableness.** Client recognizes and agrees the restrictions set forth in this Agreement, including without limitation the time period, are fair and reasonable, and the restrictions are reasonably tailored so as to meet the legitimate business interests of eTop.

## **15. ASSIGNMENT**

Neither party may assign this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign its rights or obligations under this Agreement upon written notice to the other party in the event of a Change of Control. "**Change of Control**" means the direct or indirect change in the ownership, operation or control of a party, whether resulting from merger, acquisition (including an acquisition of substantially all of the assets of a party), consolidation or otherwise. No such assignment or transfer shall have the effect of increasing the obligations of either party under this Agreement. This Agreement will be binding upon the parties and their respective legal successors and permitted assigns.

## **16. NOTICES**

All notices and other communications given or made pursuant to this Agreement must be in writing, sent to the persons designated herein or to such other persons and addresses as the parties may designate from time to time and will be deemed to have been given upon the earlier of actual receipt or (a) personal delivery to the party to be notified, (b) when sent, if sent by facsimile or electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid, or (d) one (1) business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt.

## **17. GENERAL**

**17.1. Arbitration.** Unless otherwise set forth in this Agreement, the parties agree that as to any dispute arising out of or under this Agreement, the parties shall meet to discuss such dispute for resolution within thirty (30) days. If the parties are unable to resolve the dispute, then the parties may bring an action pursuant which shall be settled by binding arbitration. The arbitration proceedings shall be conducted under the Commercial Arbitration Rules of the American Arbitration Association in effect at the time a demand for arbitration. The decision of the arbitrators, including determination of the amount of damages suffered, if any, shall be final and binding on all parties, their executors, administrators, successors and assigns and judgment with respect to such decision may be entered in any court of applicable jurisdiction. Each party shall bear its own expenses in the arbitration, for attorneys' fees, and for fees with respect to its witnesses; provided that, the prevailing party will be entitled to recover such fees in accordance with Section 17.8 herein. Other arbitration costs, including arbitrators' fees and administrative fees, and fees for records or transcripts, shall be paid equally by the parties. The location of such arbitration shall be in San Bernardino County, California

**17.2. No Waiver by Conduct.** No waiver of any of the terms of this Agreement or any SOW will be valid unless in writing and designated as such. Any forbearance or delay on the part of either party in enforcing any of its rights under this Agreement will not be construed as a waiver of such right to enforce same for such occurrence or any other occurrence.

**17.3. No Third-Party Beneficiaries.** Nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. Client agrees that eTop's obligations in this Agreement are to Client only, and eTop has no obligation to any third party (including, without limitation, Client's personnel, directors, officers, employees and any administrative authorities).

**17.4. Severability.** If any one or more of the provisions of this Agreement are for any reason held to be invalid, illegal or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement will be unimpaired and will remain in full force and effect.

**17.5. Counterparts; Method of Amendment.** Each SOW and any amendments thereto may be executed in counterparts and will not be effective or enforceable unless and until it is executed with the signature of an authorized representative of each party. The exchange of a fully executed SOW by fax, electronic and/or computer image shall be sufficient to bind the parties to the terms and conditions of such SOW. Notwithstanding anything herein to the contrary, eTop may, at any time, for any reason, in its sole and absolute discretion make changes to this Agreement and any changes to this Agreement will become effective upon

Client's execution of a new or additional SOW in which the new terms of this Agreement will be incorporated. eTop will post the updated Agreement on the "last updated" date listed above.

**17.6. Headings; Recitals.** The headings and titles of the paragraphs of this Agreement are not part of this Agreement, but are for convenience only and are not intended to define, limit or construe the contents of the provisions contained herein. The recitals are hereby incorporated into the body of this Agreement for all intents and purposes as if fully set forth herein.

**17.7. Survival.** Any provision of this Agreement which, by its nature, would survive termination of this Agreement will survive any such termination of this Agreement.

**17.8. Attorney Fees.** Notwithstanding anything herein to the contrary, if either party brings legal action to enforce its rights under this Agreement, the prevailing party will be entitled to recover all fees, costs and expenses (including without limitation reasonable attorneys' fees) incurred in connection with the action.

**17.9. No Primary Drafter.** The parties acknowledge and agree that they have mutually negotiated the terms and conditions of this Agreement and that any provision contained herein with respect to which an issue of interpretation or construction arises shall not be construed to the detriment of the drafter on the basis that such party or its professional advisor was the drafter, but shall be construed according to the intent of the parties as evidenced by the entire Agreement.

**17.10. Publicity.** Notwithstanding anything herein to the contrary, Client acknowledges and agrees that eTop may use Client as a reference for prospective clients, refer to Client in generic client lists and/or use Client's reviews of eTop and/or its Services in its marketing materials, brochures and/or website.

**17.11. Entire Agreement.** This Agreement, including all SOWs, exhibits and referenced documents constitutes the complete agreement and understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings between the parties.

**17.12. Electronic Signature.** Each party agrees that the electronic signatures, whether digital or encrypted, of the parties included on the applicable SOW are intended to authenticate this writing and to have the same force and effect as manual signatures. Delivery of a copy of the SOW or any other document contemplated hereby bearing an original or electronic signature by facsimile transmission, by electronic mail in portable document format (.pdf) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing an original or electronic signature.