



## Master Professional Services Agreement

This Agreement is by and between ETQ, LLC, a Delaware limited liability company with offices at 700 District Ave, 8<sup>th</sup> Floor, Burlington, MA 01803 (“**ETQ**”) and the company or other legal entity accepting this Agreement or represented by the individual that accepts this Agreement (“**Customer**”). This agreement governs Customer’s purchase of ETQ’s Professional Services associated with its proprietary Software and Services and is incorporated into the Master Subscription Agreement, Master Software License Agreement, or other written software license agreement executed by ETQ and Customer as applicable (each, an “**MSA**”), between ETQ and Customer by reference.

The Agreement was last updated on March 6, 2019 and is made effective between Customer and ETQ as of the date Customer accepts the Agreement (“Effective Date”) by executing an Order Form, MSA or Work Order that references this Agreement. ETQ may update this Agreement by posting an updated version at <https://www.etq.com/company/legal-agreements.shtml>, which will be effective as of the date of posting.

**DEFINITIONS.** In addition to any other terms defined in the MSA (as applicable), the following defined terms will have the following meanings:

“**Professional Services**” means software configuration, development, consulting or other services performed by ETQ as identified under a Work Order or Order Form, excluding Customer Support.

“**Work Order**” means the document(s) by which Customer orders the Professional Services, and which are agreed to by the parties in writing and incorporated herein by reference.

“**Work Product**” means any software, documentation or other materials developed and provided to Customer as part of the Professional Services.

### 1. SERVICES.

**1.1 Description of Professional Services.** ETQ agrees to provide the Professional Services to Customer as defined in the Work Order or Order Form(s) executed by the parties from time to time. ETQ has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Professional Services to be performed by ETQ hereunder unless otherwise provided herein.

**1.2 Limitations of this Agreement.** This Agreement governs Professional Services only and does not grant Customer any rights to use or access the Software or Services, as applicable, which are set forth in the MSA. If ETQ has commenced Professional Services at Customer’s request in connection with the matters described in any Order Form or proposal for Professional Services, or request for proposal, all provisions of the Agreement as originally proposed by ETQ shall apply to such activities even if the Order Form has not been formally executed by both parties.

**1.3 Term.** Each Work Order or Order Form entered into shall remain in effect until the Professional Services described therein are completed.

**1.4 Cooperation.** Customer agrees to cooperate with ETQ and provide ETQ access to complete and accurate information and data from its officers, agents, and employees; office accommodations and facilities; equipment assistance; and suitably configured technology products in a timely fashion and as reasonably required by ETQ to perform its duties hereunder. Customer agrees that such cooperation, performance of its responsibilities hereunder and provision of information, data, accommodations and facilities, equipment assistance, and technology products are essential to ETQ’s ability to perform the Professional Services and that ETQ shall be entitled to rely on Customer’s decisions and approvals in connection with ETQ’s Professional Services. To the extent that the Professional Services require ETQ to access or use any third party products provided by Customer, Customer warrants that it shall have all rights and licenses of third parties necessary or appropriate for ETQ to access or use such third party products and agrees to produce evidence of such rights and licenses upon the reasonable request of ETQ and to indemnify, defend and hold harmless ETQ and its licensors from and against any claims, actions, demands, lawsuits, damages, liabilities, settlements, penalties, fines, costs and expenses (including reasonable attorneys’ fees) to the extent arising from ETQ’s access to or use of such third party products.

**1.5 Changes.** If any relevant requirements, project plans, schedules, scopes, specifications, designs, software, hardware products, or related system environments or architecture that are either set forth in a Work Order or Order Form or otherwise necessary to perform the Professional Services are changed by Customer or any other person not authorized by ETQ, ETQ shall not be responsible for the change or the completion of Professional Services affected by the change unless Customer and ETQ specifically consent to the change, scheduling, and additional charges, if any, in writing.

**1.6 Requests for acceptance.** Customer has five (5) business days to respond to request for acceptance. If Customer does not identify specific defects in an organized deficiency list within the foregoing time frame, the Work Product is deemed accepted.

### 2. FEES AND EXPENSES.

**2.1 Fees.** Customer shall pay to ETQ fees for the Professional Services as specified in the applicable Work Order or Order Form in accordance with the terms specified therein. All Professional Services will be provided on a time and materials basis, unless

otherwise stated, and any amounts stated as estimates shall be non-binding and shall not constitute either a "fixed fee" or "not-to-exceed" agreement, unless specifically stated to be such. For any Professional Services that ETQ performs pursuant to the parties' informal agreement or understanding for which fees are not specified on the Order Form, such Professional Services shall be paid for at ETQ's then-prevailing time and materials rates unless otherwise agreed by the parties in writing.

**2.2 Delays.** Any delays in performance of the Professional Services caused by Customer may result in additional charges for resource time.

**2.3 Expenses.** Unless otherwise specified in a Work Order or Order Form, Customer shall reimburse ETQ for out-of-pocket expenses reasonably incurred in rendering the Professional Services, including reasonable travel and transportation expenses, lodging, and meals. In addition, ETQ will invoice Customer for travel time associated with the Professional Services at a rate of \$110 per hour for the actual time traveled, not to exceed four (4) hours per resource, per session.

### **3. OWNERSHIP.**

**3.1 Work Product.** Upon final payment, Customer shall have a perpetual, nontransferable, fully paid-up right and license for Customer's internal business purposes to use, copy, modify and prepare derivative works of the Work Product developed in the course of the Professional Services pursuant to this Agreement and the MSA, whether jointly or individually, subject to Customer's obligation to maintain the confidentiality of same for the benefit of ETQ. Notwithstanding the foregoing, where the Work Product consists of a modification, extension, configuration, enhancement, derivative, improvement, Modification, or modification of the Software, Services, or Documentation (each, a "**Configuration**"), Customer agrees that the software license and ownership provisions and all applicable restrictions contained in the MSA shall govern the use and ownership of such Configurations, and this Agreement does not grant license rights to such Configurations beyond those granted to Customer in the MSA with respect to the Services or Software as applicable. Such Configurations and all Work Product are and shall remain the property of ETQ, and all intellectual property and other rights, title, and interest therein are hereby assigned to ETQ, including all rights in copyrights, trade secrets, trademarks, patents, inventions, modifications, enhancements, derivative works, discoveries, processes, methods, designs and know-how, whether or not copyrightable or patentable, pertaining to such Configurations, Work Product and the Professional Services, whether conceived by ETQ alone or in conjunction with others, all of which constitute ETQ Confidential Information. Customer acknowledges that ETQ is in the business of licensing and configuring its proprietary software products for a wide variety of customers and understands that ETQ will continue these activities. Accordingly, nothing in this Agreement shall preclude or limit ETQ from providing services or developing, licensing or configuring software or materials for itself or others, irrespective of the possible similarity of such software or materials to Work Product or Configurations developed during the course of the Agreement, nor using for itself or others any knowledge, skills, experience, ideas, concepts, know-how and techniques used or gained in the performance of Professional Services or the development of Work Product or Configurations hereunder or which may be embodied or reflected therein. ETQ's rights under this Section 3.1 shall be perpetual and irrevocable.

**3.2 ETQ Products.** In the course of performance hereunder, ETQ may use products or materials proprietary to it, including ETQ software applications ("**ETQ Products**"). Such ETQ Products are ETQ's Confidential Information for purposes of the MSA. Customer shall have or obtain no rights in such ETQ Products other than to use them as authorized by ETQ from time to time solely for purposes of performing Customer responsibilities hereunder or as otherwise permitted in writing by ETQ.

### **4. LIMITED WARRANTY.**

**4.1 Warranty.** ETQ warrants, for Customer's benefit alone, for a period of 30 days from the performance of Professional Services, (A) that the Professional Services will be performed in a professional workman-like manner consistent with industry standards; and (B) the Work Product(s) will substantially conform with the descriptions provided for in each Work Order or Order Form. For clarity, the warranty period for any Work Product resulting from the Professional Services will in no event exceed the termination date of the Professional Services. ETQ does not warrant error-free or uninterrupted operation of any Professional Service or Work Product or that ETQ will correct all non-conformities.

**4.2 Exclusive Remedy.** ETQ's entire liability and Customer's sole and exclusive remedy for the breach of ETQ's warranty obligations in Section 4.1, shall be for ETQ to use commercially reasonable efforts to reperform the affected Professional Services or, at ETQ's option, terminate the Work Order or Order Form and refund to Customer the fees paid for the portion of such Professional Services giving rise to the breach plus any prepaid fees for Services which shall not be provided as a result of termination.

**4.3 Notice.** Licensee shall notify ETQ within the warranty period in writing of the alleged warranty breach and provide ETQ with a precise description of the problem and all relevant information reasonably necessary for ETQ in order to rectify such warranty breach.

**4.4 Exclusions.** The warranty described in this Section 4 shall not apply (A) if the applicable Work Product is not used in accordance with the applicable Documentation or (B) if the alleged warranty breach is caused by (i) a modification to the Work Product, (ii) Customer, or (iii) any third party software or technology product.

**4.5 Disclaimer.** OTHER THAN AS EXPRESSLY SET FORTH IN SECTION 4.1 ABOVE, AND EXCLUDING ANY WARRANTIES EXPRESSLY SET FORTH IN ANY ADDITIONAL TERMS AND CONDITIONS AGREED TO BY THE PARTIES, NEITHER ETQ NOR ITS LICENSORS, EMPLOYEES, AGENTS, DISTRIBUTORS, MARKETING PARTNERS, RESELLERS, PARENT, OR AFFILIATES OR SUBSIDIARIES MAKE ANY EXPRESS OR IMPLIED WARRANTIES OR REPRESENTATIONS TO CUSTOMER, ANY OF ITS AFFILIATES, OR TO ANY OTHER PARTY WITH RESPECT TO THE SOFTWARE, DOCUMENTATION, OR SERVICES, OR OTHERWISE REGARDING THE AGREEMENT, WHETHER ORAL OR WRITTEN, EXPRESS, IMPLIED, OR STATUTORY. WITHOUT LIMITING THE FOREGOING, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE IS EXPRESSLY EXCLUDED AND DISCLAIMED. ETQ DOES NOT WARRANT THAT THE WORK PRODUCT WILL MEET CUSTOMER'S REQUIREMENTS, THAT THE WORK PRODUCT IS WITHOUT DEFECT OR ERROR, OR THAT THE WORK PRODUCT WILL OPERATE WITH ANY HARDWARE OR SOFTWARE NOT SPECIFIED IN THE DOCUMENTATION.