

# **EWRTech LLC**

## **EwrTech Software License & SaaS Agreement (Any form of Code)**

This Agreement (as defined below) is hereby entered into and agreed upon by you, either an individual or an entity (“You” or “Company”) and EwrTech Technologies Ltd. and EwrTech Solutions ULC (collectively, “EwrTech”). This Agreement is made and entered into as of the date that You first accept this Agreement either by executing an Order Form that references this Agreement or by utilizing the Services (“Effective Date”).

BY ACCEPTING THIS AGREEMENT, EITHER BY INDICATING YOUR ACCEPTANCE, BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR BY UTILIZING THE SERVICES (DEFINED BELOW), YOU AGREE TO THIS AGREEMENT. THIS AGREEMENT IS A LEGALLY BINDING CONTRACT BETWEEN YOU AND EWRTECH AND SETS FORTH THE TERMS THAT GOVERN THE LICENSE PROVIDED TO YOU HEREUNDER. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT. ANY CHANGES, ADDITIONS OR DELETIONS BY YOU TO THIS AGREEMENT WILL NOT BE ACCEPTED AND WILL NOT BE A PART OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THIS AGREEMENT, YOU MUST NOT ACCESS, DOWNLOAD, INSTALL, OR USE THE SOFTWARE OR SERVICES. YOU ACKNOWLEDGE AND AGREE THAT EWRTECH HAS MADE THE CURRENT VERSION OF THIS AGREEMENT, INCLUDING THE TERMS AND CONDITIONS OF THE DOCUMENTS THAT ARE INCORPORATED IN THIS AGREEMENT BY REFERENCE, AVAILABLE TO YOU ON EWRTECH’S WEBSITE. YOU ACKNOWLEDGE AND AGREE THAT, OTHER THAN THE ORDER FORM YOU ENTER INTO WITH EWRTECH, EWRTECH MAY REVISE AND UPDATE THE TERMS AND CONDITIONS OF THE AGREEMENT FROM TIME TO TIME, INCLUDING TERMS AND CONDITIONS AND OTHER DOCUMENTS THAT ARE INCORPORATED IN THE AGREEMENT BY REFERENCE. EWRTECH WILL MAKE SUCH REVISED AND UPDATED VERSIONS OF THE AGREEMENT AVAILABLE ON EWRTECH’S WEBSITE, OR OTHERWISE PROVIDE YOU NOTICE OF THEM, AND YOUR CONTINUED USE OF THE SERVICES SHALL REPRESENT YOUR ACCEPTANCE OF AND AGREEMENT TO THE THEN-CURRENT TERMS AND CONDITIONS OF THE AGREEMENT. YOU AGREE THAT YOU WILL FREQUENTLY CHECK THE EWRTECH WEBSITE FOR ANY REVISIONS AND UPDATES TO THE AGREEMENT.

# 1. DEFINITIONS.

**1.1 Affiliates** means an entity controlled by, under common control with, or controlling such entity, where control is denoted by having fifty percent (50%) or more of the voting power (or equivalent) of the applicable entity. Subject to the terms and conditions of this Agreement, Your Affiliates may use the license granted hereunder, and You are responsible for their compliance with this Agreement and their actions and/or omissions.

**1.2 Agreement** means the Software Services Agreement, the Data Processing Addendum, the Order Form, and EwrTech's invoices for charges due from You in accordance with the Order Form.

**1.3 Client(s)** means, if You are an MSP, Your customer(s).

**1.4 Data Processing Addendum** means the terms of the then-current data processing addendum that EwrTech provides or makes available to you, including on EwrTech's website, and which EwrTech may revise from time to time.

**1.5 Devices** means (whether physical or virtual) a server, system, workstation, computer, mobile device, or end point upon which or through which the Services are used and/or on which the Software is installed.

**1.6 Documentation** means the then-current official user documentation prepared and provided by EwrTech to You on the use of the Services or Software, which documentation EwrTech may update from time to time. For the avoidance of doubt, any installation guide or end user documentation not prepared or provided by EwrTech, any online community site, unofficial documentation, videos, white papers, or related media or feedback does not constitute Documentation.

**1.7 MSP** means a managed service provider.

**1.8 EwrTech Content** means, if applicable, EwrTech marketing documents and other content that are made available by EwrTech on EwrTech's website from time to time for MSPs to use in connection with selling to their customers their services that utilize the Services and Software.

**1.9 EwrTech Marks** means the trademarks and service marks that are specifically approved by EwrTech for MSPs to use in connection with selling to their customers their services that utilize the Services and Software.

**1.10 Order Form** means the EwrTech order page, product information dashboard, sales order, or other EwrTech ordering document that specifies Your purchase of the Services, pricing, and other related information.

**1.11 Personal Data** means any information that can be used to identify an individual as that term is defined under Regulation (EU) 2016/679 ("General Data Protection Regulation" or "GDPR").

**1.12 Product Addendum** means additional terms and conditions set forth in Section 13 that relate to the applicable Services, Software or Documentation.

**1.13 Services** means the products and software services, including any application programming interface that accesses functionality, that are provided to You by EwrTech.

**1.14 Software** means the object code versions of any downloadable software provided by EwrTech solely for the purpose of accessing the Services, including but not limited to an agent, together with the updates, new releases or versions, and modifications or enhancements, owned and provided by EwrTech to You pursuant to this Agreement.

**1.15 Support** means the standard maintenance or support provided by EwrTech or its designated agents for the Services as set forth in this Agreement.

**1.16 User** means an individual authorized by You to use the Services, Software, and Documentation, for whom You have purchased a subscription or to whom You have supplied a user identification and password. User(s) may only include Your employees, consultants, and contractors, and if applicable, Your Clients.

**1.17 Viruses mean any** malicious code, Trojan horses, malware, spam, viruses, or other destructive technology.

**1.18 Your Data or Data** means data, files, or information, including Personal Data, accessed, used, communicated, processed, stored, or submitted by You or Your Users in connection with Your or Your User's use of the Services or Software.

## 2. PROVISION OF SERVICES.

**2.1 Services License.** Upon payment of the fees and subject to Your continuous compliance with the terms and conditions of this Agreement, EwrTech hereby grants You a limited, revocable, non-exclusive, non-transferable license for the applicable Term to use internally the Services, Software, and Documentation, subject to all of the terms of the Agreement, including those contained in this Section 2.1. You may provide, make available to, or permit Your Users to use or access the Services, the Software, or Documentation, in whole or in part. You agree that EwrTech may deliver the Services or Software to You with the assistance of its Affiliates, licensors, and service providers. During the Term (as defined herein), EwrTech may update or modify the Services or Software and Documentation or provide alternative Services or Software and Documentation to reflect changes in, among other things, laws, regulations, rules, technology, industry practices, patterns of system use, and availability of a third party program, although the provision of an alternative Software or Documentation shall not materially reduce the level of performance, functionality, or security of the Software during the Term.

**2.2 Evaluation or Beta License.** If the Services, Software, and Documentation are provided to You for evaluation, beta or release candidate purposes, EwrTech grants to You a limited, revocable, non-exclusive, non-transferable, license to use the Services, Software internally

solely for evaluation purposes prior to purchase or implementation (an “Evaluation License”), subject to this Agreement and Your continuous compliance with its terms. The Evaluation License is not for production use. The Evaluation License shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from EwrTech, in its sole discretion. Notwithstanding any other provision contained herein, the Services, Software, and Documentation provided pursuant to an Evaluation License are provided to You “AS IS” and without indemnification, liability, Support, or statutory, express, or implied warranty of any kind. Except to the extent such terms conflict with the specific Evaluation License terms set forth in this Section, all other terms of this Agreement shall apply to the Services, Software, and Documentation licensed under an Evaluation License.

**2.3 Demonstration License.** If the Services, Software, and Documentation are provided to You for demonstration purposes, EwrTech grants to You a limited, revocable, non-exclusive, non-transferable license to use internally the Services, Software solely for demonstration purposes with Clients (a “Demonstration License”), subject to this Agreement and Your continuous compliance with its terms. The Demonstration License is not for production use. The Demonstration License shall terminate on the end date of the pre-determined evaluation period or immediately upon notice from EwrTech, in its sole discretion. Notwithstanding any other provision contained herein, the Services, Software, and Documentation provided pursuant to a Demonstration License are provided to You “AS IS” and without indemnification, liability, support, or statutory, express or implied warranty of any kind. Except to the extent such terms conflict with the specific Demonstration License terms set forth in this Section, all other terms of this Agreement shall apply to the Services, Software, and Documentation licensed under a Demonstration License

**2.4 Account Type.** If applicable to Your license, You may, at any time, upgrade Your EwrTech license. The change will take effect immediately.

### **3. LICENSE RESTRICTIONS; OBLIGATIONS.**

**3.1 License Restrictions.** You may not do any of the following: (i) provide, make available to, or permit individuals other than Your Users to use or access the Services, the Software, or Documentation, either in whole or part, except under the terms expressly set forth in this Agreement; (ii) copy, reproduce, republish, upload, post, or transmit the Services, Software, or Documentation (except for back-up or archival purposes, which may not be used for transfer, distribution, or sale, or installation on Your Devices); (iii) license, sell, resell, rent, lease, transfer, sublicense, distribute, or otherwise transfer rights to the Services, Software, or Documentation; (iv) modify, translate, reverse engineer, decompile, disassemble, create derivative works of, or otherwise attempt to derive the source code of the Services, Software, or Documentation; (v)

create, market, distribute add-ons or enhancements or incorporate into another product the Services, Software, or Documentation without prior written consent of EwrTech; (vi) remove any proprietary notices or labels on the Services, Software, or Documentation, unless authorized in writing by EwrTech; (vii) license the Services, Software, or Documentation (a) if You (or any of Your Users) are a direct competitor (or an agent of a direct competitor) of EwrTech, (b) for the purposes of monitoring the availability, performance, or functionality of the Services or Software, or (c) for any other benchmarking or competitive purposes; (viii) use the Services, Software, or Documentation to violate any rights of third parties, including, without limitation, privacy rights, or storing or transmitting infringing, libelous, unlawful, or tortious material or to store or transmit material in violation of any applicable laws; (ix) use the Services or Software to store or transmit Viruses; (x) interfere with, impair, or disrupt the integrity or performance of the Services or any other third party's use of the Services or any software, hardware, equipment or network; (xi) use the Services in a manner that results in excessive use, bandwidth, or storage; or (xii) alter, circumvent, or provide the means to alter or circumvent the Services or Software, including circumvention of the technical limitations or usage limits of the Services or Software, or attempt to avoid any recurring fees. Any such forbidden use shall immediately terminate Your license to the Services and Software. The Services and Software are intended only for use with public domain or properly licensed third-party materials. All responsibility for obtaining such a license is Yours, and EwrTech shall not be responsible for Your failure to do so.

**3.2 Usage.** You and Your Users' usage of the Services or Software shall not exceed your rights to use the Services or Software set forth in the applicable Order Form. You are responsible for Your and Your Users' usage of the Services and Software, including any unauthorized usage. EwrTech may monitor usage of the Services and Software by all Users at any time. In addition, EwrTech, or its designated representatives, will have the right upon reasonable notice, during regular business hours, to access and review your books and records for the purpose of verifying Your compliance with the terms and conditions of this Agreement, including any usage limitations.

**3.3 Your Obligations.** You acknowledge, agree, and warrant that: (i) You are and will be responsible for Your and Your Users' activity and compliance with this Agreement, and if You become aware of any violation, You will immediately terminate the offending party's access to the Software and Documentation and notify EwrTech; (ii) You and Your Users will comply with all applicable local, state, federal, and international laws; (iii) You will establish a constant internet connection and electrical supply for the use of the Services, use the Services and Software only in accordance with the Documentation, ensure that the Software is installed on a supported platform as set forth in the Documentation and use the Services and Software only with public domain or properly licensed third party materials; (iv) You will install the latest version of the Software on Devices accessing or using the Services; (v) You are legally able to process and provide Your Data to EwrTech and its Affiliates, including obtaining appropriate consents or rights for such processing; (vi), You have the right to access and use Your

infrastructure, including any system or network, to obtain or provide the Services and Software and will be solely responsible for the accuracy, security, quality, integrity, and legality of the same; and (vii) You will keep your registration information, billing information, passwords and technical data accurate, complete, secure and current for as long as You subscribe to the Services, Software and Documentation.

If You are an MSP, You further acknowledge, agree, and warrant that: (i) You have sufficient technical infrastructure, knowledge, and expertise to perform Your duties for Your Clients; (ii) You will provide all sales, problem resolution, and support services to Your Clients; (iii) You will be responsible for billing, invoicing, and collection for Your Clients; and (iv) You will operate at Your own expense and risk under Your own name as an MSP.

**3.4 Injunctive Relief.** The parties agree that, in addition to any other relief to which the non-breaching party may be entitled, any material breach of this Section 3 will cause irreparable injury and the non-breaching party may seek injunctive relief in a court of competent jurisdiction without the need of posting bond.

## 4. PROPRIETARY RIGHTS.

**4.1 License to EwrTech Content.** This paragraph applies to You only if Company is an MSP. Subject to the terms of this Agreement and Your continuous compliance with the same, EwrTech hereby grants to You a personal, limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use, reproduce and distribute the EwrTech Content in Company's marketing and advertising materials that are provided to Clients. No right to modify or prepare derivative works of the EwrTech Content (including any translation into another language) is granted to Company.

**4.2 License to EwrTech Marks.** This paragraph applies to You only if Company is an MSP. Subject to this Agreement and Your continuous compliance with its terms, EwrTech hereby grants to You a personal, limited, revocable, non-exclusive, non-transferable, non-sublicensable license to use the EwrTech Marks during this Agreement solely to market and advertise to Clients that Company's services utilize the Services and Software. Your use of the EwrTech Marks will strictly comply with EwrTech's Trademark and Copyright Guidelines and Branding Guidelines (the "Guidelines") communicated or made available to You from time to time, including on EwrTech's website, which are incorporated in the Agreement by this reference. You will obtain EwrTech's prior written approval of all uses of the EwrTech Marks. EwrTech may withdraw any approval of any use of the EwrTech Marks at any time and at its sole discretion, although no such withdrawal will require the recall of any previously distributed physical printed materials. You shall cooperate with EwrTech, at EwrTech's request in facilitating EwrTech's monitoring and control of the nature and quality of the materials bearing the EwrTech Marks and will supply EwrTech with specimens of Company's use of the EwrTech Marks upon request. If EwrTech

notifies You that Company's use of the EwrTech Marks is not in compliance with this Agreement, then You shall promptly take such reasonable corrective action as reasonably directed by EwrTech. EwrTech is the sole and exclusive owner of the EwrTech Marks and is also the owner of all goodwill associated with the EwrTech Marks. You shall do nothing inconsistent with such ownership, either during the term of this Agreement or afterwards. Without limitation, You shall not attempt to register the EwrTech Marks or any similar marks in any jurisdiction or challenge EwrTech's ownership of the EwrTech Marks. Your use of the EwrTech Marks shall be on behalf, and inure to the benefit, of EwrTech. Your utilization of the Marks will not create any right, title or interest in such EwrTech Marks for Your benefit. Company shall use the EwrTech Marks so that each EwrTech Mark creates a separate and distinct impression from any other trademark that may be used or affixed to materials bearing the EwrTech Marks. You may not delete, remove, hide, move or alter any trademark, logo, icon, image or text that represents the company name of EwrTech, or create or use any derivation thereof, or any icon, image, or text that is likely to be confused with the same. All representations of the company name or mark of EwrTech or any of its Affiliates' names or marks must remain as originally distributed regardless of the presence or absence of a trademark, copyright, or other intellectual property symbol or notice.

**4.3 Ownership of EwrTech Intellectual Property.** The Services, Software, EwrTech Content, EwrTech Marks and Documentation are licensed, not sold. Use of "purchase" in conjunction with licenses under this Agreement does not imply a transfer of ownership. Except for the limited rights expressly granted by EwrTech to You under this Agreement, You acknowledge and agree that all right, title and interest in and to all copyrights, trademarks, patents, trade secrets, intellectual property (including without limitation algorithms, business processes, improvements, enhancements, modifications, derivative works, and information collected and analyzed in connection with the Services) and other proprietary rights arising out of or relating to the Services, the Software, EwrTech Content, EwrTech Marks, and Documentation, and the provision of them, belong exclusively to EwrTech or its suppliers or licensors. All right, title, and interest in and to content which may be accessed through the Services or the Software is the property of the respective owner and may be protected by applicable intellectual property laws and treaties. This Agreement gives You no rights to such content, including use of the same. You hereby grant EwrTech a royalty-free, fully-paid, worldwide, exclusive, transferable, sub-licensable, irrevocable and perpetual license to use or incorporate into its products and services any information, data, suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the Services, Software, or Documentation. All rights not expressly granted to You under this Agreement are reserved by EwrTech. There are no implied rights to the Services, Software, Documentation, EwrTech Content, or EwrTech Marks.

**4.4 Ownership of Your Data.** You and Your Users retain all right, title, and interest in and to all copyright, trademark, patent, trade secret, intellectual property, and other proprietary rights in and to Your Data. EwrTech's right to access and use the same are limited to those expressly granted in this Agreement. No other rights with respect to Your Data are implied.

## 5. TERM AND TERMINATION.

**5.1 Term.** Unless terminated earlier in accordance with this Section, this Agreement will begin on the Effective Date and will continue until the end of the period specified in the applicable Order Form (the "**Initial Term**"). You authorize EwrTech to automatically renew the applicable Services upon the expiration of the Initial Term (each a **Renewal Term**, and collectively with the Initial Term, the **Term**). The Renewal Term will be the same length as the Initial Term unless otherwise specified by EwrTech at the time of renewal.

**5.2 Your Rights.** You may terminate this Agreement at any time by providing EwrTech with thirty (30) days' prior written notice of Your intention to terminate this Agreement. The thirty (30) day termination period will commence on the first day of the full calendar month after receipt of the termination notice. During the Initial Term, fees charged during the thirty (30) day notification period will be based on the list price of the monthly contract value. During any Term, an early termination fee, based on the list price of the monthly contract value, will also be applied to the final invoice and due upon receipt.

**5.3 Termination by EwrTech.** Unless as otherwise set forth herein, and in addition to any other right or remedy EwrTech may have, EwrTech may suspend or terminate the Agreement upon thirty (30) days' prior written notice or immediately: (i) if You become subject to bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors; (ii) if You infringe or misappropriate EwrTech's intellectual property rights; (iii) if You breach this Agreement, including failure to make any payment due hereunder; or (iv) pursuant to or in compliance with applicable law or our receipt of a subpoena, court order, or other request by a law enforcement agency.

**5.4 Effect of Termination.** Termination shall not relieve You of the obligation to pay any fees or other amounts accrued or payable to EwrTech through the end of the current Term. You shall not receive a credit or refund for any fees or payments made prior to termination. Without prejudice to any other rights EwrTech may have, upon termination, You must cease all use of the Services, Software, EwrTech Marks, EwrTech Content, and Documentation and destroy or return (upon request by EwrTech) all copies of the Services, Software, EwrTech Content, and Documentation and destroy all materials bearing the EwrTech Marks. You further acknowledge



and agree that You will retrieve Your Data or copies of Your Data from EwrTech within five (5) business days of the termination of this Agreement. Unless in accordance with our internal policies, contractual, legal, or other obligation, You acknowledge and agree that EwrTech has the right to delete Your Data, including any and all copies thereof. Your Data, once deleted, will not be able to be recovered. Sections 1 (Definitions), 4.3 (Ownership of EwrTech Intellectual Property), 4.4 (Ownership of Your Data), 5.4 (Effect of Termination), 6-8 (Fees and Payment; Taxes; Data; Protection of Your Data; Confidential Information), 9.1 (Disclaimer), 10 (Indemnification), 11 (Limitation of Liability), and 14 (General), shall survive any termination or expiration of this Agreement, along with any other provisions which by their express terms do survive or by their nature should survive.

## **6. FEES AND PAYMENT; TAXES.**

**6.1 Fees and Payment.** All orders placed will be considered final upon acceptance by EwrTech. Fees will be due and payable as set forth on the Order Form. Unless otherwise set forth herein, fees shall be at EwrTech's then-standard rates at the time of invoice or, if applicable, as set forth in the Order Form. If You fail to pay as so required, EwrTech shall be entitled, at its sole discretion, to: (i) suspend provision of the Services until You fulfill Your pending obligations; (ii) charge You an interest rate designated by EwrTech at the time of invoice; and/or (iii) terminate this Agreement. If You or Your Users exceed the license capacity designated in Your Order Form, in addition to EwrTech's other remedies, You will be charged, and You shall pay, the then-current list price for the excess usage, which will be reflected in Your invoice. Unless otherwise stated, all payments made under this Agreement shall be in United States dollars. Fees are non-refundable. If You believe all or any part of an invoice is in error, you must notify EwrTech within ninety (90) days of your receipt of the invoice. If You fail to do so, EwrTech will not be required to make any adjustment to the invoice, and You shall be deemed to have waived any right to contest the invoice. Company may, at any time, upgrade its EwrTech subscription license. After an upgrade, the Company will be billed at the beginning of the next payment cycle for the additional fees due under the upgraded subscription license. The amount due and owing for the upgraded subscription license will be reduced by the amount the Company has already paid, if any, for the remainder of the applicable Term.

**6.2 Taxes.** All fees are exclusive of taxes, and You shall pay or reimburse EwrTech for all taxes arising out of transactions contemplated by this Agreement. If You are required to withhold any tax for payments due, You shall gross up Your payments to EwrTech so that EwrTech receives sums due in full, free of any deductions. As reasonably requested, You will provide documentation to EwrTech showing that taxes have been paid to the relevant taxing authority. "Taxes" means any sales, VAT, use, and other taxes (other than taxes on EwrTech's income), export and import fees, customs duties and similar charges imposed by any government or

other authority. You hereby confirm that EwrTech can rely on the name and address that You provide to EwrTech when You agree to the fees or in connection with Your payment method as being the place of supply for sales tax and income tax purposes or as being the place of supply for VAT purposes where You have established Your business.

## **7. DATA; PROTECTION OF YOUR DATA.**

**7.1 Your Data.** EwrTech and its Affiliates may remove Your Data or any other data, information, or content of data or files used, stored, processed or otherwise by You or Your Users that EwrTech, in its sole discretion, believes to be or is: (a) a Virus; (b) illegal, libelous, abusive, threatening, harmful, vulgar, pornographic, or obscene; (c) used for the purpose of spamming, chain letters, or dissemination of objectionable material; (d) used to cause offense, defame or harass; or (e) infringing the intellectual property rights or any other rights of any third party. You agree that You and Your Users are responsible for maintaining and protecting backups of Your Data directly or indirectly processed using the Services and Software and that EwrTech is not responsible for exportation of, the failure to store, the loss, or the corruption of Your Data. You hereby grant to EwrTech a nonexclusive, worldwide, royalty-free, fully-paid, transferable license to process Your Data to assist with the necessary operation and function of the Services and Software, to improve EwrTech products and services and Your and Your Users' experience with them, and for any purpose set forth in this Agreement or pursuant to the EwrTech Privacy Notice, which EwrTech provides or makes available to you, including on EwrTech's website, which EwrTech may update or revise from time to time, and which is incorporated in this Agreement by this reference.

You represent and warrant that You and Your Users, in regard to processing of Personal Data hereunder, shall be deemed the data controller (and EwrTech, the data processor) and shall determine the purpose and manner in which such Personal Data is or will be processed.

**7.2 Protection of Data.** Each party shall comply with its respective obligations under applicable data protection laws. Each party shall maintain appropriate administrative, physical, technical and organizational measures that ensure an appropriate level of security for Confidential Information and Personal Data. EwrTech and its Affiliates will process Personal Data in accordance with the Data Processing Addendum, which is hereby incorporated by this reference. You are responsible for ensuring that the security of the Services is appropriate for Your intended use and the storage, hosting or processing of Personal Data.

**7.3 No Protected Health Information.** You expressly acknowledge and agree that You shall neither submit to the Services or Software, nor use the Services or Software to store, maintain, process or transmit, any data or information that constitutes protected health information as defined under the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA") or otherwise use the Services or Software in any manner that would

require EwrTech or the Services or Software to be compliant with HIPAA. You acknowledge and agree that EwrTech shall have no liability to You for any such data or information. You further acknowledge and agree that neither EwrTech or its Affiliates are acting on Your behalf as a Business Associate (as defined under HIPAA). EwrTech may immediately and upon notice suspend all or portion of Your access to the Services and Software (without any liability to You in connection with such suspension), if EwrTech has a good faith belief that You have breached this paragraph.

## 8. CONFIDENTIAL INFORMATION.

As used in this Agreement, “**Confidential Information**” means any nonpublic information or materials disclosed under this Agreement by either party to the other party, either directly or indirectly, in writing, orally, or by inspection of tangible objects, which the disclosing party clearly identifies as confidential or proprietary. Confidential Information includes Personal Data, and EwrTech’s Confidential Information includes the Services, Software, and any information or materials relating to the Services or Software (including pricing), or otherwise. Confidential Information may also include confidential or proprietary information disclosed to a disclosing party by a third party.

The receiving party will: (i) hold the disclosing party’s Confidential Information in confidence and use reasonable care to protect the same; (ii) restrict disclosure of such Confidential Information to those employees or agents with a need to know such information and who are under a duty of confidentiality respecting the protection of Confidential Information substantially similar to those of this Agreement; and (iii) use Confidential Information only for the purposes for which it was disclosed, unless otherwise set forth in this Agreement. The restrictions will not apply to Confidential Information, excluding Personal Data, to the extent it: (i) is (or through no fault of the recipient, has become) generally available to the public; (ii) was lawfully received by the receiving party from a third party without such restrictions; (iii) was known to the receiving party without such restrictions prior to receipt from the disclosing party; or (iv) was independently developed by the receiving party without breach of this Agreement or access to or use of the disclosing party’s Confidential Information.

The recipient may disclose Confidential Information to the extent the disclosure is required by law, regulation, or judicial order, provided that the receiving party will provide to the disclosing party prompt notice, where permitted, of such order and will take reasonable steps to contest or limit the steps of any required disclosure. The parties agree that, in addition to any other relief to which the non-breaching party may be entitled, any material breach of this Section 8 will cause irreparable injury and the non-breaching party may seek injunctive relief in a court of competent jurisdiction without the need of posting bond.

## 9. DISCLAIMER.

EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, THE SERVICES, SOFTWARE, DOCUMENTATION, EWRTECH CONTENT, EWRTECH MARKS, SUPPORT, AND ALL OTHER PRODUCTS AND SERVICES PROVIDED HEREUNDER OR MADE AVAILABLE UNDER THIS AGREEMENT, INCLUDING THIRD PARTY HOSTED SERVICES OR SOFTWARE (COLLECTIVELY, FOR THE PURPOSES OF THIS PARAGRAPH, “PRODUCTS”), ARE PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EWRTECH DISCLAIMS AND EXCLUDES ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, ACCURACY, RELIABILITY, SECURITY, LOSS OR CORRUPTION OF DATA, CONTINUITY, OR ABSENCE OF DEFECT RELATING TO THE PRODUCTS OR THE RESULTS OF THE SAME. EWRTECH DOES NOT WARRANT THAT THE PRODUCTS, INCLUDING ANY SPECIFICATIONS OR FUNCTIONS CONTAINED IN THEM, WILL MEET YOUR REQUIREMENTS, THAT THE PRODUCTS WILL ERROR-FREE, OR THAT DEFECTS IN THE PRODUCTS WILL BE CORRECTED.

EWRTECH SPECIFICALLY DISCLAIMS RESPONSIBILITY FOR THIRD-PARTY PRODUCTS AND SERVICES WITH WHICH YOU MAY UTILIZE THE SERVICES AND SOFTWARE, AND YOU SPECIFICALLY DISCLAIM AND WAIVE ANY RIGHTS AND CLAIMS AGAINST EWRTECH WITH RESPECT TO SUCH THIRD-PARTY PRODUCTS AND SERVICES.

## 10. INDEMNIFICATION.

**10.1 EwrTech Indemnification.** Subject to Section 11 below, EwrTech will indemnify, defend, and hold You harmless from any third party claim brought against You that the Services, Software, Documentation, EwrTech Content, or EwrTech Marks infringes or misappropriates any U.S. patent, copyright, trademark, trade secret, or other intellectual property rights of a third party (an “Infringement Claim”), provided: (i) use of the Services, Software, Documentation, EwrTech Content, and EwrTech Marks by You is in conformity with the Agreement and Documentation; (ii) the alleged infringement is not caused by modification or alteration of the Services, Software, Documentation, EwrTech Content, or EwrTech Marks; (iii) the alleged infringement was not caused by a combination or use of the Services, Software, Documentation, EwrTech Content, or EwrTech Marks with products or content not supplied by EwrTech; and/or (iv) You have not continued to use the Services, Software, Documentation, EwrTech Content, or EwrTech Marks after You are notified of the alleged infringement and provided with Services, Software,

Documentation, EwrTech Content, or EwrTech Marks that avoids the alleged infringement. EwrTech's indemnification obligations are contingent upon You: (i) promptly notifying EwrTech in writing of the Infringement Claim; (ii) granting EwrTech sole control of the selection of counsel, defense, and settlement of the Infringement Claim; and (iii) providing EwrTech with reasonable assistance, information and authority required for the defense and settlement of the Infringement Claim. This Section states EwrTech's entire liability (and shall be Your sole and exclusive remedy) with respect to Infringement Claims.

**10.2 Your Indemnification.** You agree to indemnify, defend, and hold harmless EwrTech and its Affiliates, and its and their directors, officers, employees, and agents from and against any claims, liabilities, damages, costs, and expenses ( including attorneys' fees and expenses) arising out of or due to: (i) Your Data; (ii) Your (or Your User's) breach of this Agreement; (iii) Your (or Your User's) use of the Services, Software, Documentation, or EwrTech Content in violation of third party rights, including any intellectual property or privacy rights, or any applicable laws; or (iv) Your (or Your User's) misuse of the Services, Software, Documentation, EwrTech Content, or EwrTech Marks.

## **11. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, (I) IN NO EVENT WILL EWRTECH OR ITS AFFILIATES, OR ITS OR THEIR DIRECTORS, EMPLOYEES, OR AGENTS HAVE ANY LIABILITY, CONTINGENT OR OTHERWISE, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, STATUTORY OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO LOST PROFITS, LOST OR CORRUPTED DATA, LOSS OF GOODWILL, WORK STOPPAGE, EQUIPMENT FAILURE OR MALFUNCTION, PROPERTY DAMAGE OR ANY OTHER DAMAGES OR LOSSES ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, SOFTWARE, DOCUMENTATION, EWRTECH CONTENT, M-ABLE MARKS OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER, EVEN IF THEY HAVE BEEN ADVISED OF THE POSSIBILITY THEREOF, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT (INCLUDING NEGLIGENCE), STATUTE, INDEMNITY OR OTHERWISE) UPON WHICH ANY SUCH LIABILITY IS BASED; AND (II) THE AGGREGATE LIABILITY OF EWRTECH AND ITS AFFILIATES, AND ITS AND THEIR DIRECTORS, EMPLOYEES, AND AGENTS, AND THE SOLE REMEDY AVAILABLE TO YOU ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE SERVICES, SOFTWARE, DOCUMENTATION, EWRTECH CONTENT, EWRTECH MARKS, OR ANY OTHER PRODUCTS OR SERVICES PROVIDED HEREUNDER SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND DAMAGES NOT TO EXCEED THE TOTAL AMOUNT PAYABLE OR PAID TO EWRTECH UNDER THIS AGREEMENT DURING THE TWELVE MONTHS PRIOR TO TERMINATION.

## 12. THIRD PARTY PROGRAMS.

You may receive access to third-party software programs through the Services or Software, or third-party programs may be bundled with the Services or Software. These third-party software programs are governed by their own license terms, which may include open source or free software licenses, and those terms will prevail over this Agreement as to Your use of the third-party software programs. Nothing in this Agreement limits You or Your User's rights under, or grants You or Your User rights that supersede, the terms of any such third party software program. If You do not agree to the license terms applicable to this third party software, then You agree that you shall not use the Software or the third party software.

## 13. SUPPORT.

EwrTech shall, during the Term, provide You with Support in accordance with EwrTech's then-current Software Support and Maintenance Terms and Conditions, which EwrTech provides or makes available to you, including on EwrTech's website, and which EwrTech may revise and update from time to time. The Software Support and Maintenance Terms and Conditions are incorporated in the Agreement by this reference.

## 14. GENERAL.

**14.1 Notices.** All notices must be in writing email and sent via EwrTech website contact form (with evidence of effective transmission).

**14.2 Entire Agreement; Precedence.** This Agreement constitutes the entire agreement between the parties relating to the subject matter of this Agreement and supersedes all prior or contemporaneous communications, agreements and understandings, written or oral, with respect to the subject matter hereof. If there is a conflict or inconsistency between the provisions of this Agreement and the documents otherwise referred to in this Agreement, the conflict or inconsistency will be resolved in the following order of precedence, with the first document listed having the highest precedence and the last document listed having the lowest precedence: the Agreement; the Order Form; any invoice issued by EwrTech hereunder; the Data Processing Addendum; and any other document referred to in this Agreement. In addition, any and all additional or conflicting terms provided by You, whether in a purchase order, an alternative license, or otherwise, shall be void and shall have no effect.

**14.3 Assignment.** You may not assign any of Your rights under this Agreement or delegate Your performance under this Agreement, whether voluntarily or involuntarily, by merger, consolidation, dissolution, operation of law, or in any other manner, without EwrTech's prior

written consent. EwrTech may assign its rights and delegate its performance under this Agreement to: (i) any entity that acquires all or substantially all of EwrTech's assets or substantially all of the assets of that portion of EwrTech's business that manages this Agreement; (ii) any affiliate that controls, is controlled by, or is under common control with EwrTech; or (iii) any successor in a merger, acquisition, or reorganization, including any judicial reorganization. Any purported assignment of rights or delegation of performance by You in violation of this Section is void. This Agreement is binding upon, and will inure to the benefit of, the Parties hereto and their permitted assigns and successors-in-interest.

**14.4 Export Control Laws.** The Services, Software, and Documentation delivered to You under this Agreement are subject to export control laws and regulations of the United States and Canada and may also be subject to import and export laws of the jurisdiction in which it was accessed, used, or obtained, if outside those jurisdictions. You shall abide by all applicable export control laws, rules, and regulations applicable to the Services, Software, and Documentation. You agree that You are not located in or are not under the control of or a resident of any country, person, or entity prohibited to receive the Services, Software, or Documentation due to export restrictions and that You will not export, re-export, transfer, or permit the use of the Services, Software, or Documentation, in whole or in part, to or in any of such countries or to any of such persons or entities.

**14.5 Modifications.** This Agreement shall not be amended or modified except in a writing signed by authorized representatives of each party.

**14.6 Severability.** If any provision of this Agreement is held to be unenforceable, illegal, or void, that shall not affect the enforceability of the remaining provisions. The parties further agree that the unenforceable provision(s) shall be deemed replaced by a provision(s) that is binding and enforceable and that differs as little as possible from the unenforceable provision(s), with considerations of the object and purpose of this Agreement.

**14.7 Waiver.** The delay or failure of either party to exercise any right provided in this Agreement shall not be deemed a waiver of that right.

**14.8 Remedies.** EwrTech's rights and remedies set forth in this Agreement are cumulative and are not intended to be exhaustive.

**14.9 Force Majeure.** EwrTech will not be liable for any delay or failure to perform obligations under this Agreement due to any cause beyond its reasonable control, including: acts of God; labor disputes; industrial disturbances; systematic electrical, telecommunications or other utility failures; earthquakes, storms, or other elements of nature; blockages; embargoes; riots; acts or orders of government; acts of terrorism; war; or any other cause beyond its reasonable control (whether similar or dissimilar to the foregoing).

**14.10 Construction.** Paragraph headings are for convenience and shall have no effect on interpretation.

**14.11 Governing Law.** The validity, interpretation and enforcement of this Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and of the United States, without regard to any conflict of law provisions, except that the United Nations Convention on the International Sale of Goods and the provisions of the Uniform Computer Information Transactions Act shall not apply to this Agreement. You hereby consent to the exclusive jurisdiction of the state and federal courts in Boston, Massachusetts. You hereby waive all rights to trial by jury with respect to any dispute arising out of or relating to this Agreement or your use of the Services, Software, Documentation, EwrTech Marks, or EwrTech Content. If you have any claim arising out of relating to this Agreement or the Services, Software, Documentation, EwrTech Marks, or EwrTech Content, you must bring the claim in an appropriate court as set forth in this Section within two (2) years after your right to bring the claim accrued. If EwrTech brings litigation against you regarding this Agreement or the Services, Software, Documentation, or EwrTech Marks, or EwrTech Content, in addition to any other relief to which EwrTech may be entitled, EwrTech shall be entitled to recover reasonable attorneys' fees, expenses, and costs of litigation. If this Agreement is translated into a language other than English and there are conflicts between the translations of this Agreement, You agree that the English version of this Agreement shall prevail and control.

**14.12 Third Party Rights.** Other than as expressly provided herein, this Agreement does not create any rights for any person who is not a party to it, and no person not a party to this Agreement may enforce any of its terms or rely on an exclusion or limitation contained in it.

**14.13 Relationship of the Parties.** The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary, or employment relationship between the parties.

## **15. PRODUCT ADDENDA.**

### **15.1 Mail Services Product.**

**15.1.1 Software Installation.** It is Your responsibility during the Term of this Agreement to comply with the Documentation, including the configuration, operation, installation and use requirements of the Services and/or the Software on Your Devices, and shall provide any necessary assistance to EwrTech related thereto. You may incur additional fees in the event that You request for EwrTech to reinstall the Software or Services on Your Devices due to an error unrelated to the Software or Services or to transfer installation of the Software or Services to other Devices.

**15.1.2 Effect of Termination.** You acknowledge and agree You are solely responsible for adjusting the relevant server and network configuration. Your failure to do so may cause Your Data to be lost.



## **15.2 Backup.**

**15.2.1. Protected Health Information.** If You purchase the Backup product, which is able to be utilized for the processing, storage, maintenance, and transmission of protected health information HIPAA, or otherwise use the Services in any manner that would require EwrTech or the Services to be compliant with HIPAA information, You must execute the Business Associate Agreement that EwrTech provides or makes available to you. Otherwise, You further acknowledge and agree that neither EwrTech nor its Affiliates are acting on Your behalf as a Business Associate (as defined under HIPAA). EwrTech may immediately and upon notice suspend all or portion of Your access to the Services and Software (without any liability to You in connection with such suspension), if EwrTech has a good faith belief that You have breached this paragraph.

**15.2.2. Additional Disclaimer.** IN ADDITION TO THE OTHER TERMS AND CONDITIONS HEREIN, YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR DATA MAY NOT BE AVAILABLE OR RESTORABLE IF (1) YOU UTILIZE THE SERVICES IN EXCESS OF THE AMOUNT YOU ORDERED; (2) A COPY OF YOUR DATA WAS NOT COMPLETED FOR ANY REASON; (3) YOU ATTEMPT TO BACK UP DEVICES, FILES, FOLDERS, OR DRIVES NOT SUPPORTED BY THE SERVICES AS SET FORTH IN THE DOCUMENTATION; (4) YOU DESELECT OR DELETE A DEVICE, FILE, FOLDER, OR DRIVE FROM YOUR EWRTECH ACCOUNT, FROM YOUR DEVICE, OR FROM BEING BACKED UP BY THE SERVICES; (5) YOU MODIFY YOUR OPERATING SYSTEM IN A MANNER THAT BREAKS COMPATIBILITY OR INHIBITS THE FUNCTIONALITY OF THE SERVICES OR SOFTWARE; (6) YOUR COMPUTER IS UNABLE TO ACCESS THE INTERNET OR EWRTECH INFRASTRUCTURE; (7) YOU FAIL TO COMPLY WITH THE AGREEMENT OR DOCUMENTATION; OR (8) YOU TERMINATE OR FAIL TO RENEW YOUR SUBSCRIPTION TO THE SERVICES.

*Last updated September 20, 2021*

If you have any questions, please use our contact form [www.EwrTech.com](http://www.EwrTech.com). EwrTech LLC

