

SOFTWARE AS A SERVICE TERMS AND CONDITIONS

These Software as a Service Terms and Conditions (these “**Terms**”) will apply to the transactions contemplated by the attached Customer Order Form to which these Terms are attached (“Customer Order Form” and, together with these Terms, this “Agreement”). **NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EFT ANALYTICS INC. (“SUPPLIER”) HEREBY EXPRESSLY OBJECTS TO AND EXPRESSLY REJECTS ALL TERMS AND CONDITIONS IN CUSTOMER’S PURCHASE ORDER OR OTHER DOCUMENT FROM CUSTOMER WHICH CONFLICT WITH OR ARE IN ADDITION TO THE TERMS OR CONDITIONS OF THIS AGREEMENT AND NO SUCH TERMS SHALL BE BINDING UPON SUPPLIER UNLESS EXPRESSLY ACCEPTED IN WRITING BY AN OFFICER OF SUPPLIER.**

Customer and Supplier agree as follows:

1. DEFINITIONS. The following definitions apply to this Agreement:

1.1 "Affiliate" means any entity that directly or indirectly controls, is controlled by, or is under common control or ownership with a Party, where "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct, cause or influence the direction of the management policies of a person, whether through the ownership of voting securities, by contract, or otherwise.

1.2 "Agents" means the Customer Agents or the Supplier Agents, as applicable.

1.3 "Customer" means the entity indicated in the opening paragraph of this Agreement.

1.4 "Customer Agents" means the agents, subcontractors, and representatives of Customer, other than Supplier and Supplier Agents.

1.5 "Customer Data" means all data and information submitted to Supplier or Supplier Agents by or on behalf of Customer or to which Supplier or Supplier Agents have access in connection with the provision of the Services.

1.6 "Confidential Information" means any confidential or proprietary information or data of a Party (including any such information of a third party in the possession of the Party) that is disclosed in any manner and in any media to the other Party in connection with this Agreement which, at the time of disclosure, is either (i) marked as being "Confidential" or "Proprietary", (ii) otherwise reasonably identifiable as the confidential or proprietary information of the Disclosing Party, or (iii) given the nature of such information and the circumstances under which it is disclosed should reasonably be understood to be confidential or proprietary information of the Disclosing Party. The term "Confidential Information" will not include information that is: (w) in the possession of or otherwise known by the Receiving Party prior to disclosure by the Disclosing Party; (x) in the public domain through no fault of the Receiving Party; (y) obtained independently from a third party without an obligation of confidentiality to the Disclosing Party and without breach of this Agreement; or (z) independently developed by the receiving Party without reference to the Confidential Information of the Disclosing Party. Blended, de-identified or aggregated Customer Data, as described in Section 4.2, will not be deemed Confidential Information.

1.7 "Control" means, with respect to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such entity, whether through the ownership of voting securities (or other ownership interest), by contract or otherwise.

1.8 "Documentation" means user manuals designated as documentation by Supplier.

1.9 "Fees" means the amounts payable by Customer to Supplier pursuant to this Agreement or applicable Order Form.

1.10 "IP" or "Intellectual Property" means any (a) processes, inventions, methodologies, procedures, patents, trademarks, and designated trade secrets, (b) software and machine-readable texts and files and (c) literary works or other works of authorship, including documentation, reports, drawings, charts, graphics, and other written documentation and any related copyrights.

1.11 "Law" means any declaration, decree, directive, legislative enactment, order, ordinance, regulation, rule, or other binding restriction of or by any governmental authority.

1.12 "Order Form" means all order forms or statements of work in which Professional Services or access rights to the SaaS Solutions are ordered.

1.13 "Order Term" means the applicable time period set forth in the applicable Order Form.

1.14 "Parties" means Customer and Supplier, collectively.

1.15 "Party" means either Customer or Supplier, as the case may be.

1.16 "Professional Services" is defined in Section 3.1.2.

1.17 "SaaS Software" means the software application and/or modules set forth on the Order Form, including updates and bug fixes made available by Supplier in connection with such software application and/or modules. SaaS Software does not include upgrades that include new functionality and for which Supplier charges an additional fee to its customers.

1.18 "SaaS Solution" means the combination of the SaaS Software and all Services delivered by Supplier.

1.19 "Services" is defined in Section 3.1.

1.20 "Supplier Agents" means the agents, subcontractors, and representatives of Supplier and its Affiliates, other than Customer and Customer Agents.

1.21 "Supplier IP" means any IP used in connection with the provision of the SaaS Solution that is (a) owned, possessed, acquired or developed by Supplier or (b) licensed, leased or otherwise obtained by Supplier from a third party (other than Customer or Customer Agents). For clarity, Supplier IP includes the SaaS Software and any modifications to, derivative works in, and improvements to the SaaS Software and other Supplier IP.

1.22 "Support Services" is defined in Section 3.1.1.

1.23 "Term" is defined in Section 13.1.

1.24 "Use" means the right of Customer to access and operate the SaaS Solution as hosted and provided by Supplier.

2. CONDUCT OF ACTIVITIES

2.1 Supplier will perform the Services in accordance with all governmental laws, rules, and regulations applicable to Supplier as a software service provider.

3. SERVICES.

3.1 Services. Supplier will perform the services, activities and responsibilities required under this Agreement and any additional services, activities and responsibilities which the Parties agree in writing that Supplier will perform ("Services"):

3.1.1 SaaS Solution. Supplier will provide Customer with access to and Use of SaaS Software. Supplier grants to Customer a nonexclusive, worldwide right and license to Use the SaaS Solution during the Order

Term. Commencing on the Effective Date, Supplier will respond to reports of problems by telephone or email communications ("Support Services") in accordance with the Service Level Objectives set forth in Exhibit 1 to these Terms.

3.1.2 Professional Services. As requested by Customer and agreed to by Supplier, Supplier will provide to Customer certain professional services in accordance with this Agreement (the "Professional Services") which may include any training services. Supplier and Customer will enter into a separate statement of work agreement describing any Professional Services requested by the Customer and the fees that Supplier will charge for such Professional Services which will be incorporated by reference into this Agreement.

3.1.3 Customer Responsibilities and Restrictions. Customer is responsible for all activities that occur under Customer's user accounts. Customer shall (i) have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Data inputted by Customer or processed using the SaaS Solution, (ii) use commercially reasonable efforts to prevent unauthorized access to, or use of, the SaaS Solution, and notify Supplier promptly of any such verified unauthorized use, (iii) comply with all applicable local, state, federal, and foreign Laws in using the SaaS Solution; and (iv) use each SaaS Solution only in accordance with the Documentation and the number of users and subscription volume subscribed to by Customer in the applicable Order Form; and (v) shall only use passwords and user accounts which are rightfully possessed by Customer. Customer shall not (a) make the SaaS Solution available to anyone but authorized users, (b) interfere with the integrity or performance of the SaaS Solution or third-party data contained therein, (c) attempt to gain unauthorized access to the SaaS Solution; (d) create derivative works in or modify the SaaS Solution; (e) copy, frame, mirror, or otherwise make available to any unauthorized third party any part or content of the SaaS Solution; (f) reverse engineer the SaaS Solution; (g) copy any features, functions, processes, or graphics of the SaaS Solution; (h) upload to the SaaS Solution any information or data that does or may violate or infringe upon the rights of others (including without limitation the rights of privacy or publicity, copyright, or trade secret); (i) violate any Law; (j) upload content to, connect to, or use the SaaS Solution to engage in activities that may damage, interfere with, surreptitiously intercept or expropriate the SaaS Solution or any related system, database, or program (including through the use or transmission of viruses, Trojan horses, malware, worms, time bombs or bots; or (k) sell, resell, lease or rent the SaaS Solution.

3.2 Service Performance Management.

3.2.1 Payment of Credits. The Performance Credits set forth in Exhibit 1 are paid in recognition of the diminished value of the SaaS Solution resulting from Supplier's failure to meet the agreed upon levels of performance shown in Exhibit 1, not as a penalty.

3.2.2 Sole Remedy. The Performance Credits are Customer's sole remedy for any error or failure in the SaaS Solution and Support Services.

3.3 Law and Regulations.

3.3.1 Compliance with Law. Each of Supplier and Customer will, and will cause their respective Agents to, perform their respective obligations under this Agreement in compliance with applicable Law, provided, however, that Supplier makes no representations or warranties that the SaaS Solution will comply with Laws applicable to Customer's business.

3.3.2 Modifications. Any modifications to the SaaS Solution to enable the SaaS Solution to comply with Customer's legal obligations will require an executed statement of work for Professional Services and the payment of fees negotiated in good faith by the Parties and set forth on such statement of work.

3.4 Additional Terms. Customer hereby acknowledges that any electronic terms and conditions agreed to by the Customer or its Agents when accessing the SaaS Solution will become a part of this Agreement; provided,

however, that in the event of any conflict between any such electronic terms and conditions and the terms set forth herein, the terms set forth herein will govern.

3.5 Assignment.

3.5.1 No Assignment. Except as set forth in Section 3.5.2 below, neither Party will assign, delegate, sell, sublicense, or otherwise transfer its rights or obligations (by contract, operation of law, or otherwise) under this Agreement in whole or in part without the prior written consent of the other Party.

3.5.2 Change in Ownership. Supplier may transfer, assign and delegate all of its rights and obligations under this Agreement without Customer's consent to:

- (i) a purchaser of all or substantially all of Supplier's voting stock or capital assets;
- (ii) an entity with which Supplier consolidates or merges;
- (iii) any subsidiary of Supplier; or
- (iv) any new entity that acquires one or more business units or divisions or facilities of Supplier; or
- (v) an Affiliate.

4. PROPRIETARY RIGHTS.

4.1 Supplier IP. Supplier will own the Supplier IP and any modifications, enhancements or derivations of Supplier IP, developed, in whole or in part, pursuant to this Agreement by or on behalf of Supplier or Supplier Agents.

4.2 Customer Data. All Customer Data is and will remain the property of Customer. Customer will own all derivative works in Customer Data whether made by Customer or by Supplier or Supplier Agents which derivative works will be deemed Customer Data. Notwithstanding the foregoing, Customer hereby grants Supplier the right to use any and all Customer Data in blended, de-identified, or aggregated form for the purpose of data analysis, compilation, interpretation, study, improvement of the Services, or product and services development. Customer hereby grants to Supplier a non-exclusive, perpetual, irrevocable, royalty-free, worldwide license to (i) use, copy, and modify Customer Data for the purpose of providing the SaaS Solution hereunder; (ii) use, copy and modify Customer Data for the purpose of data analysis, compilation, interpretation, study, improvement of the SaaS Solution, and product and services development; and (iii) use, copy, modify and distribute Customer Data to other customers of Supplier in de-identified or aggregated format in connection with the SaaS Solution.

4.3 Customer's Name and Marks. Supplier may use Customer's name, trade name, trademarks or service marks or those of its subsidiaries and affiliates, but only in a non-disparaging fashion, in any publication, advertisement, or promotional material without Customer's prior written consent.

5. FORCE MAJEURE. Neither Party will be liable for any failure to perform its obligations under this Agreement to the extent caused by events outside its reasonable control and not caused by its fault or negligence including any act of God, fire or explosion, flood, war, terrorism, riot, act of governmental authority in response to a major national security threat or natural disaster, telecommunications failure or internet failure ("Force Majeure Event") and the impacted Services will, in Service Provider's sole discretion, be eliminated from this Agreement or the delivery and performance dates of such Services will be extended by the period of the Force Majeure Event; provided, that a Force Majeure Event will in no event excuse the payment of amounts earned and due hereunder.

6. PAYMENTS AND INVOICING.

6.1 Fees. The Fees for the SaaS Solution and the Services provided under this Agreement will be as set forth in the applicable Order Form. Customer will pay to Supplier the Fees in accordance with Sections 6.2 and 6.3. Supplier may increase its Fees and hourly rates once per year by no more than 10% of the Fee or hourly rate for the immediately preceding year.

6.2 Invoicing. Supplier will invoice Customer for the SaaS Solution in advance on the schedule set forth on the Order Form, or annually if no other schedule is indicated. Supplier will promptly invoice Customer for the Fees associated with the Professional Services performed during the preceding month. Each invoice submitted to Customer will be denominated and paid in U.S. dollars unless otherwise indicated in an Order Form.

6.3 Time and Method of Payment. The Fees invoiced pursuant to Section 6.2.2 will be due and payable to Supplier net thirty (30) days after the date of the applicable invoice. Any late payment, except for amounts disputed in good faith by Customer, of any amount owing hereunder shall accrue interest at a rate equal to the lesser of (i) 10% per annum and (ii) the maximum rate permitted by law. In the event that Customer is delinquent in the payment of any amounts Supplier may suspend access to the SaaS Solution and other Services provided hereunder. The suspension may continue until such overdue amounts are paid in full. A suspension under this Section 6.3 will not constitute a termination of the Agreement nor will it relieve Customer of any of its obligations or liabilities under the Agreement.

6.4 Credit Terms. Supplier may, from time to time, demand different terms of payment from those referred to in Section 6.3 whenever it appears to Supplier, in its sole discretion, that Customer's financial condition requires such a change. Further, Supplier may demand assurance of Customer's ability to pay whenever Supplier, in its sole discretion, determines that such ability is in doubt. Any such adequate assurance shall be in the form and amount requested by Supplier in its sole discretion. Such assurance may, at the option of Supplier, include, without limitation, any of the following or any combination of the following, (i) the required posting of a letter of credit as security for payment and performance (in a format and issued by a commercial bank acceptable to Supplier); (ii) cash prepayments; or (iii) corporate guarantee. ANY SUCH DEMAND MAY BE IN WRITING OR ORAL AND SUPPLIER MAY, UPON THE MAKING OF SUCH DEMAND, SUSPEND SERVICES HEREUNDER UNTIL WRITTEN ACCEPTANCE OF DIFFERING PAYMENT TERMS OR RECEIPT OF ASSURANCE OF FINANCIAL ABILITY IN A FORM ACCEPTABLE TO SUPPLIER, WHICHEVER HAS BEEN REQUESTED, HAS BEEN RECEIVED BY SUPPLIER. If within the period stated in such demand Customer fails or refuses to agree to such different terms of payment or fails or refuses to give adequate assurance of ability to pay, Supplier may, at its option, treat such failure or refusal as a repudiation of the portion of this Agreement which has not been fully performed.

6.5 Audit. During the Term and for a period of one (1) year thereafter, Customer will maintain complete and accurate records with respect to its use of the SaaS Solution. During normal business hours, no more often than once per year during the Term and above referenced period thereafter, and upon reasonable advance, written notice, Supplier or its designated representative may review those relevant Customer records as are reasonably necessary to confirm that the Fees paid to Supplier are correct and Customer has complied with all of the terms of this Agreement. Any such review shall be conducted so as not to unreasonably interfere with Customer's business. The costs and expenses of the auditor shall be paid by Customer if the audit determines any noncompliance with this Agreement or underpayment by Customer; otherwise the costs and expenses of the auditor shall be paid by Supplier. If an audit reveals that Customer has underpaid Fees for the SaaS Solution, Customer will be invoiced for

such underpaid Fees based upon Supplier's list price in effect at the time the audit is completed. Customer will pay Supplier an additional fee of 10% of the applicable unpaid Fees disclosed by the audit.

7. TAXES.

7.1 Service Taxes. Any sales, use, or similar taxes resulting from the provision of the SaaS Solution or the performance of the Services will be the responsibility of Customer. With respect to any claim by a governmental authority for a tax for which Customer has a reimbursement obligation under this Agreement, Customer shall participate with Supplier in defense of the claim for such tax.

7.2 Other Taxes. Each Party will be responsible for (a) any personal property taxes on property it owns or leases (other than property subleased to the other Party), (b) employment taxes of its own employees, and (c) taxes based on its net income or gross receipts.

7.3 Cooperation. Customer and Supplier will cooperate to segregate the Fees into the following separate payment streams: (a) those for taxable Services; (b) those for nontaxable Services; (c) those for which a sales, use or other similar tax has already been paid; and (d) those for which Supplier functions merely as a paying agent for Customer in receiving goods, supplies or services (including leasing and licensing arrangements) that otherwise are nontaxable or have previously been subject to tax. In addition, each of Customer and Supplier will reasonably cooperate with the other to determine more accurately a Party's tax liability and to minimize such liability, to the extent legally permissible. Each of Customer and Supplier will provide and make available to the other any resale certificates, information regarding out-of-state sales or use of equipment, materials, or services, and any other exemption certificates or information reasonably requested by a Party.

8. RECORDS AND INFORMATION MANAGEMENT, DATA SECURITY.

8.1 As between Supplier and Customer, all Customer Data is, or will be, and will remain the property of Customer.

8.2 At the request by Customer at any time during the Term or thereafter, Supplier will erase, destroy or otherwise make unrecoverable ("Destruction") all or, if specified by Customer, any part of the Customer Data in Supplier's possession other than back up data held pursuant to Section 8.5 below. At the written request of Customer, Supplier will provide Customer with a certificate of destruction promptly following the destruction of any Customer Data. Notwithstanding anything in this Agreement to the contrary, Customer will have no obligation to delete de-identified or aggregated Customer Data.

8.3 Supplier will be responsible for establishing and maintaining an information security program that is designed to: (i) protect the security and confidentiality of Customer Data; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of Customer Data; (iii) protect against unauthorized access to or use of the Customer Data; (iv) provide for the proper disposal of Customer Data; and (v) set forth Supplier's policy for responding to any Security Incident (as defined below). Supplier will use commercially reasonable industry practices regarding access, transmission, storage, encryption, and use of Customer Data and Confidential Information, and protection of Customer Data and Confidential Information.

8.4 If Supplier learns of any unauthorized destruction, loss, alteration of or access to Customer Data (a "Security Incident"), Supplier will notify Customer of such Security Incident no later than ten business days after learning of the Security Incident unless notification may or should be delayed pursuant to applicable law or investigative needs. Supplier will cooperate in good faith with Customer to remedy or mitigate the impact of any Security Incident.

8.5 Customer will not rely on Supplier's storage of Customer Data. Customer will be responsible for maintaining appropriate back-up copies of Customer Data.

9. CONFIDENTIAL INFORMATION.

9.1 Confidential Information. From time to time, either Party (the "Disclosing Party") may disclose or make available to the other Party ("Receiving Party"), whether orally or in physical form, confidential or proprietary information concerning the Disclosing Party and/or its business, products or services in connection with this Agreement. Subject to the provisions of Section 4.2, each Party agrees that during the Term (i) it will use Confidential Information disclosed or made available by the other Party for the purpose(s) of this Agreement and, with respect to Supplier, for the purposes described in Section 4.2; and (ii) it will not disclose Confidential Information disclosed or made available by the other Party to any third-party (other than the Receiving Party's employees, Affiliates and/or legal or financial advisors on a need-to-know basis who are made aware of the confidentiality obligations set forth herein) without first obtaining the Disclosing Party's written consent. The Receiving Party is responsible for any breach of the confidentiality provisions of this Agreement by its employees, professional advisors and other third-parties to whom it provided access to the Disclosing Party's Confidential Information. Each Party's obligations under this Section 9.1 will survive after expiration or termination of this Agreement for two (2) years. These confidentiality obligations will not restrict any disclosure required by order of a court or any government agency, *provided that* if legally permitted, the Receiving Party gives prompt notice to the Disclosing Party of any such order and reasonably cooperates with the Disclosing Party at the Disclosing Party's request and expense to resist such order or to obtain a protective order.

10. REPRESENTATIONS AND WARRANTIES.

10.1 Performance Representations and Warranties. Supplier represents and warrants, during the Term, that Supplier uses frequently updated virus and malware protection software to prevent the introduction of viruses, spyware, malware, or similar items ("Malicious Code") into the SaaS Software. As Customer's sole remedy with respect to a breach of this warranty, Supplier will use reasonable efforts to remove such Malicious Code.

Except as otherwise provided herein, Supplier provides the SaaS Solution to Customer on an "as-is" basis without warranties, express or implied. Customer acknowledges that it has had a sufficient opportunity to make investigations of and utilize on a trial basis the SaaS Solution and satisfy itself as to the functionality and technical specifications of the SaaS Solution. Supplier does not represent or warrant that (a) the use of the SaaS Solution will be secure, timely, uninterrupted or error-free or operate in combination with any other hardware, software, system, or data, (b) the SaaS Solution will meet requirements or expectations, (c) any results or stored Customer Data will be accurate or reliable, (d) errors or defects will be corrected, (e) the SaaS Solution or the server(s) that make the SaaS Solution available are free of viruses or other harmful components; or (f) the SaaS Solution or results will meet any regulatory approvals or requirements. All conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of merchantability, fitness for a particular purpose, or non-infringement of third-party rights, are hereby disclaimed by Supplier to the maximum extent permitted by applicable Law.

10.2 General Representations and Warranties. Each of the Parties hereby represents and warrants as follows as of the date hereof:

10.2.1 It has all requisite power and authority to execute, deliver and perform this Agreement and to consummate the transactions contemplated hereby.

10.2.2 The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated hereby have been duly and validly authorized.

11. TERM AND TERMINATION.

11.1 Agreement Term. This Agreement shall remain in force from the Effective Date until terminated as provided in this Section 11 (the "Term"). This Agreement shall automatically terminate 90 days after all active Order Forms have expired or been terminated pursuant to this Section 11.

11.2 Order Forms. Unless otherwise specified in an Order Form, the term of each Order Form will be one year. Each Order Form will automatically renew for successive one-year extensions on the same terms unless either Party provides the other Party with notice of its intent not to renew an Order Form at least sixty (60) days prior to the end of the then current term of the Order Form.

11.3 Termination for Cause.

11.3.1 Termination by Supplier. Supplier may, upon notice to Customer of Customer's failure to remit a properly invoiced Fee, immediately terminate this Agreement or any applicable Order Forms if Customer fails to cure any material breach within five (5) days after receiving notice from Supplier of the failure.

11.3.2 Termination by Customer. Customer may terminate any applicable Order Forms if Supplier fails to cure any material breach within thirty (30) days after receiving notice from Customer of the failure.

11.3.3 Termination for Insolvency or Financial Deterioration. Either Party may terminate, in whole or in part, this Agreement, and any applicable Order Forms, or all of the above immediately upon written notice if the other Party hereto experiences a bankruptcy event.

11.4 Cross-Termination. In the event of a termination (or expiration) of this Agreement where any Order Form remains in effect, this Agreement will continue to govern all such Order Forms as if this Agreement remained in full force and effect until such time as such Order Forms expire or terminate by their terms.

11.5 Termination Fee. If Customer terminates this Agreement for any reason, Customer agrees to pay to Supplier the remaining value of the then-current initial or renewal term (that Customer acknowledges as liquidated damages reflecting a reasonable measure of actual damages and not a penalty) equal to the aggregate recurring Fees (as set forth in the Order Form) that will become due during the canceled portion of such Initial or Renewal Term. Such Fees will be paid by Customer within 10 days of termination. Supplier reserves the right to withhold Customer Data until receipt of the foregoing termination fee.

12. INDEMNIFICATION.

12.1 Supplier Indemnification. Supplier shall indemnify and hold Customer and its officers, directors, employees, attorneys, and agents ("Indemnitees") harmless from and against any and all costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) each to the extent paid to an unaffiliated third party and to the extent arising out of or in connection with such third-party's claim alleging that the SaaS Solution directly infringes a valid U.S. copyright or patent existing as of the Effective Date. Notwithstanding the foregoing, Supplier will have no obligation with respect to any infringement claim based upon any modification of the SaaS Solution by Customer or any use of the SaaS Solution (i) not in accordance with the Documentation; or (ii) in combination with other products, equipment, software, or data not supplied by Supplier.

12.2 Customer Indemnification. Customer shall indemnify, defend and hold Supplier, its licensors and each such party's Indemnitees harmless from and against any and all costs, damages, losses, liabilities, and expenses (including reasonable attorneys' fees and costs) each to the extent paid to an unaffiliated third party and arising from or in connection with such third-party's claims, demands, or allegations (i) that Customer violated the terms and conditions of the Services or this Agreement (ii) arising from or relating to the use of the SaaS Solution or the results thereof, except claims covered by Supplier's indemnity in Section 12.1 above.

12.3 Condition to Indemnification. As a condition to a Party's indemnification obligations hereunder, the other Party shall give the indemnifying Party sole control of the defense and settlement of the claim, prompt notice of a claim, and, at the indemnifying Party's expense and request, all available information and reasonable assistance in relation to such defense and settlement efforts. Neither Party may compromise or settle a third-party claim that adversely affects the other Party without the other Party's prior written consent, which consent shall not be unreasonably withheld.

13. DAMAGES.

13.1 Limitation of Liability. In no event shall Supplier’s aggregate liability arising from or relating to this Agreement exceed the amounts actually paid by and payable by Customer in the twelve (12) month period immediately preceding the event giving rise to such liability. Except for a Party’s obligations arising under Section 12 or a party’s breach of its obligations under Section 3.1.3 or 9, in no event shall either Party and/or its licensors be liable to anyone for any indirect, punitive, special, exemplary, incidental or consequential damages (including direct or indirect damages for loss of data, revenue, profits, use or other economic advantage) arising out of, or in any way connected with this Agreement, including but not limited to the use or inability to use the Service, or for any content obtained from or through the Service, any interruption, inaccuracy, error or omission in the content, even if the Party from which damages are being sought or such Party’s licensors have been previously advised of the possibility of such damages.

14. MISCELLANEOUS PROVISIONS.

14.1 Notices. In any case where any notice, approval, agreement or other communication is required or permitted to be given, such notice, approval, agreement or communication will be in writing and deemed to have been duly given and delivered: (a) if delivered in person, on the date of such delivery; (b) if sent by overnight express or registered or certified mail (with return receipt requested), on the date of receipt of such mail; or (c) if sent by confirmed facsimile transmission (with answer back received), on the date of such facsimile transmission, provided that notice is also sent on the same day by one of the methods set forth in clause (a) or (b) above. Such notice or other communication will be sent to the following address(es) (or such other address(es) as a Party may designate from time to time in writing):

To Customer:

With a copy to:

To Supplier:

EFT Analytics, Inc.
Attn:
4111 E. 37th Street North
Wichita, KS 67220
Fax: 316-828-5540

With copy to:

EFT Analytics, Inc.
Attn: Senior Counsel
4111 E. 37th Street North
Wichita, KS 67220
Fax: 316-828-5540

14.2 Counterparts. This Agreement may be executed in any number of counterparts, each of which will be deemed an original, but all of which taken together will constitute one single agreement between the Parties.

14.3 Relationship. The Parties intend to create an independent contractor relationship, and nothing contained in this Agreement will be construed to make either Customer or Supplier partners, joint ventures, principals, agents or employees of the other. Neither Party will have any right, power, or authority, express or implied, to bind the other.

14.4 Consents and Approval. Except where expressly provided as being in the sole discretion of a Party, where agreement, approval, acceptance, consent, confirmation, notice, or similar action by either Party is required under this Agreement, such action will not be unreasonably delayed or withheld. An approval or consent given by a Party under this Agreement will not relieve the other Party from responsibility for complying in good faith with the requirements of this Agreement, nor will it be construed as a waiver of any rights under this Agreement, except as and to the extent otherwise expressly provided in such approval or consent.

14.5 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to Law, then the remaining provisions of this Agreement, if capable of substantial performance, will remain in full force and effect.

14.6 Waivers. No delay or omission by either Party to exercise any right or power it has under this Agreement will impair or be construed as a waiver of such right or power. A waiver by any Party of any breach or covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be signed by the Party waiving its rights.

14.7 Remedies Cumulative. No right or remedy conferred upon or reserved to either Party is intended to be exclusive of any other right or remedy, and each and every right and remedy will be cumulative and in addition to any other right or remedy under this Agreement, or under applicable law, whether now or later. The election by a Party of any remedy provided for in this Agreement or otherwise available to such Party will not preclude such Party from pursuing any other remedies available to such Party at law, in equity, by contract or otherwise.

14.8 Entire Agreement. Subject to Section 3.4 herein, this Agreement represents the entire agreement between the Parties with respect to its subject matter and supersedes all prior discussions and agreements between the Parties with respect to such subject matter.

14.9 Amendments. No amendment to, or change, waiver or discharge of, any provision of this Agreement will be valid unless in writing and signed by both Parties.

14.10 Survival. Sections 3.1.3, 8, 9, 12, 13, and 14 will survive the expiration or termination of this Agreement.

14.11 Third Party Beneficiaries. This Agreement is entered into solely between Customer and Supplier, may be enforced only by Customer and Supplier, and will not be deemed to create any rights in third parties, including suppliers and subcontractors of a Party, or to create any obligations of a Party to any such third party.

14.12 Governing Law and Forum for Dispute Resolution. This Agreement will be governed by the law of the State of Delaware, without regard to the conflicts of law provisions thereof. The Parties further agree that the appropriate, exclusive and convenient forum (the "Forum") for any disputes arising out of or in connection with this Agreement will be in the Court of Chancery in the City of Wilmington, New Castle County, Delaware, except where such court lacks subject matter jurisdiction. In such event, the Forum will be in the federal district court sitting in Wilmington, New Castle County, Delaware or, in the event such federal district court lacks subject matter jurisdiction, in the Superior Court situated in the City of Wilmington, New Castle County, Delaware. The Parties hereby irrevocably and unconditionally consent to submit to the exclusive jurisdiction of such courts for any disputes and agree not to commence any action, suit or proceeding relating thereto except in such courts. The Parties hereby irrevocably and unconditionally waive any objection which they may now or hereafter have to the laying of venue of any action, suit or proceeding arising out of this Agreement or the transactions contemplated hereby in the Forum, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum.

14.13 Waiver of Jury Trial. The Parties waive, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect to any litigation directly or indirectly arising out of, under, or in connection with this Agreement. Both Parties (i) certify that no representative, agent, or attorney of the other Party has represented, expressly or otherwise, that such other Party would not, in the event of litigation, seek to enforce the foregoing waiver, and (ii) acknowledges that the other Party has been induced to enter into this Agreement, by, among other things, the waiver and certification of this Section.

14.14 Negotiated Terms. The Parties agree that the terms and conditions of this Agreement are the result of negotiations between the Parties and that this Agreement will not be construed in favor of or against either Party by reason of the extent to which such Party or its professional advisors participated in the preparation of this Agreement.

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EXHIBIT 1

SERVICE LEVEL OBJECTIVES

1. Error Correction Reporting

a. Problem Reporting

i. Customer will report problems to Supplier via telephone, fax, or email. The following information will be provided:

1. SaaS Solution involved
2. Steps leading to the error/problem
3. Whether the problem is duplicable or random
4. Impact of problem on system: Is system locked up or not, etc.
5. Any other useful information pertaining to the error/problem

When each problem is reported Supplier will designate a severity level as defined in the following chart. Supplier will have a first level technical support person contact Customer within the time frame that is in the "First Level Contact" column. All times are measured from the time Customer first reports the problem to Supplier.

b. Business Hours. Customer will respond to report requests and work to resolve problems within its support business hours of 8:00 A.M to 6:00 P.M. Eastern Time ("Business Hours")

c. Problem Resolution

Supplier will use reasonable efforts to resolve each problem within the targets listed in the "Problem Resolution Target" column. If the problem is not resolved within the "Problem Resolution Target" time period, the problem will be escalated as indicated in the chart. Upon escalation Supplier will notify Customer of the escalation and course of action taken to resolve the problem.

d. Tech Support Escalation Chart

<i>Severity</i>	<i>Type of Problem</i>	<i>First Level Contact</i>	<i>Problem Resolution Target</i>	<i>Escalate to Support Manager</i>
1. <i>Critical Problem(s)</i>	Down production system that results in loss of all functionality.	1 Business Hour	8 Business Hours	...if not resolved after 8 Business Hours

Severity	Type of Problem	First Level Contact	Problem Resolution Target	Escalate to Support Manager
2. <i>Major/Serious Problem(s)</i>	Halts on-going use, or causes downtime or data corruption, or major failure of expected functionality, or operational but degraded or limited use	4 Business Hours	2 business days	...if not resolved after 2 business days
3. <i>Other Problems</i>	Any other error or problem.	5 business days	Next release of SaaS Solution	...at monthly review

2. SaaS Solution Availability and Performance Credits

Uptime: The Supplier may need, from time to time, to perform certain maintenance activities on the SaaS Solution that could involve disruption to the delivery of the service. While the Supplier seeks to minimize such disruption, it reserves the right to conduct maintenance activities between 10pm and 2am Central Time each Friday and Saturday nights (the "Maintenance Period"). Excluding complete or partial unavailability related to these maintenance activities conducted during the stated Maintenance Period, the average monthly SaaS Solution availability will be guaranteed to be equal to or greater than 99% measured on a rolling 12-month basis. In the event that the average monthly uptime of 99% is not met, the Customer will, upon written request to Supplier, receive a Performance Credit on the following month's bill of 5% of the monthly Fee. The SaaS Solution is considered available if it is possible to log on and Use substantially all of its functionality. The Performance Credit is Customer's sole remedy for Supplier's failure to meet the requirements of this Exhibit C.