



Terms and Conditions

Carefully read the following terms and conditions of this agreement. By accessing and using the electronic services and associated software of Essential Technology Services, Inc. (ETS), you (Customer) indicate the acceptance of the following terms and conditions and you agree to be bound by them. IF YOU DO NOT AGREE TO BE BOUND BY THIS AGREEMENT, DO NOT ACCESS OR USE ETS' REMOTE BACKUP SERVICE (SERVICE) OR ASSOCIATED SOFTWARE.

This agreement constitutes the complete and exclusive statement of the agreement between you and ETS with respect to the services and associated software and SUPERSEDES ANY PROPOSAL OR PRIOR AGREEMENT, oral or written, and any other communications relating to the subject matter of this agreement.

Now, therefore, in consideration of the mutual covenants set forth herein, ETS and Customer agree as follows:

1. Order Acceptance, Payment.

All orders are subject to acceptance by ETS. An order will be deemed accepted by ETS when ETS sends written confirmation of the order to Customer.

ETS shall bill Customer for the applicable set-up fees and monthly fees according to the Plan(s) (as defined in the enrollment form) selected by Customer and provided by ETS. Such fees and charges shall include, without limitation, the fees for services provided by ETS and charges by any and all third parties whose materials are included as part of the Plan(s). ETS reserves the right to change the amount of, or basis for determining, any fees or charges and institute new fees and charges upon prior notice to Customer. All monthly fees and set-up fees shall be due in advance of the month incurred and all additional charges shall be due at the end of the month in which such charges are incurred. If Customer otherwise fails to make any payments owing to ETS, ETS may, at ETS' discretion, suspend or terminate access to the ETS Services and/or terminate this Agreement. Should service be suspended a reactivation fee equal to the then current Setup fee will be required to re-activate ETS' service to Customer. Customer's right to use the ETS Services is subject to any limits established by ETS. Interest charges of 1% per month (or the highest rate permitted by law if lower than 1% per month) will accrue daily on any unpaid balance, which is more than thirty (30) days overdue. Customer shall be responsible for any and all taxes related to this Agreement.

2. ETS Services.

During the term of this Agreement, ETS shall provide software services to Customer according to the Plan(s) accepted by Customer. "Plan" means one of ETS Service offerings, as can be found on ETS' Web site at <http://www.essentialtechservices.com> or has otherwise been quoted to customer by ETS. The specific Plan to be provided to Customer shall be established by correspondence between ETS and Customer. Such Plan shall be deemed incorporated by reference into this Agreement, as if fully set forth herein. ETS and Customer shall retain copies of such Plan(s) for future reference. ETS recommends that Customers familiarize themselves with the operation of the software and perform occasional test restores BEFORE an emergency arises.

3. Third Party Providers.

To access and use the Services, Customer may be required to subscribe to third-party providers. Customer acknowledges that in order to access the Services, Customer may have to agree to and execute agreements with third-party providers who may charge Customer fees and are in addition to the fees and charges imposed by ETS.

4. License Grant.

During the term of this Agreement, ETS grants to Customer a non-exclusive, personal, non-transferable license to access and use the ETS Software and Services solely on and as part of ETS' website and servers. ETS may modify the Software and Services at any time for any reason and may provide modified versions of the ETS Software and Services to Customer.

5. Intellectual Property Rights.

Customer acknowledges and agrees that the ETS Services constitute confidential and proprietary information of ETS and its licensors and embodies trade secrets and intellectual property of ETS and its licensors protected under United States copyright and other laws and international treaty provisions. Customer further acknowledges that all right, title, and interest in and to all parts of the ETS Services, including, without limitation, associated intellectual property rights, are and shall remain with ETS and its licensors. Customer shall not, and shall cause its employees and agents not to, disclose or transfer any portion of the ETS Services to any third party. Customer further agrees not to translate, decompile, reverse engineer, disassemble, modify, reproduce, rent, lease, lend, sublicense, distribute, remarket or otherwise dispose of any portion of the ETS Services. Customer hereby acknowledges that, if ETS at any time or from time to time performs any customizations or modifications to ETS Services, all rights and interests to such customizations or modifications shall be the sole property of ETS.

6. Term and Termination.

This Agreement shall have an initial term of two (2) months and shall thereafter automatically renew for successive one (1) month periods.

This Agreement and Customer's access to the ETS Services shall terminate as follows: (i) if cancellation notice is given as described herein, Customer may terminate agreement on or before midnight of the 30th day following the initiation of service and ETS will waive the setup fee and the monthly storage fee for the preceding month; (ii) Either party may terminate upon thirty (30) days prior notice; (iii) ETS may immediately and without prior notice terminate upon a violation by Customer of ETS' acceptable use policies; (iv) ETS may terminate immediately and without prior notice in accordance with Section 1; (and v) ETS may terminate immediately if, after fifteen (15) days prior notice to Customer, Customer has failed to correct any breach of this Agreement.

Upon termination, ETS may immediately remove and destroy all of Customer's data and information from ETS' facilities and Customer shall have no right to copy or download such data or information.

To cancel ETS' service, Customer must submit a written request via either (i) fax to 678-669-1075 or (ii) email to doug@essentialtechservices.com or (iii) via mail to Essential Technology Services, Inc., 5435 Lexington Woods Lane, Alpharetta, Georgia, 30005-6777, Attention: Cancellations. For assurance of delivery, ETS recommends that requests for cancellation be sent via certified mail.

Sections 1, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, and 16 shall survive any termination of this Agreement.

7. Exclusion of Warranties.

ETS PROVIDES THE ETS SERVICE ON AN "AS IS" BASIS, AND WITHOUT ANY WARRANTY OF ANY KIND, whether expressed or implied, including, but without limitation, any implied warranty of merchantability, or fitness for a particular purpose. While ETS makes reasonable efforts to maintain the ETS service, many factors are not within ETS' control. Therefore, ETS does not warrant, and is not responsible for any loss of data, delays, non-delivery or misdelivery of information, lack of access, slow response time, or service interruptions or errors. Loss, delay or non-delivery of data can be due to but not limited to ETS' own negligence, viruses or other third parties. Customer's data is defined as any data held by ETS and includes account

information and email services. ETS provides no warranty to customer regarding the accuracy of usage statistics, which ETS may provide at its discretion. Further, no advice or information given by an ETS representative shall create a warranty or serve as an amendment to this agreement.

ETS has the right to change prices, or add or delete features of any existing product or service. The right to change products or services extends to any software supporting a product or service. ETS reserves the right to change prices or material features at any time upon thirty (30) days prior notice. ETS reserves the right to institute new fees or new material features at any time upon thirty (30) days prior notice. ETS has the right to discontinue products or services. ETS also has the right to deactivate a customer's service with a thirty (30) day notice. Except for certain products and services specifically identified as being offered by ETS, ETS does not control any materials, information, products, or services on the Internet. The Internet contains unedited materials, some of which are sexually explicit or may be offensive to you. ETS has no control over and accepts no responsibility for such materials. You assume full responsibility and risk for use of the services and the Internet and are solely responsible for evaluating the accuracy, completeness, and usefulness of all services, products, and other information, and the quality and merchantability of all merchandise provided through the service or the Internet.

8. Limitation of Liability and Damages.

THE TOTAL AGGREGATE LIABILITY OF ETS TO CUSTOMER SHALL BE LIMITED TO THE AMOUNT PAID TO ETS BY CUSTOMER HEREUNDER DURING THE THREE MONTHS IMMEDIATELY PRECEDING A CLAIM IN WHICH ETS IS LIABLE TO CUSTOMER. IN NO EVENT SHALL ETS BE LIABLE FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR LOSS OF BUSINESS, REGARDLESS OF WHETHER SUCH DAMAGES ARE BASED UPON BREACH OF CONTRACT, TORT, OR OTHERWISE AND WHETHER OR NOT ETS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Secured Access.

The Service is intended by ETS to require a user name, password, and encryption key (collectively, "IDs") to access and use. The Customer has full responsibility for the creation of IDs, recording of IDs, changing IDs, and maintaining the strict confidentiality of the user IDs, and any charges, damages, or losses that may be incurred or suffered as a result of the Customer's failure to do so. Customer understands that encrypted data stored with the ETS Service can not be retrieved without all IDs and shall not hold ETS liable for any harm related to the theft or loss of their IDs, their disclosure of their IDs, or their authorization to allow another person or entity to access and use the site using their IDs. Customer agrees to immediately notify ETS of any unauthorized use of Customer IDs or other need to deactivate an ID due to security concerns.

10. Security.

The site will endeavor to use appropriate security measures to protect the confidentiality of the Customer's information. The Service will use standard encryption technology when transmitting and storing Customer information. Customer acknowledges and agrees that no form of encryption is fool proof and will hold harmless ETS, its affiliate companies, and its stockholders in the event that the site's security and the data contained therein is compromised.

11. Indemnification.

Customer shall indemnify and hold ETS, its affiliate companies, and its stock holders harmless against all third party claims, demands, suits, actions, judgments, losses, costs, damages (direct, indirect and consequential), attorney's fees and expenses that you may sustain or incur by reason of any breach or alleged breach of any term or condition of this Agreement (including reasonable attorney's fees) and for any act or omission of Customer or its clients which are in any way related to the ETS Service.

12. Force Majeure.

ETS shall have no liability for delays, failure in performance or damages due to: fire, explosion, lightning, pest damage, power surges or failures, strikes or labor disputes, water, acts of God, the elements, war, civil disturbances, acts of military authorities or the public enemy, inability to secure raw materials, transportation facilities, fuel or energy shortages, acts of omissions of communications carriers, unauthorized use of the Services, or other causes beyond ETS' control, whether similar to the foregoing or not.

13. Miscellaneous.

Customer may not assign its rights or delegate any of its duties under this Agreement without our prior written consent of ETS, and any attempted assignment or delegation without such consent shall be void. If one or more provisions of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining provisions shall not be affected or impaired thereby. Nothing in this Agreement or in the understanding of the parties construes upon the parties the status of partners or joint ventures. ETS may subcontract any work, obligations or other performance required of ETS under this Agreement without consent of Customer. Other than the termination of this agreement, all notices provided hereunder sent by email, mail or certified mail to ETS, will be effective upon transmission. ETS has the right to amend the Agreement from time to time. When amended the new Terms & Conditions will be made publicly available on ETS' website (<http://www.essentialtechservices.com>). Continued use of the service is construed as your acceptance of the currently posted Terms & Conditions. Customers are advised to visit ETS' website from time to time and review the Terms & Conditions to acquaint themselves with the provisions of the Agreement. The laws of the State of Georgia shall govern the Agreement, without giving effect to applicable conflict of laws provisions. The federal and state courts located in Atlanta, Georgia alone have jurisdiction over all disputes arising out of or related to this Agreement and the Services. You consent to the personal jurisdiction of such courts sitting in Georgia with respect to such matters or otherwise between you and ETS, and waive your rights to removal or consent to removal. In the event any litigation or other proceeding is brought by either Party in connection with this Agreement, the prevailing Party in such litigation or other proceeding shall be entitled to recover from the other Party all reasonable costs, attorney's fees and other expenses incurred by such prevailing Party in such litigation.

14. U.S. GOVERNMENT RESTRICTED RIGHTS.

This product is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013, subparagraph (c)(1) and (2) of the Commercial Computer Software Restricted Rights clause at 48 FAR 52.227-19 as applicable. The subcontractor/manufacturer is listed below.

15. Arbitration.

Except as specifically provided in this Agreement, the parties agree that any dispute or controversy arising out of, relating to or in connection with the interpretation, validity, construction, performance, breach or termination of this Agreement shall be submitted to binding arbitration to be held in Georgia in accordance with the rules of the American Arbitration Association (the "Rules"). The decision of the arbitrator shall be final, conclusive and binding on the parties to the arbitration. Judgment may be entered on the arbitrator's decision in any court of competent jurisdiction. The parties shall each bear their own attorney fees with respect to such Arbitration but shall share equally the other costs and expenses of arbitration.

Should you have any questions concerning this agreement, or if you desire to contact ETS for any reason, please write to Essential Technology Services, Inc., 5435 Lexington Woods Lane, Alpharetta, Georgia, 30005-6777, or call 1-404-434-7776.

ETS is not responsible for typographical errors.