

# **Electric AI INC**

## **TERMS & CONDITIONS**

PLEASE READ THESE TERMS AND CONDITIONS (THE “AGREEMENT”) CAREFULLY BEFORE PURCHASING AND/OR USING THE SERVICES PROVIDED BY ELECTRIC AI, INC. (“ELECTRIC”). BY SIGNING AN ORDER THAT REFERENCES THIS AGREEMENT, OR BY INSTALLING OR USING THE SERVICES IN ANY MANNER, YOU AND THE ENTITY YOU REPRESENT (“CUSTOMER”) AGREE THAT YOU HAVE READ AND AGREE TO BE BOUND BY AND A PARTY TO THE TERMS AND CONDITIONS OF THIS AGREEMENT TO THE EXCLUSION OF ALL OTHER TERMS, AND YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND CUSTOMER. IF THE TERMS OF THIS AGREEMENT ARE CONSIDERED AN OFFER, ACCEPTANCE IS EXPRESSLY LIMITED TO SUCH TERMS.

### **1. SERVICES AND SUPPORT**

1.1 Subject to the terms and conditions of this Agreement, Electric will provide the information technology distributed management services specified in one or more Order Forms to this Agreement (collectively the “Service”) on a hosted basis via the internet for the term of this Agreement. An “Order Form” shall mean (i) any written agreement between Customer and Electric for the purchase of Services which incorporates this Agreement or (ii) an order confirmation specifying the Electric services selected by the Customer for purchase via the Electric website,

1.2 Electric hereby grants Customer for the term of this Agreement a non-exclusive, non-transferable, royalty free, worldwide, limited right and license (without the right to sublicense) to download and install the Electric client software (“Client Software”). The Client Software is licensed for use solely in connection with Customer’s authorized use of the Service and Customer shall not use the Client Software for any other purpose. Electric shall provide instructions for downloading the Client Software promptly after execution of this Agreement by both parties.

1.3 Customer is responsible for providing Electric with (i) all subscriptions and account credentials necessary for Electric to access any and all data and information to be monitored, analyzed and/or processed by the Service, or otherwise provided to Electric in connection with Customer’s use of the Service (such data and information, “Customer Information”) and all servers, devices, storage, software (other than the Client Software), databases, network and communications equipment and ancillary services that connect to, access or otherwise use the Service at Customer’s facility(ies), or are otherwise designated by Customer to be managed in connection with the Service (collectively, “Customer Systems”). Customer shall ensure that all Customer Systems comply with all specifications provided to Customer by Electric in writing as of the Start Date specified in the applicable Order Form. Customer represents and warrants that it owns the Customer Systems or has the right to provide the Service with access to the Customer Systems, and that if the Customer Systems are owned by individual end users or other third parties who supply their own devices for use with Customer’s business applications (e.g., under a “BYOD” or similar policy) (“BYOD Devices”), Customer has made such end users or other third parties aware that the Service will connect to those BYOD Devices, obtained their consent for such Service connectivity, and informed them of the terms and conditions of this Agreement and the fact that they shall apply with respect to the use of the Service in connection with those BYOD

Devices. Electric does not recommend, support or encourage the use of the Service in connection with BYOD Devices and shall have no liability for the results of the Service connecting to BYOD Devices (including, without limitation, liability for accessing, reproducing, modifying or deleting personal data or other information stored on the BYOD Devices).

1.4 Electric will use reasonable efforts to provide Customer with its standard customer support and assistance services via the Slack interface during its normal business hours (Monday through Friday, 9AM to 6PM Local time, excluding holidays). Customer acknowledges and agrees that the Service is subject to occasional downtime for scheduled or emergency maintenance or as a result of any third party services (including network and hosting services) being unavailable.

## **2. RESTRICTIONS AND RESPONSIBILITIES**

2.1 Customer will not, and will not permit any third party to, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the Service (including any software used to provide the Service) or the Client Software (provided that reverse engineering is prohibited only to the extent such prohibition is not contrary to applicable law); modify, translate, or create derivative works based on the Service or Client Software; or copy (except for archival purposes), rent, lease, pledge, assign, or otherwise transfer or encumber rights to the Service or Client Software; post, upload, or otherwise store or transmit through the Service any data or other content that is

obscene, pornographic, threatening, harmful, or otherwise violates this Agreement or the rights of others; or use the Service or Client Software (i) for the benefit of a third party, (ii) other than for Customer's own internal business purposes, (iii) to build a competitive product or service or (iv) in violation of any applicable laws, rules and regulations.

2.2 Customer will use reasonable measures to safeguard the security of any credentials issued by Electric or registered by Customer for access to the Service in order to prevent unauthorized access to the Service, and shall notify Electric promptly of any such unauthorized access or use. Customer shall be responsible for compliance with this Agreement by any person or entity it allows to access the Service on its behalf.

### **3. CUSTOMER INFORMATION**

3.1 In the course of providing the Service, Electric will obtain and process Customer Information provided by Customer's employees, agents, contractors and other users of the Customer Systems (collectively, "Customer Users"). Electric will use any Customer Information solely to provide the Service.

3.2 From time to time, Customer will designate one or more Customer representatives as having the authority to take administrative actions with respect to Services ("Authorized Customer Users"). By way of example, and not as a limitation, Authorized Customer Users may direct Electric to activate or deactivate Customer User network

privileges (e.g., in connection with employee onboarding or termination), to reproduce, delete or protect from deletion some or all of the Customer Information, and to enable or disable access by Customer Users to all or some of the Customer Information.

Customer represents that Electric shall be entitled to rely on the instructions and/or other information provided by Authorized Customer Users or otherwise provided through the Electric account associated with Authorized Customer Users, and may communicate with Customer Authorized Users regarding all aspects of the Service, the Customer Systems and Customer Information. Electric shall have no obligation to evaluate any such instructions or information or to identify or warn against the potential effects of such instructions. Electric shall not be liable for the results of any actions or inactions carried out in reliance on such instructions or information. It is the sole responsibility of Customer to have in place its own internal policies and procedures regarding Customer Users' interactions with Electric and the Service.

3.3 Customer represents and warrants to Electric that (i) it has informed and will at all times keep informed its Customer Users of the fact that their use of the Customer Systems is subject to monitoring (including as contemplated hereunder), and (ii) Electric's access to and use of the Customer Information as authorized under this Agreement will not violate the privacy rights or any other rights (statutory or otherwise) of the Customer Users.

3.4 Customer represents and warrants that the Customer Information provided to Electric for the purposes set forth under this Agreement was lawfully acquired without violating the rights of any third parties. If Electric receives any notice or claim that any Customer Information, or activities hereunder with respect to any Customer Information, infringes or violates the privacy or intellectual property rights of a third party or the terms

of any confidentiality agreement or other restriction on the disclosure of such Customer Information to Electric (a "Claim"), Electric may (but is not required to) suspend activity hereunder with respect to that Customer Information and Customer will indemnify Electric from all liability, damages, settlements, reasonable attorney fees and other costs and expenses in connection with any such Claim, as incurred.

#### **4. INTELLECTUAL PROPERTY RIGHTS**

4.1 Customer retains all rights, title and interests in and to the Customer Information and all data, analyses and other results obtained from the Services through its processing of Customer Information or access to the Customer Systems; provided, however, Electric shall be free to measure levels of Service usage for its own internal business purposes and may use and disclose aggregated, anonymous statistical information concerning its customers' use of the Service, for any purpose.

4.2 The Client Software is licensed, not sold. Nothing in this Agreement conveys to Customer any rights of ownership in or related to the Service or Client Software, or any intellectual property rights therein. Except as expressly set forth herein, Electric alone (and its licensors, where applicable) will retain all intellectual property rights relating to the Service and the Client Software and shall be free to use, and to allow others to use, any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Customer or any third party relating to the Service and/or the Client Software so long as Customer is not identified as the source of such information.

4.3 Customer represents and warrants that it owns or otherwise controls all rights to the Customer Information (or has the right to use such Customer Information in connection with the Service) and that use of the Customer Information by Electric will not infringe or violate the rights of any third party.

## **5. CONFIDENTIAL INFORMATION**

5.1 “Confidential Information” means all financial, business, operational, marketing or technical information disclosed by or for a party in relation to this Agreement whether disclosed in tangible, written, oral or electronic form, that is of a nature that should reasonably be considered to be confidential and proprietary. Without limitation, (a) all non-public product, pricing and technical information related to the Service and the Client Software shall be treated as Electric’s Confidential Information and (b) all Customer Information shall be deemed Customer’s Confidential Information for purposes of this Section 5. Confidential Information expressly excludes any information to the extent that a recipient can demonstrate such information is (a) already known by it prior to receipt for the disclosing party without restriction, (b) rightfully furnished to it without restriction by a third party not in breach of any obligation to the disclosing party, (c) generally available to the public without breach of this Agreement or (d) independently developed by the recipient without reference to or use of any of the disclosing party’s Confidential Information.

5.2 Except for the specific rights expressly granted by this Agreement, the receiving party shall not use, copy or disclose any of the disclosing party's Confidential Information without disclosing party's prior written consent. The receiving party shall use the disclosing party's Confidential Information solely for the purpose of exercising its rights and performing its obligations hereunder. The receiving party shall only disclose Confidential Information to its employees, contractors and agents ("Representatives") who have a need to know for the purposes of this Agreement and are bound by substantially similar confidentiality obligations and shall use reasonable care to safeguard the disclosing party's Confidential Information. Each party shall be responsible for any breach of confidentiality by its Representatives, as applicable. Promptly upon the disclosing party's request at any time, the receiving party shall return all of the disclosing party's tangible Confidential Information, permanently erase all Confidential Information in electronic form and destroy all information, records, copies, summaries, analyses and materials developed therefrom. Neither party will be obligated to erase Confidential Information contained in an archived computer system backup made in accordance with such party's security and/or disaster recovery procedures, provided that such archived copy will (i) eventually be erased or destroyed in the ordinary course of such party's data processing procedures and (ii) will remain fully subject to the obligations of confidentiality stated herein. Each party may disclose the general nature, but not the specific terms, of this Agreement without the prior consent of the other party; provided, however, that either party may provide a copy of this Agreement or otherwise disclose its terms on a confidential basis in connection with any financing transaction or due diligence inquiry.

5.3 Nothing herein shall prevent a party from disclosing this Agreement or any of the other's Confidential Information as necessary pursuant to any court order or any legal, regulatory, law enforcement or similar requirement or investigation; provided, prior to



any such disclosure, the receiving party shall use reasonable efforts to (a) promptly notify the disclosing party in writing of such requirement to disclose and (b) cooperate with the disclosing party in protecting against or minimizing any such disclosure or obtaining a protective order.

## **6. DATA SECURITY**

Electric shall comply with industry standard security measures (including with respect to personnel, facilities, hardware and software, storage and networks, access controls, monitoring and logging, vulnerability and breach detection, incident response, and any other organizational and technical measures reasonably appropriate to protect against unauthorized access to Customer Information). Electric shall notify Customer of an Incident as soon as practicable, but no later than twenty-four (24) hours after Electric becomes aware of it. Electric shall use commercially reasonable efforts to remedy any Incident as soon as reasonably practicable and prevent any further Incident at Electric's expense in accordance with applicable laws. "Incident" means any act or omission that compromises either the security, confidentiality or integrity of Customer Information or the physical, technical, administrative or organizational safeguards put in place by Electric that relate to the protection of the security, confidentiality or integrity of Customer Information and that results in the unauthorized access, use, disclosure or deletion of Customer Information. Electric will promptly notify Customer if any notices are required under applicable law in connection with an Incident and allow Customer to assist in preparing and delivering the notices.

## **7. PAYMENT OF FEES**

Customer will be responsible for all fees specified in the applicable Order Form(s) ("Fees"). Electric reserves the right to change the Fees or applicable charges and to institute new charges and Fees at the end of each pre-paid term or at the end of the then-current prepaid renewal term, as applicable, upon sixty (60) days prior notice to Customer (which may be sent by email), unless otherwise provided for in the Order Form. All undisputed Fees must be paid in accordance with the payment terms set forth in the Order Form or the Service may be suspended or terminated. If any part of the Fees charged to Customer's credit card or paid via ACH or similar electronic payment method are declined, reversed, charged back or for any other reason not paid in full via such electronic payment method, Electric shall have the right, exercisable in its sole discretion and without prejudice to any of its other rights or remedies under this Agreement, to either resubmit such charges to Customer's form of payment or invoice Customer for the amount of such charges (with payment due within ten (10) days after receipt of invoice), in each case, plus a returned payment charge of \$35 or the maximum permitted by applicable law, if less. Unpaid Fees other than amounts disputed in good faith are subject to a finance charge of 0.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower. Customer shall be responsible for all taxes imposed or based on the Service other than taxes based on Electric's net income or gross receipts.

## **8. TERM; TERMINATION**

8.1 Unless terminated earlier as provided below, this Agreement shall govern the Order Form(s) that reference this Agreement and shall remain in effect until the last Order Form expires or is terminated hereunder. Each order form shall remain in effect from the Start Date specified therein for a period equal to the initial term specified therein. Unless a party cancels an applicable Order Form within thirty (30) days prior to the end of the initial term thereof, Customer will be charged for, and the Order Form will automatically renew, for a subsequent service term equal in duration to the previous service term.

8.2 In addition to any other remedies it may have, either party may terminate this Agreement upon thirty (30) days' notice if the other party breaches any of the terms or conditions of this Agreement and fails to remedy such breach within such 30-day period. Customer will pay all undisputed, properly invoiced amounts for the Service up to and including the last day of the initial term or then-current renewal term, as applicable, of each Order Form.

8.3 All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, accrued rights to payment, warranty disclaimers, indemnification obligations, and limitations of liability.

## **9. LIMITED WARRANTY AND DISCLAIMER**

9.1 Electric warrants that the service shall perform in accordance with any and all official specifications and similar documentation provided to customer. In the event the service does not conform to such specifications or documentation, customer shall provide written notice of non-conformance to electric and electric shall, at its option and as its sole obligation and customer's exclusive remedy, re-perform the affected portion of the services at no additional charge, issue a refund for the non-conforming services, or, if it determines neither of the foregoing options are commercially practical, terminate this agreement and issue a refund for any prepaid amounts for unused portions of the term.

9.2 ELECTRIC DOES NOT WARRANT THAT THE ELECTRIC PLATFORM, SUPPORT SERVICES, HARDWARE, OR PURCHASED THIRD PARTY SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE ELECTRIC PLATFORM, SUPPORT SERVICES, HARDWARE, OR PURCHASED THIRD PARTY SOFTWARE. OTHER THAN THE EXPRESS WARRANTY SET FORTH IN SECTION 9.1, THE ELECTRIC PLATFORM, SUPPORT SERVICES, HARDWARE, AND ANY PURCHASED THIRD PARTY SOFTWARE ARE PROVIDED "AS IS" AND ELECTRIC DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

## **10. LIMITATION OF LIABILITY**

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, ELECTRIC AND ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF ELECTRIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; (C) FOR ANY MATTER BEYOND ELECTRIC'S REASONABLE CONTROL; (D) FOR THE RESULTS OF ANY ACTS OR OMISSIONS UNDERTAKEN IN COMPLIANCE WITH CUSTOMER'S INSTRUCTIONS OR (E) FOR ANY AGGREGATE DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER TO ELECTRIC FOR THE SERVICE IN THE 12 MONTHS PRIOR TO THE CLAIM GIVING RISE TO SUCH DAMAGES. THE LIMITATIONS SET FORTH IN THIS SECTION 10 SHALL NOT APPLY TO FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO A PARTY'S INDEMNIFICATION OBLIGATIONS OR TO ANY BREACH OF CONFIDENTIALITY OR VIOLATION OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS.

## **11. INDEMNIFICATION**

11.1 Electric will defend Customer and Customer's officers, directors, employees, agents and representatives from all third party claims that the Client Software or Services provided by Electric, when used and operated in accordance with the terms and conditions of this Agreement, infringes any intellectual property rights of such third party. Electric will pay all losses, damages, awards, penalties and/or settlement amounts finally awarded to such third party by a court of competent jurisdiction, or agreed to in a monetary settlement, with respect to any such claims. Electric shall have sole control over the defense and/or settlement of any claim subject to indemnification by Electric; provided, however, that Electric will not settle any such claim without the prior written consent of the indemnified party (such consent not to be unreasonably withheld, conditioned or delayed) unless the settlement requires only the payment of money and includes a full and unconditional release of all liability.

11.2 Customer will defend Electric and Electric's officers, directors, employees, agents and representatives from all third party claims that arise in connection with any breaches of Section 3.3. Customer will pay all losses, damages, awards, penalties and/or settlement amounts finally awarded to such third party by a court of competent jurisdiction, or agreed to in a monetary settlement, with respect to any such claims. Customer shall have sole control over the defense and/or settlement of any claim subject to indemnification by Customer; provided, however, that Customer will not settle any such claim without the prior written consent of the indemnified party (such consent not to be unreasonably withheld, conditioned or delayed) unless the settlement requires only the payment of money and includes a full and unconditional release of all liability. Electric shall promptly notify Customer of any such claim and provide Customer with reasonable assistance in connection with any such claim.

11.3 Neither party shall have any responsibility to defend or indemnify the other party for any claims under Section 11.1 or

11.2, as the case may be, to the extent the claim otherwise subject to indemnification results from the gross negligence, willful misconduct or breach of this Agreement by the indemnified party.

## **12. MISCELLANEOUS**

If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by a Party except with prior written consent of the other Party; except that either Party may assign this Agreement in connection with the sale or transfer of all or substantially all of that Party's business or assets. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that all waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. No agency, partnership, joint venture, or employment is created as a result of this Agreement and neither party shall have any authority of any kind to bind the other party in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when

receipt is electronically confirmed, if transmitted by facsimile or e-mail; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. This Agreement shall be governed by the laws of the United States and the State of New York without regard to its conflict of laws provisions. Any disputes arising out of this Agreement shall be brought exclusively in the courts located in New York County, New York. Each party shall have the right to pursue injunctive or other equitable relief at any time from any court of competent jurisdiction.