



Wholesale Basic Services Agreement

This Services Agreement (this “**Agreement**”) sets forth the terms agreed to by and between Estech Systems, Inc. (“**ESI**”), a Texas corporation with offices at 3701 E Plano Parkway, Suite 100, Plano, TX 75074 and **Customer**. Whereas, ESI owns and operates a communications network and is in the business of providing communications services to other entities; and Whereas, Customer desires to purchase from ESI certain services available through the ESI network; Whereas, ESI is willing to sell such services to Customer according to the terms and conditions set forth in this Agreement and in any Customer Order Schedule (“**COS**”) executed by or on behalf of Customer (the “**Services**”); Now, therefore, in consideration of the foregoing recitals and the covenants contained herein and other good and valuable consideration, the two parties agree as follows:

1. TERM. The term of this Agreement (“**Term**”) begins on the Cutover Date and continues for the length identified in the COS, unless terminated earlier as provided in Section 10, 11 or 19 of this Agreement. At the end of the current Term, the Term is automatically renewed for an additional one (1) year period unless Customer provides ESI with written notification of intention to cancel the service at least thirty (30) days prior to the end of the current Term. Customer agrees to pay for Services for the duration of the Term. Expiration of the Term does not alleviate Customer of responsibility for paying all unpaid, accrued charges due hereunder. If Customer chooses to cancel the Services or any portion of the Services prior to the end of the current Term, disconnection or cancellation fees might apply as set forth in Sections 10, 11 or 19 of this Agreement.

2. 911 & SERVICE LIMITATIONS. The Federal Communications Commission (“**FCC**”) requires that ESI provide E911 service to all customers who use ESI Services within the United States.

2.1. Customer acknowledges that ESI’s equipment and Services do not support 911 emergency dialing or other emergency functions in the same way that traditional land line 911 services work. The differences are detailed in this Section 2 and Customer hereby understands and agrees that Customer’s E911 services are subject to the limitations described herein. ESI will provide Customer with warning labels regarding the limitations or unavailability of 911 emergency dialing. Customer agrees to place a label on and/or near each telephone or other Customer premise equipment on which the Services might be utilized. If additional labels are required, Customer can request them from ESI. ESI will provide Customer with advisory notices regarding 911 emergency dialing and request written acknowledgments from Customer. Customer agrees to respond and affirmatively acknowledge that ESI has advised Customer of the circumstances under which ESI E911 service might not be available or might be limited in comparison to traditional 911 emergency dialing. ESI ADVISES CUSTOMER TO MAINTAIN AN ALTERNATIVE MEANS OF ACCESSING TRADITIONAL 911 SERVICES.

2.2. Customer acknowledges that the Services will not function in the absence of electrical power.

2.3. Customer acknowledges that the Services will not function properly if there is an interruption or a lack of bandwidth of Customer’s broadband or high-speed internet access service.

2.4. Customer acknowledges that the Services are not set up to function with out-dialing systems including home security systems, medical monitoring equipment, TTY equipment, and entertainment or satellite television systems. Customer hereby waives all claims against ESI for interruption or disruption of such systems by the Services.

2.5. ESI E911 service is a mandatory component of all inbound/outbound fax and voice service plans. E911 service is not offered on virtual numbers, toll free numbers or similar service accessories or add-on plans. E911 service is only available in selected areas. Customers who subscribe to ESI E911 service will be required to register the physical location of their equipment (ATA or IP phone) with ESI, either on the my ESI.com user portal, initial order forms (COS) or by calling customer service. Customer agrees to update the location whenever the physical location of service routing 911 calls to the correct emergency call taker is no longer the physical location currently registered for the account. Customer acknowledges and understands that any enhanced location information passed to an emergency operator by ESI will be based upon the physical location provided to ESI by Customer. In the event that the physical location has not been updated or is not complete, ESI might attempt to route a 911 call based upon the bill to or ship to addresses associated with the Customer’s account or initial order.

2.6. Customer also acknowledges that ESI E911 service has certain characteristics that distinguish it from traditional, legacy, circuit-switched 911 service. These characteristics might make ESI’s E911 services unsuitable for some Customers. Because each Customer’s circumstances might vary widely, Customers should carefully evaluate their own circumstances when deciding whether to rely solely upon ESI’s E911 service. Customer



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acknowledges that it is Customer's responsibility to determine the technology or combination of technologies best suited to meet Customer's emergency calling needs, and to make the necessary provisions for access to emergency calling services (such as maintaining a conventional landline phone or wireless phone as a backup means of completing emergency calls). The following characteristics distinguish ESI's E911 service from traditional, legacy, circuit-switched 911 service: ESI's E911 service will not function if Customer's ATA or IP phone fails or is not configured correctly or if Customer's ESI service is not functioning for any reason, including, but not limited to, electrical power outage, broadband service outage, or suspension or disconnection of service because of billing or other issues. If there is a power outage, Customer might be required to reset or reconfigure the equipment before being able to use the ESI Services, including for E911 purposes. After initial activation of the E911 service, and following any change of and update to Customer's physical location, there might be some delay before the automatic number and location information is passed to the local emergency service operator. This information is typically populated into ESI's nomadic E911 so that the automatic number and location information will be activated within this schedule. The local emergency service operator receiving ESI E911 emergency service calls might not have a system configured for E911 services or be able to capture and/or retain automatic number or location information. This means that the operator might not know the phone number or physical location of the person who is making the ESI E911 call. Due to technical factors in network design, and in the event of network congestion on the ESI network, there is a possibility that an ESI E911 call will produce a busy signal or will experience unexpected answering wait times and/or take longer to answer than 911 calls placed via traditional, legacy, circuit-switched telephone networks. If a Customer does not correctly identify the actual location where the ESI equipment will be located at the time of activation of the Services, ESI E911 communications might not be directed to the correct local emergency operator.

2.7. Customer acknowledges and understands that neither ESI nor any of its third party services providers will be liable for any service outage and/or inability to dial 911 or any other emergency telephone number using ESI Services or equipment or to access an emergency service operator due to the 911 dialing characteristics and limitations set forth in this Agreement. CUSTOMER AGREES TO DEFEND, INDEMNIFY, AND HOLD HARMLESS ESI, ITS OFFICERS, DIRECTORS, EMPLOYEES, AFFILIATES AND AGENTS AND ANY OTHER THIRD PARTY SERVICES PROVIDERS WHO FURNISH SERVICES PURSUANT TO THIS AGREEMENT, FROM ANY AND ALL CLAIMS, LOSSES, DAMAGES, FINES, PENALTIES, COSTS AND EXPENSES (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEY FEES) BY, OR ON BEHALF OF, CUSTOMER OR ANY THIRD PARTY OR USER OF THE SERVICES RELATING TO THE FAILURE OR OUTAGE OF THE SERVICES, INCLUDING THOSE RELATED TO 911 DIALING.

3. EQUIPMENT. To provide the Services, ESI might sell, lease or otherwise provide certain telecommunication and digital connections and links, switches, routers, and other hardware or equipment, including, but not limited to telephones, to Customer (the "**Equipment**"). All Equipment shipments are F.O.B. ESI's facility. ESI's liability for delivery shall cease, and title and all risk of loss or damage shall pass to Customer upon shipment from ESI's facility to Customer. In addition to the other terms and conditions in Section 3, leased Equipment is further subject to Section 3.7 below. If the equipment is purchased, All ESI branded equipment will be provided a warranty from the date of purchase to the end of term. All non-branded ESI equipment will be subject to the original manufacturer's warranty from date of purchase. In the event of an accepted warranty claim, Customer shall be eligible for Advance Replacement of the defective item. Pursuant to such warranty, ESI will either repair or replace the Equipment, with new or like-new equipment, in its sole discretion. For warranty claims, Customer shall be required to obtain a Return Material Authorization number, in advance, from ESI to return any Equipment. ESI will pay for standard ground shipping back to the Customer for any items accepted as warranty claims for which a Return Material Authorization number was obtained. Any additional charges for priority or expedited shipping and handling shall be at Customer's sole expense. ESI will provide replacement equipment only if the Equipment is deemed to be defective and covered under the warranty. ESI will not cover replacement for lost, stolen or modified equipment; malfunctions resulting from lightning, fire, accident, neglect, abuse or acts of God; use of improper electrical power; repair of, tampering with or alteration of the Equipment, by anyone other than ESI or its authorized Independent Sales Agent; or any other malfunctions caused by circumstances beyond the control of ESI or an affiliate thereof, or from other than ordinary use of the Equipment. Equipment returned by Customer that is not covered under warranty may be refused by ESI and Customer will be responsible for all return shipping charges. With respect to the Equipment, the parties agree as follows:

3.1. Customer bears the entire risk of loss, theft, destruction or damage to the Equipment, and Customer should consider maintaining insurance covering each piece of purchased Equipment through the Term of any bundled Services Agreement. For leased Equipment, Customer is subject to those insurance obligations contained in the Lease Agreement. Loss, theft, destruction or damage to the Equipment does not constitute a Force Majeure



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condition which could excuse performance by Customer under the Agreement and Customer would remain responsible for performance of the Agreement in accordance with its terms.

3.2. Customer should not move, configure, reconfigure, program or otherwise alter the Equipment in any manner that might void the warranty under this Section 3.

3.3. EXCEPT TO THE LIMITED EXTENT SET FORTH IN THIS SECTION 3, ESI MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, WITH RESPECT TO THE EQUIPMENT, ITS MERCHANTABILITY OR ITS FITNESS FOR A PARTICULAR PURPOSE.

3.4. ESI shall not be liable to Customer or any other person for direct, indirect, special, incidental or consequential damages arising from Customer's use of the Equipment or from Customer's use of its own equipment even if ESI has consented to such use or for damages based on strict or absolute tort liability or ESI's negligence.

3.5. Customer shall provide appropriate equipment space, environment, ducting and electrical power to enable the Equipment to be installed and maintained and for ESI to provide the Services.

3.6. Customer hereby agrees to comply with the conditions of any license and/or warranty of any Equipment or related software supplied by ESI.

4. BILLING, CHARGES AND PAYMENTS

4.1. PAYMENT. Upon purchase of the Services, Customer will be asked to provide ESI with a valid credit card number from an issuer that is accepted by ESI. Customer authorizes ESI to charge the credit card number provided by Customer for all charges arising from Customer's use of the Services as well as fees related to any disconnection or cancellation of the Services if payment is not made on time. Customer agrees to notify ESI of any change to the credit card information including, but not limited to, changes in account number, expiration date or billing address. ESI shall not be responsible for any charges made by the credit card issuer to Customer's account for exceeding credit limit, insufficient funds or other reasons. Under rare certain circumstances, with prior credit approval by ESI, which will be granted or withheld in ESI's sole discretion, Customer might have the option to pay for all charges by check. If such approval is granted, payment terms are Net 30 days. Customer's account will not be billed until Equipment has shipped. Estimated ship dates are approximate and are not guaranteed.

4.2. LATE/NON-PAYMENT. If any charges for the Services are due but unpaid for any reason including, but not limited to, non-payment or declined credit card charges, ESI may suspend or terminate the Services and all accrued charges shall be immediately due, plus a late fee of the lesser of 1.5% per month or the maximum allowed by law ("Late Fee(s)") accrued from the date of invoice until payment in full is received by ESI. If charges cannot be processed to the credit card and the Customer's account is suspended, Customer will be charged a fee of twenty-five dollars (\$25.00) to reactivate the account. No suspension or termination of the Services or of this Agreement shall relieve Customer from paying any amounts due hereunder. Any account terminated under this Section 4.2 shall be subject to the Early Termination Fee set forth in Section 11 of this Agreement in addition to all charges accrued and unpaid, any Late Fees thereon and all costs and expenses of collection including reasonable legal fees.

4.3. CREDIT TERMS. All Services provided to Customer and covered by this Agreement shall at all times be subject to credit approval or review by ESI. Customer will provide such credit information or assurance as is requested by ESI at any time. ESI, in its sole discretion and judgment, may discontinue credit at any time without notice and/or require a deposit or prepayment or automated payment by credit card.

4.4. BILLING. ESI will provide Customer with a monthly billing statement sent by electronic mail for all Services provided. Such charges shall include activation fees, monthly service fees, shipping charges, disconnection fees, equipment charges, toll charges, taxes and any other applicable charges. All rates and charges will be as provided in the Customer Order Schedule attached to this Agreement, subject to change by ESI as provided herein. Monthly service fees are billed in advance of each month's service including, but not limited to, taxes and other assessments on such Services which are passed through to the Customer. In the event that Services are retroactively charged



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with any increase in applicable taxes, fees or assessments or become subject to any additional governmental charges of any kind, ESI reserves the right to bill such charges to Customer in its sole discretion and Customer agrees to pay such charges to ESI. Toll charges, any charges based on actual usage and any other applicable charges, including but not limited to taxes and other assessments on such services which are passed through to the Customer, are billed subsequent to the end of each month's service. Billing for monthly service fees commences upon activation of the Services, and the first month's monthly service fee shall be prorated to take into account any partial month that may occur as the result of the date monthly service fees are initiated. ESI and Customer also agree that additional services may be ordered from time to time after the initial installation and commencement of Services. Therefore, additional COS's may be executed and will contain pricing and a full description of the additional services to be provided by ESI. Regardless of the date of execution of the additional COS's, any and all COS's executed between ESI and Customer shall incorporate all of the terms and conditions of this Agreement as updated on the ESI web site unless specifically stated otherwise in writing.

4.5. RATE CHANGES. ESI may change the prices for the Services and toll charges from time to time. ESI may change prices, plans, taxes or fees without any advance notice. In the event of a change in prices or toll charges, ESI will update the table at www.esi-estech.com/legal under "Cloud Rates Table". International toll calling rates are updated quarterly on the web site and no other notice shall be provided for changes to international toll calling rates. A Customer's recurring monthly service fees are locked in for the initial Term of the Agreement and any auto renewal Term.

4.6. CREDITS. Customer acknowledges and agrees that the Services are provided "as is, where is." Credit allowances for interruption of the Services shall not be provided.

4.7. BILLING DISPUTES. Customer must provide ESI with written notice of any disputed charge(s) within thirty (30) days after the invoice dates listed on the bill or shall be deemed to have waived its right to dispute the charges. The dispute notice shall be sent to disputes@esi-estech.com and shall set forth in reasonable detail the information concerning the disputed charges and the reason for the dispute. ESI and Customer will both act in good faith to promptly resolve any dispute. Once resolved, Customer will promptly pay any amounts owed including any Late Fee thereon.

4.8. TAXES. Prices for the Services do not include any customs, duties, sales, use, value added, excise, federal, state, local, public utility, universal service or other similar taxes or assessments. To the maximum extent permitted under applicable law, all such taxes and assessments shall be paid by Customer and will be added to any amounts otherwise charged to Customer unless Customer provides ESI with an appropriate exemption certificate. If any amounts paid for the Services are refunded by ESI, applicable taxes might not be refundable.

5. TELEPHONE NUMBER. Any telephone number provided by ESI ("**Number**") to the Customer shall be considered leased and not sold. Customer shall not use the Number with any device other than the Equipment without the express written permission of ESI. ESI reserves the right to change, cancel or move the Number at its sole discretion. At ESI's discretion, ESI may release the Number to Customer at the end of the Term and will honor a porting request from another provider pursuant to a Letter of Agency executed by an authorized representative of Customer. ESI shall not be responsible for and Customer hereby expressly waives and releases ESI from any claim for additional costs and expenses incurred by Customer as a result of ESI's exercise of any of the rights granted under this Section 5.

6. PROHIBITED USES. Any use of the Services or any other action that causes a disruption in the network integrity of ESI or its third party service providers or other vendors, whether directly or indirectly, including, but not limited to, the introduction of viruses, worms, Trojan horses, e-mail bombs, cancel bots or other similar destructive computer programming routines into the network, is strictly prohibited and could result in termination of the Services at the sole discretion of ESI. Customer understands that neither ESI nor any of its third party service providers or other vendors is responsible for the content of the transmissions that might pass through the Internet and/or the Services. Customer agrees that it will NOT use the Services in ways that violate laws (including but not limited to laws prohibiting transmission of unsolicited fax advertisements), infringe the rights of others, or interfere with the users, Services, or equipment of the network. Customer agrees and represents that it is purchasing the Services and/or the Equipment for its own internal use only, and shall not resell, transfer or make a charge for the Services or the Equipment without the advance express written permission of ESI. ESI's Service Plans for business Customers that offer "unlimited" minutes of PSTN calls ("Unlimited PSTN Plans") are for reasonable business use



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of Customer only. ESI defines the reasonable business use by Customer as 2,000 minutes per month per trunk. Such use shall not include certain activities including, but not limited to, any autodialing, continuous or extensive call forwarding, continuous connectivity, fax broadcast, fax blasting, telemarketing (including without limitation charitable or political solicitation or polling), call center operations, junk faxing, fax spamming, calling/faxing any person (through the use of distribution lists or otherwise) who has not given specific permission to be included in such a process or any other activity that would be inconsistent with reasonable business usage. Customer represents and warrants that it will not use the Services to transmit unsolicited content and that it has obtained the requisite consent required by any applicable law, rule or regulation to contact recipients using the Services. Customer shall not transmit through the Service any material of any kind or nature that is unlawful, harassing, libelous, abusive, threatening, harmful, vulgar, obscene, misleading or inaccurate, constitutes "hate speech" or is otherwise objectionable. Customer further agrees not to transmit any material that encourages conduct that could constitute a criminal offense, give rise to civil liability or otherwise violate any applicable local, state, national or international law or regulation. Customer also agrees not to use the Services to transmit any content which infringes or misappropriates the intellectual property of any other person. Any use found to be inconsistent with these restrictions will result in termination of the Services and ESI and its third party service providers shall not be liable for any losses incurred by Customer as a result of such termination and shall be indemnified by Customer against claims brought by any third party as a result of such Prohibited Use(s). ESI reserves the right to immediately terminate or modify the pricing of Services of any Customer using Unlimited PSTN Plans if ESI determines, in its sole discretion, that Customer is not using the Unlimited PSTN Plans for Customer's reasonable business use.

7. FRAUDULENT CALLS/IMPERMISSIBLE USE OF SERVICE. In the event ESI discovers fraudulent calls being made, or reasonably believes fraudulent calls are being made (including calls the purpose of which is theft or unauthorized usage of Services, misleading or fraudulent communications of any nature, unauthorized use of calling cards, pay-per-call numbers, information service calls, directory assistance calls or any other calls for which ESI is billed that are passed through to Customer for billing to Customer's end users or otherwise), ESI shall notify Customer as soon as reasonably possible after it learns of such potentially fraudulent activity. ESI might also, without any liability to Customer, take immediate action that is reasonably necessary to prevent such Fraudulent Calls from taking place, including without limitation, denying any Services to particular ANIs or terminating any Services to or from specific affected locations. Customer remains solely responsible for all costs, expenses, claims or actions arising from calls the purpose or effect of which is theft or unauthorized usage of Services or misleading or fraudulent communications of any nature.

Customer shall be responsible for the security of Authorization or Security Codes used by Customer or its end users. All calls placed using such Authorization or Security Codes or using facilities owned or controlled by Customer or its end users will be billed to, and must be paid by, Customer. Customer shall not use or permit others to use the Services in a manner that could interfere with Services provided to others or that could harm the facilities of ESI or others. Such impermissible uses include, but are not limited to: equipment malfunctions, connection of unauthorized equipment, mass calling events, inadequate Customer trunking, excessive non-completed calls, and excessive invalid calls. ESI may, without liability, initiate immediate action including, but not limited to, interruption of Customer's traffic without notice in order to prevent or terminate impermissible uses of Services.

8. OPTIONAL PEAK CAPACITY SUPPORT. Additional peak capacity ("**Bursting**") support might be provided by ESI as part of certain SIP Trunking service packages made available for sale as long as the SIP Trunks are used in conjunction with an ESI on-premises, telephone system. For such Bursting support to be available, certain minimum purchase quantities might apply.

Bursting is defined specifically as the ability to use additional SIP Trunk capacity above and beyond the number of SIP Trunk services purchased monthly as part of the Agreement. Bursting Trunks are intended to handle occasional spikes or peaks in call volumes that result in temporary demand or need for additional SIP Trunks on an intermittent or temporary basis. Customers who have an ESI telephone system and purchase capacity equal to the number of SIP Trunks noted in Column 1 with Bursting will receive temporary peak capacity equal to the number of Trunks noted in Column 2. If the use of the Bursting Trunks provided exceeds five (5) Peak Instances in a calendar month, ESI has the right to require that Customer add additional capacity at normal billing rates defined in the then current Customer Order Schedule. A Peak Instance is defined as any day in which busy hour capacity exceeds the number of Purchased Trunks and the additional Bursting Trunk(s) are active.



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Column 1	Column 2
Number of Purchased Trunks	Total Number of Trunks provided as part of Bursting Service
4	5
5	6
6	8
7	9
8	10
9	11
10	12
11	14
12	15
13	16
14	17
15	19
16	20
17	21
18	22
19	24
20	25

Customers with more than 20 trunks will need to contact their Independent Sales Agent or ESI for a complimentary custom traffic analysis and for the recommended Bursting Capacity required to be provided as part of their Services.

9. CHANGES TO THE AGREEMENT, SERVICES OR PLAN. ESI reserves the right to make changes to the terms and conditions of this Agreement. In the event of a change of such terms and conditions, ESI will post the change to the web site currently located at <http://www.esi-estech.com/cloud-services>. Notice will be considered received by Customers on the date shown for the changes posted to the web site (“**Change Date**”) and no additional notice will be required. Customer reserves the right to cancel this Agreement if the changed provisions impact the Customer’s account and Customer finds the change in terms and conditions to be unacceptable. However, a change in international toll rates does not represent a change in terms to the Agreement. Customer may request to add Services at any time, subject to any applicable change of Service fees from the effective date of such change and additional terms and conditions. ESI will bill retroactively and Customer will pay for any additional fees due from the effective date to the end of the month in which the Service change takes effect.

10. NOTICE. If Customer uses the Service after the Change Date and does not send ESI notification of its desire to terminate this Agreement within fifteen (15) days of the Change Date, Customer is deemed to have accepted and consented to the change of terms and conditions of the Service. Any cancellation based on non-acceptance of new terms and conditions of Service must be in writing and received by ESI within fifteen (15) days of the Change Date. Cancellation will be deemed effective at the end on the next month which is at least thirty (30) days after such notice is received by ESI and Service will continue for such period under the old terms and conditions. If Customer does not consent to the change of Service and terminates this Agreement, Customer will be responsible for any sums due hereunder in addition to any applicable disconnection or cancellation fee pursuant to Sections 11 and 19. All notices to ESI must be in writing and may be mailed to: ESI, 3701 East Plano Parkway, Suite 300, Plano, TX 75074 or sent by electronic mail to notices@esi-estech.com.

11. TERMINATION. Customer agrees to provide ESI at least thirty (30) days written notice of termination except as otherwise provided in Section 10 hereof as a result of a change in terms and conditions. Customer shall be responsible for the full monthly service fee for the month after which the notice of termination of Service is provided to ESI. ESI reserves the right, at its sole discretion, to suspend, terminate or change the Services without advance notice for any reason, including without limitation, misuse of the Services in any way, Customer’s breach of this Agreement, Customer’s failure to pay any sum due hereunder or any other agreement with ESI, suspected fraud or other activity by Customer that adversely affects the Services, ESI, ESI’s network or any other Customer’s use of the Services. ESI reserves the right to determine, in its sole discretion, what constitutes misuse of the Services and Customer agrees that ESI’s determination is final and binding on Customer. ESI may require an activation fee to change or resume a terminated or suspended account. All current and past due balances for Services must be paid in full upon termination. If Customer chooses to cancel the Services or any



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portion of the Services prior to the end of the current Term, Customer shall pay all monthly recurring charges which would be due through the end of the current Term including any applicable taxes, assessments or other governmental charges or a disconnection fee of \$200 per station/extension, trunk and router, whichever is greater (the "Early Termination Fee") in addition to any additional amounts payable upon early termination that are set forth in a COS executed between ESI and Customer. Customer and ESI agree that the Early Termination Fee represents an estimate of actual damages and not a penalty. Certain third-party products and service included in the Services, which might include broadband or other services, may not be eligible for early termination. In such an event, Customer shall be liable for payment of all such third-party products and services until the end of the Term of the Agreement in addition to the Early Termination Fee provided for herein. All such charges will be billed to Customer as of the effective date of the termination.

12. PRIVACY. ESI utilizes the public Internet and third-party networks to provide fax, messaging, voice and video communication services. Accordingly, ESI cannot guarantee the security of fax, messaging, voice and video communications of Customer. ESI is committed to respecting a Customer's privacy. Once the Customer chooses to provide personally identifiable information, it will only be used in the context of the Customer's relationship with ESI which may include certain affiliates or business partners of ESI which offer related goods or services. ESI will not sell, rent, or lease Customer's personally identifiable information to other unrelated parties. Unless required by law or subpoena or if Customer's prior permission is obtained, ESI will only share the personal data Customer provides with other ESI entities and/or business partners that are acting on ESI's behalf to complete the activities described herein or which offer related goods or services. Such ESI entities and/or national or international business partners are governed by ESI's privacy policies with respect to the use of this data. ESI is required to file numerous reports with different administrative bodies. As such, ESI might provide aggregate statistics about customers, sales and traffic patterns. None of these reports or statistics will include personally identifiable information. However, ESI reserves the right to use personally identifiable information to investigate and help prevent potentially unlawful activity that threatens either ESI or any company affiliated with ESI. Moreover, upon the appropriate request of a government agency, law enforcement agency, court or as otherwise required by law, ESI may disclose personally identifiable information without prior permission from the Customer. In order to ensure proper operation of our network and maintain the quality of the Services, ESI will collect certain data about usage of our Services which might include content of communications made using the Services. ESI will not read, listen to or disclose to any third parties private e-mail, conversations, or other communications that are transmitted using the Services except as required to ensure proper operation of Services, for quality control, to comply with industry guidelines and government regulations including to identify abusive or fraudulent uses or as otherwise authorized by law, or with your prior consent. ESI's complete Privacy policy, which is subject to change without prior notice to Customer, can be found on the ESI website. A change in ESI's Privacy policy is not a change in Terms or Conditions for the purposes of Sections 9 and 10 of this Agreement.

13. RETURNS AND ADJUSTMENTS. No Equipment may be returned by Customer for any reason without prior approval of ESI. All returns shall be in original packaging or equivalent. Customer shall be responsible for all costs related to shipping any Equipment that is being returned to ESI. Any Equipment returned to ESI without a prior Return Material Authorization number and directions for its return or proper packaging may be refused and returned to Customer at Customer's expense.

14. CUTOVER DATE AND ACCEPTANCE. For the purposes of this Agreement, "Cutover Date" is defined as the date upon which the Equipment installed at the premises is capable of providing substantially all of the basic Services for which such Equipment is intended and such Services are activated. The "Estimated in Service Date" is only an approximate date of when the Equipment will be installed and ready for service. Provider shall not be liable for special, consequential or punitive damages for causes beyond its reasonable control or unforeseen circumstances causing delays in delivery or installation of the Equipment. Customer agrees not to withhold any scheduled payments due to such problems. Customer agrees to pay any remaining payment that is due and shall confirm the Cutover Date by executing a Delivery and Acceptance certificate. It shall be conclusively presumed that Customer's execution of the Delivery and Acceptance certificate confirms Customer's inspection, satisfaction and unqualified acceptance of the Equipment.

15. BREACH. In the event of Customer's breach of the terms of this Agreement, including without limitation, failure to pay any sum due hereunder, Customer shall reimburse ESI for all attorneys' fees and costs and for court, collection and other costs incurred by ESI in the enforcement of ESI's rights hereunder and ESI may keep any deposits or other payments made by Customer.

16. INDEMNIFICATION. Customer shall indemnify ESI, its affiliates, officers, directors, licensees and licensors



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and third party services providers from any and all losses, claims and expenses of whatever nature, including, without limitation, reasonable attorneys' fees, fines, penalties and additional operating costs arising from or relating to Customer's breach of any provision of this Agreement or asserted by third parties against ESI arising from Customer's use of the Equipment or the Services or from any other action or inaction by Customer.

17. DISCLAIMER OF CERTAIN DAMAGES. IN NO EVENT SHALL ESI, ITS AFFILIATES, THIRD PARTY SERVICES PROVIDERS OR ITS OTHER VENDORS BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES OR FOR ANY DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF DATA, LOSS OF REVENUE OR PROFITS, OR ARISING OUT OF OR IN CONNECTION WITH THE TERMINATION OF OR USE OR INABILITY TO USE SERVICES OR PRODUCTS PROVIDED HEREUNDER WHETHER DUE TO A BREACH OF CONTRACT, BREACH OF WARRANTY, THE NEGLIGENCE OF ESI, ITS AFFILIATES, THIRD PARTY SERVICES PROVIDERS OR ITS OTHER VENDORS, STRICT PRODUCT LIABILITY OR OTHERWISE, REGARDLESS OF WHETHER SUCH PERSON OR ENTITY HAS BEEN NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES WERE REASONABLY FORESEEABLE.

18. WARRANTY AND LIABILITY LIMITATIONS. NEITHER ESI NOR ANY OF ITS AFFILIATES, ITS THIRD PARTY SERVICES PROVIDERS OR ITS OTHER VENDORS MAKE ANY WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO THE SERVICES INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NEITHER ESI NOR ANY OF ITS AFFILIATES, ITS THIRD PARTY SERVICES PROVIDERS NOR ITS OTHER VENDORS WILL BE LIABLE FOR UNAUTHORIZED ACCESS TO ESI 'S OR CUSTOMER'S TRANSMISSION, FACILITIES OR CUSTOMER PREMISE EQUIPMENT OR FOR UNAUTHORIZED ACCESS TO OR ALTERATION, THEFT OR DESTRUCTION OF CUSTOMER'S DATA FILES, PROGRAMS, PROCEDURES OR INFORMATION THROUGH ACCIDENT, FRAUDULENT MEANS OR DEVICES, OR ANY OTHER METHOD, REGARDLESS OF WHETHER SUCH DAMAGE OCCURS AS A RESULT OF ESI 'S, ITS AFFILIATES', ITS THIRD PARTY SERVICES PROVIDERS' OR ITS OTHER VENDORS' NEGLIGENCE.

ANY CLAIM AGAINST ESI MUST BE MADE WITHIN THIRTY (30) DAYS OF THE EVENT OF THE CLAIM OR THIRTY (30) DAYS FROM THE TERMINATION OF SERVICE, WHICHEVER IS EARLIER, AND ESI HAS NO LIABILITY THEREAFTER. ESI'S LIABILITY IS LIMITED TO REPAIR, REPLACEMENT, CREDIT OR REFUND. ESI MAY ELECT TO PROVIDE A REFUND IN LIEU OF CREDIT, REPLACEMENT OR REPAIR. ALL WARRANTIES COVER ONLY DEFECTS ARISING UNDER NORMAL USE AND DO NOT INCLUDE MALFUNCTIONS OR FAILURES RESULTING FROM MISUSE, ABUSE, NEGLIGENCE, ACTS OF GOD, ALTERATION, MODIFICATION, IMPROPER INSTALLATION, OR REPAIRS BY ANYONE OTHER THAN ESI OR ITS AUTHORIZED INDEPENDENT SALES AGENT OR RESELLER. IN NO EVENT SHALL ESI 'S TOTAL LIABILITY HEREUNDER EXCEED THE AMOUNTS PAID BY CUSTOMER TO ESI EXCLUDING ANY TAXES, FEES, ASSESSMENTS OR OTHER GOVERNMENTAL CHARGES WHICH ARE NOT RETAINED BY ESI IN THE PRIOR TWELVE (12) MONTHS FROM DATE OF CLAIM. THE REMEDY STATED HEREIN, IF ANY, IS CUSTOMER'S SOLE REMEDY FOR A BREACH OF WARRANTY. ESI EXPRESSLY DENIES ANY REPRESENTATION OR WARRANTY ABOUT THE ACCURACY OR CONDITION OF DATA OR THAT THE SERVICES OR RELATED SYSTEMS WILL OPERATE UNINTERRUPTED OR ERROR-FREE.

19. CUSTOMER SATISFACTION GUARANTEE. If Customer is dissatisfied with ESI's Services and if for any reason Customer wishes to cancel all or part of Customer's Services bundle within thirty (30) days of activation, the Customer may obtain a refund of service and Equipment fees subject to the limitation in Section 25 hereof with respect to certain broadband circuit related equipment. To cancel and obtain a refund, Customer must cancel their Service within thirty (30) days of the activation of their account by notifying ESI in writing as provided in Section 10 hereof or by e-mail to notices@esi-estech.com. Returns of Equipment require a Return Material Authorization number and Customer is responsible for return shipping charges. Customer must contact ESI Customer Care to cancel Services and obtain a Return Material Authorization number. Customer must return to ESI any Equipment provided hereunder, undamaged and in good working condition, in its original packaging and with its original content or otherwise will be immediately responsible for paying to ESI an amount equal to the disconnection fee of \$200 per station/extension, trunk and router, minus any payments Customer had previously paid specifically for such Equipment. All components, manuals and registrations card(s) must be included. Customer will be refunded a disconnection or cancellation fee, if applicable, in a timely manner after ESI receives cancellation notice and any Equipment returned in acceptable condition. Equipment returned without a valid Return Material Authorization number will not be eligible for refund under the Customer Satisfaction Guarantee. Customer must return equipment within seven (7) days of cancellation. The Customer Satisfaction Guarantee will not be issued if all of the above requirements are not met.



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In the event of a cancellation under this Customer Satisfaction Guarantee, Customer is responsible to pay for all long distance, directory assistance and other call charges based on usage which have already been incurred, any one-time fees for set up, installation, expediting, porting and similar items and all regulatory or other assessments and pass-throughs thereon.

20. EXPORT COMPLIANCE. Customer agrees to comply with U.S. export laws concerning the transmission of technical data and other regulated materials via the Services. Customer agrees to comply with applicable local, state and federal regulations governing the locality in which the Equipment and Services are used.

21. PHONE NUMBERS AND WEB PORTAL DISCONTINUANCE. Upon expiration, cancellation or termination of the Services, Customer shall relinquish and discontinue use of any telephone numbers, voice mail or conference bridge access numbers and/or web portals assigned to Customer by ESI or its third party services providers unless ESI receives a Letter of Agency duly executed by Customer from another provider which requests the porting of such numbers.

22. SURVIVAL. The provisions of Sections 2, 3, 4, 12, 15, 16, 17, 18, 20, 22, 24, and 26 shall survive any termination of this Agreement.

23. FORCE MAJEURE (EVENTS BEYOND OUR CONTROL). ESI shall not be liable for any delay in performance directly or indirectly caused by or resulting from acts of God, fire, flood, hurricanes, earthquakes, accident, riot, acts of war or terrorism, government intervention, embargoes, strikes, labor difficulties, equipment failure, technology attacks, late delivery by suppliers, changes in laws or regulations or other difficulties of ESI as might occur in spite of ESI's commercially reasonable efforts.

24. GOVERNING LAW / RESOLUTION OF DISPUTES.

24.1. MANDATORY ARBITRATION. EXCEPT AS NOTED BELOW, CUSTOMER AND ESI WILL ARBITRATE ANY DISPUTES OR CLAIMS IN ANY WAY RELATED TO OR CONCERNING THE AGREEMENT, OR THE PROVISION OF SERVICES OR PRODUCTS TO CUSTOMER, INCLUDING ANY BILLING DISPUTES ("CLAIMS"). CLAIMS SHALL BE SUBMITTED TO FINAL, BINDING ARBITRATION BEFORE THE AMERICAN ARBITRATION ASSOCIATION ("AAA"). THIS AGREEMENT TO ARBITRATE ALSO REQUIRES CUSTOMER TO ARBITRATE CLAIMS AGAINST OTHER PARTIES RELATING TO SERVICES OR PRODUCTS PROVIDED, INCLUDING THE EQUIPMENT, OR BILLED TO CUSTOMER IF CLAIMS ARE ASSERTED AGAINST ESI IN THE SAME PROCEEDING. ARBITRATION WILL BE CONDUCTED UNDER THE AAA'S PUBLISHED COMMERCIAL ARBITRATION RULES AND SUPPLEMENTAL PROCEDURES FOR CONSUMER RELATED DISPUTES, WHICH ARE AVAILABLE BY CALLING THE AAA AT 800-778-7879 OR VISITING ITS WEB SITE AT www.adr.org.

24.2. DISPUTES. Customer and ESI agree that the prevailing party shall be entitled to recover its fees, costs, and expenses, including those for any attorneys, experts, and witnesses. The AAA Supplemental Procedures for Consumer Related Disputes provide that unless a hearing is requested, disputes will be resolved based on written submissions and no personal appearance is required. If Customer requests an arbitration hearing, that hearing will take place either telephonically or in Plano, Texas. As a limited exception to the agreement to arbitrate, Customer and ESI agree that: (a) Customer may file Claims in small claims court in Collin County, Texas, if the Claims qualify for hearing by such court; (b) if Customer fails to timely pay amounts due, ESI may assign the account for collection, and the collection agency may pursue in court claims limited strictly to the collection of the past due debt and any interest or cost of collection permitted by law or this Agreement; and (c) any Claim filed as a class action is not subject to arbitration but instead must be filed in the Collin County District Court or in the United States District Court for the Northern District of Texas.

24.3. PREFILING NOTICE OF CLAIM. BEFORE INSTITUTING ARBITRATION OR SUIT, CUSTOMER AGREES TO PROVIDE ESI WITH AN OPPORTUNITY TO RESOLVE THE CLAIM BY SENDING A WRITTEN DESCRIPTION OF THE CLAIM TO ESI AT disputes@esi-estech.com. IF ESI IS NOT ABLE TO RESOLVE THE CLAIM WITHIN THIRTY (30) DAYS OF RECEIPT OF NOTICE, THEN CUSTOMER OR ESI MAY INITIATE ARBITRATION OR SUIT AS DESCRIBED IN SECTIONS 24.1 AND 24.2. All claim notices should be sent to: Director of Customer Service, ESI, 3701 East Plano Parkway, Suite 100, Plano, TX 75074 or claims@esi-estech.com.

24.4. GOVERNING LAW. The Agreement and the relationship between Customer and ESI shall be governed



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by the laws of the State of Texas without regard to its conflicts of laws provisions. To the extent court action is initiated to enforce an arbitration award or for any other reason, Customer and ESI hereby consent to submit to the personal and exclusive jurisdiction of the courts within the state of Texas, to the extent possible in Collin or Dallas Counties, and waive any objection as to venue or inconvenient forum. The failure of ESI to exercise or enforce any right or provision of the Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give effect to the parties' intentions as reflected in the provision, and the other provisions of the Agreement remain in full force and effect. Customer agrees that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or the Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred except for claims for non-payment brought by or on behalf of ESI which are subject to the applicable Texas statute of limitations.

24.5. BROADBAND ACCESS SERVICE. If ESI supplies broadband access services to Customer in conjunction with other communications services offered, Customer will be responsible to ESI for all charges from the underlying broadband access service provider including any setup charges incurred prior to activation and termination charges incurred after this Agreement has ended. Customer understands and agrees that such Broadband Access Service shall be subject to any applicable terms, conditions and policies of ESI's services provider in addition to those contained in this Agreement and any Customer Order Schedule ("COS"). Those additional terms and conditions can be found at <https://www.esi-estech.com/legal>.

In the event that ESI is supplying broadband access services, Customer hereby authorizes ESI to begin the process of activating service including providing the broadband access circuit to Customer's location(s).