

**ELECTRIC AI, INC.**  
**ALPHA TERMS AND CONDITIONS**

THESE TERMS AND CONDITIONS (THE "AGREEMENT") GOVERN THE SOFTWARE SUPPORT SYSTEM OFFERED BY ELECTRIC AI, INC. OR ITS WHOLLY-OWNED SUBSIDIARY NAMED IN AN ORDER FORM ("ELECTRIC"), SUCH SYSTEM HEREINAFTER REFERRED TO AS THE "ELECTRIC PLATFORM." BY SIGNING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, OR BY ACCESSING OR USING THE SERVICES, YOU AGREE ON BEHALF OF THE ENTITY YOU REPRESENT ("CUSTOMER") THAT YOU HAVE READ AND AGREE FOR CUSTOMER TO BE BOUND BY AND BE A PARTY TO THIS AGREEMENT AS WRITTEN, UNLESS OTHERWISE EXPRESSLY AGREED UPON BY CUSTOMER AND ELECTRIC IN THE APPLICABLE ORDER FORM OR ACCESS METHOD THROUGH LANGUAGE THAT REFERENCES THIS AGREEMENT AND COMMUNICATES THE PARTIES' INTENT TO MODIFY ONE OR MORE SPECIFIC PROVISIONS OF THIS AGREEMENT WITH RESPECT TO SUCH ORDER FORM OR ACCESS. YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND CUSTOMER.

**1. SERVICES**

1.1 Electric will provide the Electric Platform as provided in the applicable signed Order Form, or as provided in the service description when you first access the Electric Platform, and subject to the terms and conditions of this Agreement. An "Order Form" shall mean (i) any written agreement between Customer and Electric for the purchase or use of the Electric Platform which incorporates this Agreement or (ii) an order or other confirmation specifying the services selected by the Customer for purchase or use via the Electric website. In the event of a discrepancy arising between the Order Form and Agreement, the terms outlined in the Order Form shall take precedence.

1.2 Electric hereby grants Customer for the term of the applicable Order Form a non-exclusive, non-transferable, royalty free, worldwide, limited right and license (without the right to sublicense) to the Electric Platform, including to download and install the Electric client software ("Client Software") which is part of the Electric Platform. The Electric Platform is licensed for use solely in connection with Customer's authorized use of the Electric Platform and Customer shall not use the Electric Platform for any other purpose.

1.3 The commencement of the term is the date which is the earlier of (a) Customer's initial access to the Electric Platform through any online provisioning, registration or order process or (b) the effective date of the first Order Form referencing this Agreement. This Agreement will govern Customer's initial purchase or use on such commencement date as well as any future purchases or uses made by Customer through an Order Form that reference this Agreement.

1.4 Customer is responsible for providing in a timely manner to Electric (i) all subscriptions and account credentials and other information necessary for Electric to access any and all data and information to be monitored, analyzed and/or processed by the Electric Platform, or otherwise reasonably necessary for Customer's use of, and Electric's provision of, the Electric Platform (such information, "Customer Information"), and (ii) access to all servers, devices (Customer-owned and those 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" policy)), storage, software (other than the Client Software), databases, network and communications equipment and ancillary services that connect to, access or otherwise use the Electric Platform at Customer's facility(ies), or are otherwise designated by Customer to be managed in connection with the Electric Platform (collectively, "Customer Systems"). Customer shall ensure that all Customer Systems comply with all specifications provided to Customer by Electric in writing as of the commencement date specified in the applicable Order Form. Customer represents and warrants that it owns the Customer Systems or has the right to provide Electric with access to the Customer Systems.

1.5 Customer acknowledges and agrees that the Electric Platform 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. Electric will use commercially reasonable efforts to notify Customer of scheduled maintenance downtime with 48 hours' notice. Customer acknowledges that downtime cannot be predicted or communicated in advance when related to emergency maintenance or unplanned third-party degradation of service.

## **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 Electric Platform (including any software used to provide the Electric Platform) 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 Electric Platform or Client Software; or copy (except for archival purposes), rent, lease, pledge, assign, or otherwise transfer or encumber rights to the Electric Platform or Client Software; post, upload, or otherwise store or transmit through the Electric Platform any data or other content that is obscene, pornographic, threatening, harmful, or otherwise violates this Agreement or the rights of others; or use the Electric Platform 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, (iv) in violation of any applicable laws, rules and regulations, or (v) as a relied upon means for contacting any police, fire, medical, or other emergency services. Customer will defend, indemnify, and hold harmless Electric from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising from any Customer Information or breach or alleged breach by Customer of Section 2.1

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 Electric Platform in order to prevent unauthorized access to the Electric Platform, and shall notify Electric promptly of any such unauthorized access or use that it becomes aware of. Customer shall be responsible for compliance with this Agreement by any person or entity it allows to access the Electric Platform on its behalf.

## **3. CUSTOMER INFORMATION**

3.1 If Customer Information includes personally identifiable information of Customer's employees, agents, contractors and other users of the Customer Systems (collectively, "Customer Users"), Electric will only access such information as reasonably necessary for its provisioning and delivery of the Electric Platform and as otherwise authorized by Customer.

3.2 From time to time, Customer may designate one or more Customer representatives as having the authority to take administrative actions with respect to the Electric Platform ("Authorized Customer Users"). If applicable, 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 Electric Platform, 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 Electric Platform.

## **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 Electric Platform through its processing of Customer Information or access to the Customer Systems. Notwithstanding the foregoing, Customer acknowledges and agrees that Electric (i) may use and modify Customer Information and such data, analyses and other results for the purposes of providing the Electric Platform to Customer, (ii) may collect information and generate Aggregated

Anonymous Data (as defined below), (iii) is and will remain the sole and exclusive owner of all right, title and interest in and to all Aggregated Anonymous Data, including all intellectual property rights related thereto, and (iv) may freely use and make available Aggregated Anonymous Data for Electric's business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing Electric's current and future products and services) during the term of this Agreement and thereafter. "Aggregated Anonymous Data" means any of the following information that has been aggregated with other similar information of other Electric customers, and anonymized so that it does not reveal any personally identifying information or information identifying Customer: (a) information related to how Electric's customers are using the Electric Platform, (b) information related to the performance of the Electric Platform, and (c) any other information that provides insight into Electric's business.

4.2 The Electric Platform is licensed, not sold. Nothing in this Agreement conveys to Customer any rights of ownership in or related to the Electric Platform, 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 Electric Platform, and any improvements and other modifications to the Electric Platform, 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 Electric Platform.

## **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 Electric Platform 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 receiving party can demonstrate such information is (a) already known by it without restriction prior to receipt from the disclosing party, (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 receiving party 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 either return all of the disclosing party's tangible Confidential Information or 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 backup, 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 (including without limitation Order Forms) 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 commercially 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**

6.1 In providing the Electric Platform, Electric shall act in accordance with its current information security policy. A copy of Electric's information security policy can be referenced here <[www.electric.ai/infosecuritypolicy](http://www.electric.ai/infosecuritypolicy)>. Electric will not make any changes to its information security policy which materially reduces the level of security being provided by Electric.

## **7. PAYMENT OF FEES**

7.1 Customer will be responsible for all fees specified in the applicable Order Form(s) ("Fees"), if any. 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 then-current prepaid renewal term, as applicable, upon sixty (60) days prior notice to Customer (which may be sent by email), except as otherwise specified on the Order Form. All undisputed Fees must be paid in accordance with the payment terms set forth in the Order Form or Customer's access to the Electric Platform 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. Customer will inform Electric of any disputes related to invoice amounts within thirty (30) days of Customer's receipt of invoice. If Customer does not inform Electric of any disputes related to invoice amounts within this thirty (30) day period, Customer will no longer have the right to dispute the amount and the amount will remain due and payable to Electric without exception. 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. In the event Electric must utilize a third-party collection agency to collect fees from Customer when Customer is delinquent in payment, Customer will reimburse Electric for all fees incurred with the third-party collection agency. Customer shall be responsible for all taxes imposed or based on the Electric Platform other than taxes based on Electric's net income.

7.2 Electric may, in its sole discretion, offer Customer promotional credits or other free use of the Electric Platform. Any such credits or free use will be credited against Customer's monthly fees, if any. Promotional credits and any other free use of the Electric Platform have no cash value, are non-transferable and non-refundable. Customer also acknowledges and agrees that Customer's use of the Electric Platform in such cases may be limited or capped by Electric in its sole discretion.

## **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 terminates hereunder or in accordance with the terms and conditions of the applicable Order Form. Each Order Form shall remain in effect from the commencement date specified therein for a period equal to the initial term specified therein. Unless a party cancels an applicable Order Form at least thirty (30) days prior to the end of the initial term thereof, the Order Form will automatically renew for a subsequent service term equal in duration to the previous service term (and if such Order Form involves payment of fees, Customer will be charged for fees upon such renewal at then-current market pricing).

8.2 Either party may terminate this Agreement upon thirty (30) days' written notice if the other party materially breaches any of the terms or conditions of this Agreement and fails to remedy such breach within such 30-day period. Such written notice must identify the alleged breaches in detail reasonably sufficient to allow the recipient to investigate and be provided an opportunity to cure. If fees are applicable to the Order Form, Customer will pay all undisputed, properly invoiced amounts for the Electric Platform up to and including the last day of the term of each Order Form. Electric may temporarily suspend access to the Electric Platform and/or remove Customer Information from the Electric Platform if Electric in good faith believes that, as part of using the Electric Platform, Customer has violated a law. Electric will use commercially reasonable attempts to contact Customer in advance of suspension of service as described in this section 8.2.

8.3 If Customer's access to the Electric Platform is qualified as a "beta," "trial," "evaluation" or other non-production service, either party may terminate this Agreement and any Order Form upon written notice delivered to the other party at any time, for any reason or no reason.

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

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

9.1 Unless Customer's access to the Electric Platform is qualified as a "beta," "trial," "evaluation" or other non-production service, Electric warrants that the Electric Platform shall perform in substantial accordance with this Agreement, the applicable Order Form, and any and all official specifications and similar documentation provided to Customer by Electric, and will be delivered in a timely, professional and workmanlike manner and with a degree of quality in line with applicable industry standards. In the event the Electric Platform does not substantially 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 as Electric's sole liability and Customer's exclusive remedy with respect to the foregoing warranty (without limiting any other non-warranty claim hereunder), repair the affected portion of the Electric Platform at no additional charge, or, if it determines that the foregoing option is not commercially practical, terminate this Agreement with respect to the Electric Platform and issue a refund for any prepaid amounts for unused portions of the term. Electric further warrants that the Electric Platform.

9.2 IF CUSTOMER'S ACCESS TO THE ELECTRIC PLATFORM IS QUALIFIED AS A "BETA," "TRIAL," "EVALUATION" OR OTHER NON-PRODUCTION SERVICE, THE WARRANTY IN SECTION 9.1 DOES NOT APPLY. In such cases, Electric will make reasonable efforts to answer Customer's questions regarding use of the Electric Platform but is not obligated to provide any other support.

9.3 EXCEPT AS MAY BE PROVIDED BY SECTION 9.1, ELECTRIC DOES NOT WARRANT THAT THE ELECTRIC PLATFORM WILL BE UNINTERRUPTED OR ERROR FREE, NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. OTHER THAN THE EXPRESS WARRANTY SET FORTH IN SECTION 9.1 (IF APPLICABLE), THE SERVICES 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**

10.1 NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, NEITHER PARTY (INCLUDING SUCH PARTY'S SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES) SHALL 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 ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE; OR (B) FOR ANY DAMAGES, IN THE AGGREGATE, IN EXCESS OF

THE FEES PAID OR PAYABLE BY CUSTOMER TO ELECTRIC FOR THE ELECTRIC PLATFORM IN THE 12 MONTHS PRIOR TO THE CLAIM GIVING RISE TO SUCH DAMAGES (OR IF NO SUCH FEES ARE PAID BECAUSE CUSTOMER'S ACCESS TO THE ELECTRIC PLATFORM IS FREE, OR A BETA, TRIAL OR EVALUATION, THEN \$1,000). IN ADDITION, NOTWITHSTANDING ANYTHING TO THE CONTRARY, AND EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, IN NO EVENT SHALL ELECTRIC (OR ITS SUPPLIERS, OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS OR EMPLOYEES) BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY LOSS OR INACCURACY OR CORRUPTION OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICE OR TECHNOLOGY.

10.2 THE LIMITATIONS SET FORTH IN THIS SECTION 10 SHALL NOT APPLY TO (A) FRAUD, WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, (B) ANY INDEMNIFICATION OBLIGATIONS CONTAINED HEREIN, OR (C) TO ANY BREACH OF SECTION 4 (INTELLECTUAL PROPERTY) OR SECTION 5 (CONFIDENTIALITY) BUT EXCLUDING OBLIGATIONS AND/OR CLAIMS RELATING TO CUSTOMER INFORMATION AS DEFINED HEREIN OR ANY OTHER CUSTOMER DATA.

## **11. MISCELLANEOUS**

11.1 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. Both parties agree that this Agreement (including the Order Forms) 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. All waivers must be in a writing signed by both parties, except as otherwise expressly provided herein. Neither Electric or Customer shall be held liable for failure of or delay of performance under this Agreement if said failure or delay is due to a force majeure event such as but not limited to an act of God, natural disaster, war, an act of terrorism, action of foreign adversaries, a labor strike, government sanction, or failure of utility services.

11.2 This Agreement is not assignable, transferable or sublicensable by a Party except with prior written consent of the other Party, except that either party (without consent) may assign its rights and obligations hereunder to any of its affiliates or to any successor to all or substantially all of its business that concerns this Agreement (whether by sale of stock or assets, merger, consolidation or otherwise). Electric may also subcontract performance of the Electric Platform, provided that it shall remain responsible for the acts or omissions of any subcontractors. This Agreement will be binding upon, and inure to the benefit of, the successors, representatives, and permitted assigns of the parties. 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.

11.3 From time to time, Electric may modify this Agreement. Unless otherwise mutually agreed, such changes become effective for Customer upon renewal of then-current Term or upon the effective date of a new Order Form after the updated version of this Agreement goes into effect. Electric will use reasonable efforts to notify Customer of the changes through communications via Customer's account, email or other means. Customer may be required to click to accept or otherwise agree to the modified Agreement before renewing a Term or upon the effective date of a new Order Form, and in any event continued use of the Electric Platform after the updated version of this Agreement goes into effect will constitute Customer's acceptance of such updated version. Except as provided in the foregoing provision or as otherwise expressly provided in this Agreement, no supplement, modification, or amendment of this Agreement will be binding, unless executed in writing by a duly authorized representative of each party to this Agreement.

11.4 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.

11.5 This Agreement shall be governed by the laws of the United States and the State of New York without regard to its conflict of law provisions. Any disputes arising out of this Agreement shall be brought exclusively in the courts located in New York County, New York. Solely with respect to breaches of Section 5 (Confidentiality), each party shall have the right to pursue injunctive or other equitable relief at any time from any court of competent jurisdiction. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees.

11.6 Notwithstanding the provisions set forth in Section 5, Electric shall be permitted to disclose that Customer is one of its customers to any third party at its sole discretion (including without limitation by including Customer's name and logo in customer lists that may be made available on Electric's website or in Electric's marketing materials)

11.7 Electric agrees that it is engaged in a business distinct from that of Customer, is an independent contractor of Customer, shall at all times be an independent contractor of Customer, and nothing in this Agreement shall at any time be construed so as to create the relationship of employer and employee, principal and agent, partnership or joint venture as between Electric and Customer.

(version 1001)