

**ELECTRIC AI, INC.**  
**MASTER SERVICES AGREEMENT**

PLEASE READ THIS MASTER SERVICES AGREEMENT (THE “AGREEMENT”) CAREFULLY BEFORE PURCHASING AND/OR USING (I) THE SOFTWARE, CHAT-BASED IT SUPPORT SYSTEM AND/OR WEB-BASED TICKETING SOLUTION OF ELECTRIC AI, INC. OR ITS WHOLLY-OWNED SUBSIDIARY NAMED IN AN ORDER FORM (“ELECTRIC”) (SUCH SYSTEMS HEREINAFTER REFERRED TO AS THE “ELECTRIC PLATFORM”), (II) REMOTE OR ON-SITE SUPPORT PROVIDED BY ELECTRIC (“SUPPORT”), (III) HARDWARE PROVIDED BY ELECTRIC (THE “HARDWARE”), OR (IV) THIRD PARTY SOFTWARE THAT ELECTRIC RESELLS AND PROVIDES OR OTHERWISE MAKES ACCESSIBLE (THE “PURCHASED THIRD PARTY SOFTWARE”) (WITH ITEMS (I) (II) (III) AND (IV) COLLECTIVELY REFERRED TO AS “SERVICES”). 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 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. YOU REPRESENT AND WARRANT THAT YOU ARE AUTHORIZED TO BIND CUSTOMER.

**1. SERVICES**

1.1 Electric will provide the Services as provided in the applicable signed Order Form 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 of the Services which incorporates this Agreement or (ii) an order confirmation specifying the Electric services, Hardware, and/or Purchased Third Party Software selected by the Customer for purchase 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 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 Services (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 Start 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.

1.4 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. Electric warrants to Customer that the Electric Platform shall be

available for use by Customer for a minimum of ninety-nine and one-half percent (99.5%) of the scheduled uptime on a monthly basis, excluding scheduled maintenance.

1.5 In the course of providing the Services, Electric may install on Customer's systems third party software under a separate license agreement between the Customer and the owner of the software ("Installed Software"). No rights or licenses with respect to any intellectual property of Installed Software are granted under this Agreement. Customer represents and warrants that it possesses sufficient license rights in and to such Installed Software as may be necessary to authorize and enable the installation and use thereof by Electric as contemplated by this Agreement and any applicable Order Form.

1.6 Electric may resell and provide or otherwise make accessible to Customer certain Purchased Third Party Software that is owned by third parties ("Third Party Software Providers"), the use of which may be subject to additional or different terms set forth in the applicable license ("Third Party Licenses"). Customer agrees to be bound by and shall comply with the terms of the applicable Third-Party License as set forth in the applicable Order Form or otherwise provided to or made available to Customer in advance of such resale or access. For the avoidance of doubt, additional resales of or access to a particular piece of Purchased Third Party Software (including but not limited to adding users and/or seats) under the existing license between Customer and such Third Party Software Provider in the course of provisioning additional Customer end-users shall not require an additional Order Form, and Customer will be charged automatically for any such additional users and/or seats. Additional details regarding the Purchased Third Party Software resold by Electric and how authorizations for additional purchases are made by Customer can be referenced at [www.electric.ai/service-details](http://www.electric.ai/service-details).

1.7 Electric will facilitate the procurement and provisioning of Hardware on behalf of Customer in accordance with Electric's then current hardware and procurement policy. Customer acknowledges that (i) Customer will prepay for any hardware purchased through Electric, (ii) Customer is responsible for the payment of all shipping, expedited shipping, and courier charges related to the delivery of hardware and will prepay these amounts, and (iii) the time required to procure and provision hardware will vary on factors outside of Electric's control related to but not limited to hardware availability, hardware order volume, complexity of provisioning, and the ultimate ship to address of goods. Customer will make hardware decisions with an understanding of items (i), (ii), and (iii) above.

## **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.

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 Services and as otherwise authorized by Customer. In the course of providing the Services, Electric generally does not require, and therefore, Electric generally does not request, any personally identifiable information of Customer's clients that may have been collected by Customer in the course of Customer's provision of products and services to such clients.

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 the Services ("Authorized Customer Users"). 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 Services, 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 and Support Services.

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), (ii) the Customer Information and other information provided to or accessed or used by Electric for the purposes set forth under this Agreement was lawfully acquired without violating the rights of any parties, and (iii) such access and use will not violate the privacy rights or any other rights (statutory or otherwise) of the Customer Users or other parties. Electric may (but is not required to) suspend activity hereunder with respect to any actual or alleged breach of the foregoing representations.

#### **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 and Support Services 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 and Support Services, (b) information related to the performance of the Electric Platform or Support Services, including the resolution to and the type, quantity, and cause of inquiries, requests, and/or incidents reported by Customer or Customer Users, and (c) any other information that provides insight into Electric's business.

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

#### **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 Services 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 and performing the Support Services, 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"). 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), 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 the Services 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 Services other than taxes based on Electric's net income.

## **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. Customer acknowledges that the paid user count entered into on each Order Form may not be reduced during the term of the Order Form. In addition, Customer acknowledges that additional paid users added during the term may not be reduced during the remainder of the Order Form term. 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 at least 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 at then current market pricing.

8.2 Either party may terminate this Agreement upon thirty (30) days' written 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. 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. Customer will pay all undisputed, properly invoiced amounts for the Services up to and including the last day of the term of each Order Form. Electric may temporarily suspend access to the Services and/or remove Customer Information from the Electric Platform if Electric in good faith believes that, as part of using the Services, 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 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 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. 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. To the extent it is permitted to do so, Electric will pass through to Customer any third-party warranties in respect of the Hardware and/or Purchased Third Party Software as applicable. Electric further warrants that the Electric Platform will be delivered in a timely, professional and workmanlike manner and with a degree of quality in line with applicable industry standards.

9.2 EXCEPT AS MAY BE PROVIDED BY SECTION 1.4 AND SECTION 9.1, 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 SERVICES. OTHER THAN THE EXPRESS WARRANTY SET FORTH IN SECTION 9.1, 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 AND SUPPORT SERVICES IN THE 12 MONTHS PRIOR TO THE CLAIM GIVING RISE TO SUCH DAMAGES. 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) AMOUNTS PAYABLE TO THIRD PARTIES PURSUANT TO A PARTY’S INDEMNIFICATION OBLIGATIONS IN SECTION 11, OR (C) TO ANY BREACH OF SECTION 4 (INTELLECTUAL PROPERTY) OR SECTION 5 (CONFIDENTIALITY).

## **11. INDEMNIFICATION.**

11.1 Electric will indemnify, defend and hold harmless Customer and Customer’s officers, directors, employees, agents and representatives from all third-party claims that the Services provided by Electric, when used and operated in accordance with the terms and conditions of this Agreement, infringe any intellectual property rights of such third party. Electric shall have sole control over the defense and/or settlement of any claim subject to indemnification by Electric and 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; 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. Customer shall promptly notify Electric of any such claim and provide Electric with reasonable assistance in connection with any such claim. If the Client Software or Electric Platform becomes or, in Electric's opinion, is likely to become the subject of any injunction preventing its use as contemplated herein, Electric may, at its option (1) obtain for Customer the right to continue using the Client Software or Electric Platform or (2) replace or modify such Client Software or Electric Platform so that it becomes non-infringing without substantially compromising its principal functions. If (1) and (2) are not reasonably available to Electric, then it may (3) terminate this Agreement upon written notice to Customer and issue a refund for any prepaid amounts for unused portions of the term.

11.2 Electric shall have no liability or obligation to Customer under Section 11.1 with respect to any claim based upon (i) any use of the Services not strictly in accordance with this Agreement, (ii) use of the Services in an application or environment or on a platform or with devices for which it was not designed or contemplated, (iii) alterations, combinations or enhancements of the Services not created by Electric, (iv) that portion of the Services which implements Customer's unique requirements and not generally offered to other Electric customers, or (v) Customer's continuing allegedly infringing activity after being notified

thereof or its continuing use of any version of the Services after being provided modifications that would have avoided the alleged infringement.

11.3 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 Sections 1.5, 1.6 and 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.

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

12.1 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, and that all waivers and modifications 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.

12.2 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 any Support, 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.

12.3 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.

12.4 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.

12.5 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).

12.6 Electric agrees to maintain in full force and effect during the term of any Order Form insurance as is normal and customary in Electric's industry generally for parties similarly situated.

12.7 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.