END USER LICENSE AGREEMENT

DEFINITIONS

"Confidential Information" shall be deemed to include any and all non-public information of any form obtained or learned by each Party or its representatives in connection with this Agreement, regardless of whether such information is marked or identified as confidential, including, but not limited to, any prices, information, trade secrets, processes or documentation obtained in connection therewith or related thereto, and information regarding either Party's business practices, policies, and strategies, technology systems and platforms, all information regarding either Party's clients and specifically including all intellectual property of either Party. Confidential Information shall not include any information to the extent it (i) is or becomes a part of the public domain other than as a result of an unauthorized disclosure by a Party, (ii) was already in the possession of a Party prior to the first date of signature below and free of any actual or constructive knowledge of any obligation of confidentiality with respect thereto, (iii) is disclosed to a Party by a third party having no obligation of confidentiality with respect thereto, (iv) is independently developed by a Party without reference to the other Party's Confidential Information, (v) is released from confidential treatment by written consent of a Party, or (vi) is required or requested to be disclosed pursuant to law, court order, subpoena or governmental authority.

"Documentation" means the instructional, operating or user manuals that Company provides to Customer in any form, including electronic downloads, that relate to the operation of the Software.

"End User" means the individual using the Software as authorized by Customer.

"License Fees" are set forth in the applicable Order Form, including any support fees.

"Licensed Features" means the terms identified on an Order Form specifically related to the Software being licensed thereunder, including number of Seats, product descriptions, License Fees and payment terms.

"Order Form" means each form generated by or on behalf of Company and executed by Customer that specifies the Licensee, the Software being licensed, the Subscription Term, the Licensed Features and other commercial terms.

"Seats" means the number of unique logons set forth on the applicable Order Form for which a copy of the applicable Software may be used.

"Software" means the computing programs set forth on the applicable Order Form, and Upgrades or Updates provided to customer hereunder.

"Subscription Term" means the period of time from the start date to the end date specified in each Order Form.

"Updates" means the maintenance fixes and error corrections of the Software provided by Company pursuant to the Hosting Services or Support and Maintenance Services.

"Upgrades" means version of the Software that Company designates as such that incorporates new functionality or enhances performance.

WHEREAS, Customer wishes to license the Software specified in an applicable Order Form to this Agreement for use in its business.

WHEREAS, Company is willing to grant Customer the right to incorporate the Software specified in an applicable Order Form to this Agreement into its desktop images and to deploy the

Software to its employees for use.

THEREFORE, the Parties, intending to be legally bound by the terms hereof, hereby enter into the following agreements:

TERMS

1. <u>License</u>. Subject to the terms and conditions of this Agreement, including timely payment of License Fees, Company hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable, fully revocable and worldwide license to use, and to permit End Users to use, the object code of the Software and Documentation during the Subscription Term solely for the internal business purposes of Customer. The Software may be used for the number of Seats identified on an Order Form. Customer shall not and shall not permit any End User to use the Software beyond the Subscription Term, in excess of the authorized number of Seats counts, or in any violation of any other restrictions or limitations set forth on the applicable Order Form. Customer agrees that the Software and Documentation shall be deemed accepted upon delivery and the license granted hereby is not contingent on the delivery of any future functionality or features or dependent on any oral or written public statements made by Company regarding future functionality or features. Company reserves all rights not expressly granted herein.

2. <u>Evaluation License and Terms Specific to Evaluation Copies of Software.</u>If the Order Form indicates that the Software is being licensed for evaluation, then the following shall apply to the licensing of the Software during the evaluation term as identified on the applicable Order Form and notwithstanding any contrary term specified in this Agreement: (A) unless otherwise specified in the Order Form, License Fees do not apply; (B) the Software is licensed solely for the evaluation term and solely for the limited purpose of evaluating the Software and establishing Customer's desire to acquire licenses to Software for a Subscription Term; (C) the Software is provided "As Is" without any warranty of any kind, either express or implied, including but not limited to, the implied warranties or merchantability or fitness for a particular purpose; (D) Customer shall not be entitled to any Support and Maintenance Services or any Upgrades or Updates during the evaluation term; (E) to the extent the Software is a hosted service or solution provided by Company, Customer shall be solely responsible for any and all information, materials, and data that it submits to, uploads into, or otherwise uses in connection with the Software during the evaluation period; (F) except for Company's breach of Section 9(i) and 9(ii) of this Agreement, Customer shall be solely responsible for any losses, costs, or damages, of any kind, that it incurs directly or indirectly with respect to use of the Software and agrees to hold harmless, defend, and indemnify Company in connection with any claims or actions brought by a third party alleging any damages or losses in connection with Customer's use of the Software; (G) Customer expressly warrants that no information, materials or data will be submitted to Company, uploaded into any Software (as applicable), or otherwise used in connection with the Software evaluation that is subject to any data privacy rules or regulations, or is otherwise going to impose data privacy constraints or legal obligations on Company; and (H) upon the expiration of the evaluation term or earlier, upon five (5) days' notice to Customer, if requested by Company, the license granted shall terminate and Customer shall promptly return the Software and Documentation, without retaining copies.

3. <u>Restrictions</u>**.** Except as otherwise expressly permitted under this Agreement, Customer shall not (and shall not authorize or permit any third party including any End Users to): (A) copy or

use the Software or any portion thereof, except as expressly authorized by this Agreement; (B) use the Software on unauthorized equipment or products, (C) duplicate, modify the Software or create derivative works based upon the Software; (D) reverse engineer or decompile, decrypt, disassemble or otherwise reduce the Software to human-readable form, except to the extent otherwise expressly permitted under applicable law notwithstanding this restriction; (E) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise, without the express written authorization of Company; (F) disclose, provide, or otherwise make available trade secrets contained within the Software in any form to any third party without the prior written consent of Company; (G) release, publish, and/or otherwise make available to any third party the results of any performance or functional evaluation of the Software without the prior written approval of Company; or (H) alter or remove any proprietary notices or legends contained on or in the Software. For the avoidance of doubt, all restrictions specified herein with respect to Software apply to all components and the Documentation.

Customer warrants that they and the End User are not competitors or potential competitors of Company, and are not acting on behalf of a competitor or potential competitor.

Customer agrees to provide network access for Software to communicate with the Company servers on an ongoing basis, as applicable based on the Software, and that the Customer identifier (such as a name or number), End User identifier (such as name or id), computer identifier (such as computer name and network address), Company product (such as name and version), performance tracking data, and Company license key may be communicated. Customer agrees that the Software may not operate without such access, and that the Software may stop operating without notice if it is unable to verify license rights. Customer also agrees that, without such access, Company may not be obligated to provide the support and maintenance services referred to in section 4(a) and/or any applicable Service Level Agreement.

4. <u>Services.</u>

(a) <u>Support and Maintenance Services.</u>If the Order Form indicates that Support and Maintenance Services are to be provided by Company to Customer then, provided that Customer has paid Company the applicable fees indicated thereon, and subject to the terms and conditions of this Agreement, Company shall provide Customer Support and Maintenance Services for the relevant maintenance term in accordance with Company's then-current Support and Maintenance Services Service Level Agreement, a description of which is available at: https://support.emili.net; as the same may be modified from time to time.

(b) <u>Hosted Services.</u>If the Order Form indicates that hosting services are to be provided by Company to Customer then subject to the terms and conditions of this Agreement, Company shall host the Software on behalf of Customer for the Subscription Term and in accordance therewith shall use commercially reasonable efforts to provide access to the Software by Customer, including its End Users, on a 24/7/365 basis except for planned downtime and other unavailability caused by circumstances outside the reasonable control of Company only for as long as such circumstances exist. If, for any reason, the Software downtime exceeds one (1) percent of any monthly period, the Customer shall be entitled to a credit equal to the percent of downtime upon request, but this shall be the sole and entire compensation.

5. <u>Fees.</u>Customer shall pay the License Fees set forth on the applicable Order Form within thirty (30) days of Company's invoice. All renewal fees are payable annually in advance. All amounts

are non-refundable. Customer will pay all sales, use or similar taxes applicable to this transaction arising now or at any time in the future. Such amounts, if any, are not included in the License Fees. Unless Customer has an enterprise license as defined in any Order Form, at least sixty (60) days prior to the end of the Subscription Term, or at any time upon the reasonable request of Company, Customer will verify the number and location of End Users using the Software and if such number exceeds the number identified in the Order Form the License Fees will thereupon be increased accordingly based upon the then current rates charged by Company. If any undisputed fee due hereunder remains unpaid ten (10) days after its due date, Company may assess, and Customer shall pay, a finance charge of the greater of one (1) percent per month or the maximum rate allowable per applicable law on all undisputed amounts past due from the date that such amount became due and payable.

6. Indemnity.Subject to the terms herein, Company, at its own expense, shall defend Customer from any and all third party claims that the Software infringes or violates any third party intellectual property right in the country that Customer acquired a license to Software as set forth on the applicable Order Form and Company shall indemnify Customer from any amounts assessed against Customer in a resulting judgment or amounts to settle such claims, provided that Customer: (a) gives Company prompt written notice of any such claim; (b) permits Company to control and direct the defense or settlement of any such claim; and (c) provides Company all reasonable assistance in connection with the defense or settlement of any such claim, at Company's expense. If Customer's use of the Software is (or in Company's opinion is likely to be) enjoined, Company, at its expense and in its sole discretion, may: (i) procure the right to allow Customer to continue to use the Software, or (ii) modify or replace the Software or infringing portions thereof to become non-infringing, or (iii) if neither (i) nor (ii) is commercially feasible, terminate Customer's right to use the affected portion of the Software and refund any License Fees paid by Customer during the then current Subscription Term but in no event greater than a three (3) year period. Notwithstanding the foregoing, Company shall have no obligations under this Section to the extent any infringement claim is based upon or arises out of: (A) any modification or alteration to the Software not made by Company or its contractors; (B) any combination or use of the Software with products or services not approved by Company in writing; (C) Customer's continuance of allegedly infringing activity after being notified thereof; (D) Customer's failure to use Updates made available by Company; and/or (E) use of the Software not in accordance with the applicable Documentation or the license granted hereby. The remedies set forth in this Section constitute Customer's sole and exclusive remedies, and Company's entire liability, with respect to infringement or misappropriation of third party intellectual property.

7. Ownership. The Software is licensed and not sold. Company and its licensors, as applicable, shall own and retain all right, title, and interest in and to the Software and Documentation, subject only to the license granted hereunder, all copies or portions thereof, and any derivative works thereof by whomever created. All suggestions or feedback provided by Customer, its employees, consultants or agents (including End Users) to Company with respect to the Software shall be Company's property and deemed Confidential Information of Company and Customer hereby assigns the same to Company.

Without limiting the foregoing, Customer, on behalf of itself and each End User acknowledges that the Software and Documentation may be protected by copyright and other intellectual

property laws and may not be copied, reproduced, translated, or reduced to any electronic medium or machine readable form, in whole or in part, without the express written permission of Company, except as necessary for system backup and disaster recovery. The Software may be covered by one or more US and/or international patents, as well as copyright, and all rights under US and international patent and copyright laws are reserved to Company and its licensors. Customer shall not undertake or permit any action that will interfere with or diminish the right, title or interest of Company or its licensors in their trademarks. tradenames, copyright or patent rights or any of their rights under patent, trademark or copyright laws.

8. Term and Termination.

(a) Subscription Term.The term of each license of Software granted hereunder shall be the Subscription Term. Upon expiration of a Subscription Term, Customer shall destroy (or at Company's option, return) all copies of the Software and Documentation in its possession or control. If the Software and Documentation is destroyed, Customer shall submit a certification verifying the same to Company. Notwithstanding the foregoing, Customer shall be entitled to retain copies of the Confidential Information and Software for routine back-up and archival purposes, or otherwise as required by law, provided that all such information retained is subject to the confidentiality restrictions set forth in this Agreement in perpetuity.

(b) Agreement Term. This Agreement shall remain effective until terminated or until the Subscription Term under each Order Form expires whichever is earlier. This Agreement may be terminated by a party: (a) upon thirty (30) days written notice, if the other party materially breaches any provision of this Agreement and such breach remains uncured within such thirty (30) day period; or (b) effective immediately, if the other party ceases to do business, or otherwise terminates its business operations without a successor; or (c) effective immediately, if the other party becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is filed against it and not dismissed within ninety (90) days. Upon termination of this Agreement, Customer shall destroy (or at Company's option, return) all copies of the Software and in its possession or control. If the Software and Documentation is destroyed, Customer shall submit a certification verifying the same to Company. Notwithstanding the foregoing, Customer shall be entitled to retain copies of the Confidential Information and Software for routine back-up and archival purposes, or otherwise as required by law, provided that all such information retained is subject to the confidentiality restrictions set forth in this Agreement in perpetuity.

(c) Survival. All Sections, definitions, terms and conditions necessary to enforce a Party's rights and obligations under this Agreement shall survive the termination or expiration of this Agreement. Additionally, Sections 1, 3, 6, 7, 8, 9, 10, 11, and 12 shall survive the termination or expiration of this Agreement.

9. Confidentiality and Data Protection. Each party (the "**Receiving Party**") agrees to keep the Confidential Information (as defined above) of the other party (the "**Disclosing Party**") in confidence and not to use such Confidential Information except in performing hereunder. Except as expressly authorized herein, the Receiving Party agrees to: (i) treat all Confidential Information of the Disclosing Party in the same manner as it treats its own similar proprietary information, but in no case will the degree of care be less than reasonable care; and (ii) disclose the Disclosing Party's Confidential Information only to those employees, contractors or

professional advisors of the Receiving Party who have a need to know such information for the purposes of this Agreement, provided that any such employee and contractor shall be subject to a binding written agreement with respect to such Confidential Information at least as restrictive as the terms and conditions of this Agreement, and the Receiving Party shall remain solely liable for any non-compliance of such employee or third party with the terms and conditions of this Agreement. During the Subscription Term, Company will maintain safeguards for protecting Customer's Confidential Information as described in Company's' privacy policy located at https://emili.net/privacy-policy/.

10. Warranties.

(a) Software Warranty.For a period of ninety (90) days from the date of delivery of Software to Customer, Company warrants that the Software substantially conforms to its published specifications described in the end user Documentation supplied by Company. This limited warranty extends only to the Customer who is the original Licensee. Customer's sole and exclusive remedy and the entire liability of Company and its suppliers and licensors under this limited warranty will be, at Company's option, repair or replacement of the Software, or if repair or replacement is not possible, to refund the License Fees paid for the Software upon the return and removal of all Software from servers and devices.

(b) Restrictions.The Software Warranty does not apply if the Software, or any portion thereof: (a) which has been altered, except by Company or its authorized representative, (b) has not been used, installed, operated, repaired, or maintained in accordance with the relevant license Agreement and/or published Documentation provided by Company, (c) which has been subjected to abnormal physical or electrical stress, misuse, negligence, or accident; or (d) which is licensed, for beta, evaluation, testing or demonstration purposes. Additionally, this warranty only applies to the original Licensee and does not apply to any bug, defect or error caused by or attributable to other software or hardware used with the Software not supplied by Company.

(c) Mutual Warranties.Each party represents and warrants to the other party that (i) it has the legal power to enter into this Agreement and (ii) it will not intentionally transmit to the other party any malicious code (except for malicious code first transmitted to the warranting party by the other party).

(d) DISCLAIMERS.EXCEPT FOR ANY LIMITED WARRANTY EXPRESSLY PROVIDED ABOVE, THE SOFTWARE, DOCUMENTATION, ANY RELATED SERVICES ARE PROVIDED "AS IS" AND COMPANY AND ITS LICENSORS PROVIDE NO OTHER WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, WITH REGARD TO THE SOFTWARE, DOCUMENTATION OR SERVICES. EXCEPT AS SPECIFIED IN THIS SECTION 11, ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INTERFERENCE, ACCURACY OF INFORMATIONAL CONTENT, OR ARISING FROM A COURSE OF DEALING, LAW, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW AND ARE EXPRESSLY DISCLAIMED BY COMPANY, ITS SUPPLIERS AND LICENSORS. TO THE EXTENT AN IMPLIED WARRANTY CANNOT BE EXCLUDED, SUCH WARRANTY IS LIMITED IN DURATION TO THE EXPRESS WARRANTY PERIOD. FURTHER, COMPANY AND ITS LICENSORS DO NOT WARRANT THE RESULTS OF USE OF THE SOFTWARE OR DOCUMENTATION OR THAT THE SOFTWARE IS BUG/ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT BECAUSE

SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, THE ABOVE LIMITATION MAY NOT APPLY. THIS WARRANTY GIVES CUSTOMER SPECIFIC LEGAL RIGHTS, AND CUSTOMER MAY ALSO HAVE OTHER RIGHTS WHICH VARY FROM JURISDICTION TO JURISDICTION. THIS DISCLAIMER AND EXCLUSION SHALL APPLY EVEN IF THE EXPRESS WARRANTY SET FORTH ABOVE FAILS OF ITS ESSENTIAL PURPOSE.

11. Limitation of Liabilities.EXCEPT FOR ANY LIABILITY ARISING UNDER SECTION 6 (INDEMNITY) OR SECTION 9 (CONFIDENTIALITY), IN NO EVENT WILL ANY PARTY BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR LOST OR DAMAGED DATA, BUSINESS INTERRUPTION, LOSS OF CAPITAL, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWSOEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY OR WHETHER ARISING OUT OF THE USE OF OR INABILITY TO USE SOFTWARE OR OTHERWISE AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT FOR ANY LIABILITY ARISING UNDER SECTION 6 (INDEMNITY), OR SECTION 9 (CONFIDENTIALITY), IN NO EVENT SHALL ANY PARTY'S LIABILITY TO THE OTHER, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF WARRANTY, OR OTHERWISE, EXCEED THE LICENSE FEES RECEIVED BY COMPANY FROM CUSTOMER (AND IN THE CASE OF CUSTOMER FEES PAID AND DUE TO COMPANY OR ITS AUTHORIZED RESELLER) IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM, WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE. BECAUSE SOME JURISDICTIONS DO NOT ALLOW LIMITATION OR EXCLUSION OF CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO CUSTOMER. Customer agrees that the limitations of liability and disclaimers set forth herein will apply regardless of whether Customer has accepted the Software or Documentation or any other product or service delivered by Company or its Authorized Resellers.

12. General

(a) Customer Records.Customer grants to Company and its independent accountants the right to examine Customer's books, records and accounts to verify compliance with this Agreement, provided that such examination does not occur more than once every twelve months. If such audit discloses non-compliance with this Agreement, Customer shall promptly pay to Company the appropriate License Fees, plus the reasonable cost of conducting the audit. The foregoing right shall be limited to examination of only those records which are relevant to determining compliance with this Agreement, will be conducted at a time and location mutually agreeable to Company and the Customer, and shall be conducted in a manner to minimize business interruption of the Customer.

(b) Export.The Software and Documentation, including technical data, may be subject to export control laws, and may be subject to export or import regulations in other countries. Customer agrees to comply strictly with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import Software and Documentation.

(c) Choice of Law; Venue.This Agreement shall be governed by and construed in accordance with the substantive and procedural laws of the Province of Québec, without reference to or application of choice of law rules or principles. The sole and exclusive jurisdiction and venue for actions arising under this Agreement shall be the Provincial and Federal courts with jurisdiction in the Province of Québec. Customer hereby agrees to service of process in accordance with the rules of such courts. Notwithstanding any choice of law provision or otherwise, the Uniform

Computer Information Transactions Act (UCITA) and the United Nations Convention on the International Sale of Goods shall not apply. If any portion hereof is found to be void or unenforceable, the remaining provisions of the Agreement shall remain in full force and effect.

(d) Entire Agreement; Modifications. Except as expressly provided herein, this Agreement (specifically including any terms incorporated herein by reference) and each Order Form executed in connection herewith constitutes the entire Agreement between the parties with respect to the license of the Software and delivery of hosting or Support and Maintenance Services, if applicable. Except as expressly provided herein, this Agreement supersedes and cancels all previous written and oral agreements and communications relating the subject matter of this Agreement. Except as expressly provided herein, this Agreement may be amended only by a writing executed by both parties. In the event of a conflict between the terms and conditions of this Agreement and an Order Form, the more specific terms of the Order Form, if applicable, shall prevail. Without limiting the foregoing, the terms and conditions of this Agreement and the Order Form govern in the event of any conflict with a purchase order, if use of a purchase order is required by Customer. For avoidance of doubt, each Order Form executed by Customer that references this EULA by the effective date set forth above is incorporated herein by reference.

(e) Illegality.Should any term of this Agreement be declared void or unenforceable by any court of competent jurisdiction, that provision shall modified, limited or eliminated to the minimum extent necessary and such declaration shall have no effect on the remaining terms hereof, which shall continue in full force and effect.

(f) Waiver.The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

(g) Assignment.This Agreement is non-assignable unless the other party consents, which consent shall not be unreasonably withheld. Either party may assign this Agreement, without the consent of the other party, to a successor in interest in the event of a merger, acquisition or re-organization. Any action or conduct in violation of the foregoing shall be void and without effect.

(h) Legal Fees.In any action to enforce one's rights hereunder, the non-prevailing party shall pay the reasonable fees and expenses of the prevailing party.

(i) Notice.Any and all notices or other information to be given by one of the parties to the other shall be in writing and delivered (i) by electronic mail to Customer at the email address on the applicable Order Form and to Company at legal@emili.net (subject line: Notice under Terms of Use), or (ii) by certified mail (receipt requested), or hand delivery to the other party to the address set forth on the applicable Order Form. Such notices shall be deemed to have been received on the first business day following the day of such delivery. The address of either party may be changed at any time by giving ten (10) business days prior written notice to the other party in accordance with the foregoing.

(j) Equitable Relief.The parties agree that a material breach of this Agreement adversely affecting Company's intellectual property rights in Software or the Confidential Information of either party may cause irreparable injury to such party for which monetary damages would not be an adequate remedy and the non-breaching party shall be entitled to equitable relief

(without a requirement to post a bond) in addition to any remedies it may have hereunder or at law