

**Appendix F to DIR Contract No. DIR-TSO-2613
TECHNOLOGY AGREEMENT**

This **TECHNOLOGY AGREEMENT** (this “**Agreement**”) is made effective as of [REDACTED], 20[REDACTED] (the “**Effective Date**”), by and between **ETAN INDUSTRIES, LLC** (“**ETAN**”), and [REDACTED], [a/an] [REDACTED] (“**Customer**”). ETAN and Customer are individually a “**Party**” and collectively the “**Parties**.”

A. ETAN provides a suite of technology services and products from which purchasers can select those services and products that meet their respective needs.

B. Customer has elected to purchase certain technology services and/or technology products from ETAN.

C. ETAN desires to provide to Customer, and Customer desires to receive from ETAN, such technology services and/or technology products, in accordance with the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the terms and conditions of this Agreement and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties, intending to be legally bound, agree as follows:

1. **Definitions.** The following definitions apply for purposes of this Agreement:

1.1 “**ETAN Software**” means Licensed Software that is owned by ETAN or an affiliate of ETAN.

1.2 “**Confidential Information**” means all information and materials (tangible and intangible) disclosed by a Party to the other Party, including information and materials related to (i) the Purchased Items, (ii) ETAN’s pricing, customers, and marketing plans, and (iii) the existence of, and manner in which, ETAN bundles, markets, and distributes the Purchased Items and the Licensed Materials.

1.3 “**Consent**” means the prior, express, and written consent of a Party, which consent may be withheld, delayed, or conditioned in such Party’s sole discretion.

1.4 “**Customer Data**” means all data entered by Customer, or received by ETAN, as part of, or in connection with, Customer’s use of the Purchased Items or the Licensed Materials.

1.5 “**Disclosing Party**” means a Party that discloses or makes such Party’s information or materials available to the other Party.

1.6 “**End User License Agreement**” means a license agreement for Third Party Software.

1.7 “**Licensed Documentation**” means any and all documentation made available to Customer in order for Customer to use, access, or receive the Purchased Items.

1.8 “**Licensed Materials**” means, collectively, the Licensed Documentation and the Licensed Software.

1.9 “**Licensed Software**” means any and all software made available to Customer in order for Customer to use, access, or receive the Purchased Items.

1.10 “**Purchased Items**” means all of the services and products that are described on the Purchase Schedules.

1.11 “**Purchase Schedule**” means a schedule to this Agreement, which is signed by the Parties, pursuant to which ETAN agrees to provide, and Customer agrees to purchase, the technology services and/or products that are described in such schedule, such as (i) infrastructure services, (ii) virtualized services, and (iii) outsourcing services. Each Purchase Schedule shall describe the compensation payable by Customer to ETAN for the provision of the applicable services and/or products and shall contain the payment terms and conditions for such compensation.

1.12 “**Receiving Party**” means a Party that receives or otherwise learns of the other Party’s information or materials.

1.13 “**Service Level Schedule**” means a schedule to this Agreement, which is signed by the Parties, pursuant to which ETAN agrees to service level commitments with respect to the Purchased Items described in such schedule. Each Service Level Schedule shall describe the service level credits payable to Customer by ETAN for ETAN’s failure to meet the service level commitments.

1.14 “**Third Party**” means a person or entity that is not a Party.

1.15 “**Third Party Software**” means Licensed Software owned by a Third Party.

2. **Purchased Items.**

2.1 **Scope.** ETAN shall provide the Purchased Items to Customer in accordance with the Purchase Schedules and the Service Level Schedules, subject to Customer’s complying with the terms and conditions of this Agreement and complying and otherwise satisfying Customer’s obligations under the Purchase Schedules and the Service Level Schedules. ETAN shall not be required to provide any services under this Agreement except for the Purchased Items.

2.2 **Additional Purchased Items.** If, at any time following the Effective Date, ETAN agrees to provide, and Customer agrees to purchase, additional Purchased Items, then the Parties shall sign an additional Purchase Schedule indicating the additional Purchased Items. Each such additional Purchase Schedule shall include (i) a description of the services and products to be provided by ETAN with respect to such Purchase Schedule and (ii) the compensation payable by Customer to ETAN for such services and products. Upon signing by the Parties, such Purchase Schedule shall amend the Purchased Items to be provided by ETAN and the amounts payable by Customer in accordance with this Agreement.

2.3 **Functionality.** Customer acknowledges and agrees that (i) Customer is contracting, pursuant to this Agreement, to obtain the functionality associated with the Purchased Items and (ii) unless otherwise expressly provided in an applicable Purchase Schedule, ETAN has the right (but not the obligation) to change the Licensed Materials (including the Licensed Software) from time to time in ETAN’s sole discretion, so long as the general functionality of the Purchased Items to which such Licensed Materials relate remains materially unchanged and ATScldoud provides at least 2 weeks’ notice for the change. “Materially unchanged” means that the functionality still performs the same functions for the Customer, without diminution of speed, reliability or security, and at no additional cost.

2.4 Customer Data. Customer shall own the Customer Data. ETAN may use the Customer Data only in connection with this Agreement; provided, however, that ETAN shall be entitled to use all de-identified Customer Data (without limitation both during and after the term of this Agreement) for any and all purposes, including for purposes of aggregating statistical information and providing or selling such information to a Third Party.

3. Change Orders. If both Parties subsequently desire to change any Purchase Schedule, then the Parties shall develop a mutually agreeable change order document setting forth in writing the changes to the Purchase Schedule and the economic impact of such changes, including additional fees (if any) associated with such changes (a “**Change Order**”). A Change Order shall not be effective for purposes of this Agreement unless and until signed by both Parties; for the avoidance of doubt, in no event shall a Party’s failure to sign a Change Order be deemed such Party’s approval or acceptance of such Change Order.

4. Licenses.

4.1 ETAN Software. For any and all ETAN Software contained in, or used or accessed in connection with, the Licensed Materials, ETAN grants to Customer a non-exclusive and non-transferable license to use or access (as applicable) such ETAN Software, but only in accordance with, and as necessary to use or access (as applicable), the Purchased Item(s) to which such Licensed Materials relate.

4.2 Third Party Software. For any and all Vendor-provided Third Party Software contained in, or used in connection with, the Licensed Materials, such Third Party Software is subject to the applicable Third Parties’ terms and conditions, and Customer shall comply with such terms and conditions and shall, contemporaneously with the execution of this Agreement or, if later, immediately upon presentation by ETAN, enter into all applicable End User License Agreements. If Customer fails to enter into any applicable End User License Agreement prior to using such Licensed Materials, then ETAN may refuse to provide, and/or terminate Customer’s use of, the part of the Purchased Items affected by the Third Party Software to which such End User License Agreement relates. Customer will not be billed for any Purchased Items that are, or that become, unavailable to Customer, and any advance payment that Customer has made for such purchased items will be refunded immediately.

4.3 Ownership. Except for the licenses granted to Customer pursuant to this Section 4, ETAN and the applicable Third Party licensors own all right, title, and interest in and to the Licensed Materials. All rights in and to the Licensed Materials not expressly granted to Customer in this Agreement shall remain in ETAN and the applicable Third Party licensors.

4.4 Limitations. Except as otherwise expressly permitted in this Agreement (including any Purchase Schedule) to the contrary, (i) Customer shall not (and shall not attempt to), and shall not permit Customer’s personnel or any other persons under Customer’s control to, disassemble, decompile, reverse engineer, download, copy, disclose, sell, assign, lend, lease, license, sublicense, or otherwise transfer or provide the Purchased Items or any component of, right in, or access to, the Purchased Items to any other person or entity for any purpose, (ii) Customer shall not (and shall not permit anyone to) use the Purchased Items to provide services (such as processing, commercial timesharing, rental, sharing, application service provider, “service office,” or “service bureau” arrangements) to any Third Party, (iii) Customer may only use the Licensed Software as translated into specific instructions executable by a computer, (iv) Customer shall not (and shall not permit anyone to) obtain, generate, or build (or attempt to obtain, generate, or build) the Licensed Software’s code in a format discernable by a human, (v) Customer shall not copy (or permit or authorize anyone to copy) the Licensed Software or any portion of the Licensed Software, (vi) Customer shall not provide a copy of the Licensed Software to any Third

Party, and (vii) Customer shall not download any software through the use of, or for use in connection with, the Purchased Items or the Licensed Materials. Customer shall be solely responsible for any and all illegal or unpermitted software downloads.

5. **Compensation.** In consideration of ETAN's providing the Purchased Items and the Licensed Materials, Customer shall pay ETAN the amounts set forth in the Purchase Schedules (the "**Technology Fees**") in accordance with the payment terms and conditions contained therein. Payment shall be in accordance with Section 6C of Appendix A, DIR Contract No. DIR-TSO-2613.

6. **Confidentiality.**

6.1 **Use and Disclosure.** Except as required by the Texas Public Information Act and other applicable laws, without the Consent of the Disclosing Party or as otherwise contemplated by this Agreement (including as necessary for ETAN to provide the Purchased Items), the Receiving Party shall never disclose, copy, or use any Confidential Information of the Disclosing Party in any manner; provided, however, that the Receiving Party may disclose the Disclosing Party's Confidential Information as required by operation of law (including pursuant to any search or seizure process), provided that the Receiving Party has promptly notified the Disclosing Party of any legal process requiring production of such Confidential Information prior to compliance with such process such prior notification and precautions are practicable based upon then-current circumstances.

6.2 **Degree of Care and Ownership.** The Receiving Party shall treat the Disclosing Party's Confidential Information with the same degree of care as the Receiving Party accords to the Receiving Party's own Confidential Information, but in no case less than reasonable care. The Receiving Party shall promptly advise the Disclosing Party if the Receiving Party learns of any unauthorized use, disclosure, or copying of the Disclosing Party's Confidential Information. Unless otherwise provided in this Agreement, the Disclosing Party shall continue to own all of the Disclosing Party's Confidential Information. The Receiving Party shall promptly return to the Disclosing Party, at the Disclosing Party's sole cost and expense, all Confidential Information of the Disclosing Party in the Receiving Party's possession or control upon the earlier to occur of (i) a written request by the Disclosing Party (except to the extent necessary for ETAN to provide the Purchased Items) or (ii) termination of this Agreement for any reason by any Party.

6.3 **Exclusions.** Except for information that is required by law to remain confidential (such as Protected Health Information), Confidential Information of the Disclosing Party does not include information or materials that are (i) publicly available without violation of this Agreement or any other obligation of confidentiality, (ii) already known by the Receiving Party without any obligation of confidentiality, (iii) independently developed by the Receiving Party without any use of, or reference to, the Disclosing Party's Confidential Information, or (iv) subsequently disclosed to the Receiving Party by a Third Party without restriction and the disclosure by the Third Party does not violate any obligation of confidentiality.

6.4 **Remedies.** IF CUSTOMER BREACHES OR THREATENS TO BREACH THIS SECTION 6, THEN ETAN MAY, WITHOUT LIABILITY, IMMEDIATELY SUSPEND ANY AND ALL PURCHASED ITEMS UNTIL SUCH BREACH OR THREATENED BREACH IS CURED; however, Customer will not be billed for the period of the suspension, no charges will become due during that time, and if the suspension continues for more than 10 days, Customer may terminate without having to pay termination fees and the terms of Section 9B.4 of Appendix A, DIR Contract No. DIR-TSO-2613 will apply.

7. **Audits.** Customer shall keep clear and complete files with all information ETAN might require to verify compliance with this Agreement for one year after the termination of the related purchase order, including information relating to all financial and transactional aspects of this Agreement (the “**Audit Files**”). ETAN shall have the right, upon thirty days’ prior notice, to audit and analyze the Audit Files, Customer’s equipment, and any other necessary Customer property (real or personal) during Customer’s normal working hours and with minimum disruption, so as to verify Customer’s compliance with this Agreement. Each audit shall be carried out at the expense of ETAN, unless the results of the audit show a breach of this Agreement by Customer, in which case Customer shall pay the expenses and fees of such audit. If the results of an audit show a due payment owed to ETAN or any other breach to the terms of this Agreement, Customer shall immediately pay or rectify such breach (as applicable), including the payment of interest on all past due amounts.

8. **Customer’s Representations and Warranties.** Customer represents and warrants to ETAN the following as of the Effective Date and thereafter, with the intention that such representations and warranties survive the Effective Date: (i) Customer is a [REDACTED] duly organized, validly existing, and in good standing under the laws of the state of [REDACTED] and possesses the power to enter into this Agreement and to comply with the terms and conditions of this Agreement without violating any other agreement or commitment of any sort; (ii) the execution, delivery, and performance of this Agreement, and the transactions contemplated by this Agreement, by Customer have been duly and validly authorized and approved by all requisite action on the part of Customer; (iii) this Agreement is a legal, valid, and binding obligation of Customer; (iv) no consent or approval by any person or public authority is required to authorize, or is required in connection with, the execution, delivery, or performance of this Agreement by Customer; (v) Customer has obtained (a) the necessary consent from Customer’s landlord(s) to obtain, install, use, and maintain the Purchased Items for Customer’s facilities at which the Purchased Items are obtained, installed, used, and/or maintained, and (b) all other consents, licenses, and permits applicable to Customer’s operations; (vi) Customer has entered into the End User License Agreements prior to obtaining the applicable Purchased Item; (vii) Customer and Customer’s employees and contractors have obtained and shall maintain all consents, licenses, and permits applicable to Customer’s operations; and (viii) Customer shall comply with all applicable laws and regulations.

9. **Disclaimers and Limitations.**

9.1 **No Additional Warranties.** EXCEPT FOR THE WARRANTIES SET FORTH IN SECTION 8, NEITHER PARTY MAKES ANY OTHER WARRANTY, EITHER EXPRESS OR IMPLIED, WRITTEN OR VERBAL. EACH PARTY SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THE PURCHASED ITEMS AND THE LICENSED MATERIALS ARE PROVIDED “AS IS,” “WHERE IS,” AND “WITH ALL FAULTS.” ETAN DOES NOT WARRANT THAT THE OPERATION OF THE PURCHASED ITEMS OR THE LICENSED MATERIALS WILL BE UNINTERRUPTED OR ERROR FREE.

9.2 **Limitations.** Limitation of Liability shall be in accordance with Section 8K of Appendix A, DIR Contract No. DIR-TSO-2613.

9.3 **Basis of Bargain.** THE LIMITATIONS IN THIS SECTION 9 REPRESENT THE ALLOCATION OF RISK OF FAILURE BETWEEN THE PARTIES AS REFLECTED IN THE PRICING OF THE PURCHASED ITEMS AND ARE AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES.

10. **Indemnification.** Indemnification shall be in accordance with Section 8A of Appendix A, DIR Contract No. DIR-TSO-2613.

11. **Term and Termination.** This Agreement shall be effective for a term to be mutually agreed upon by the Vendor and the DIR Customer. Minimum term for service is one year. Vendor and Customer will agree in writing 30 days before the initial expiration period for renewal options of 12, 24, or 36 months.

11.1 Termination. Termination shall be in accordance with Section 9B of Appendix A, DIR Contract No. DIR-TSO-2613.

11.2 Effect of Termination. Upon termination of this Agreement, (i) Customer shall immediately discontinue use of the Purchased Items and the Licensed Materials, (ii) all licenses and leases (if any) granted to Customer pursuant to this Agreement (including any End User License Agreement) shall terminate immediately and without further notice. Prior to the Transfer Services, ETAN shall deliver to Customer a written estimate of the cost for ETAN's providing the Transfer Services (the "**Transfer Estimate**"). Pricing shall be in accordance with Technical Service rates as specified in Appendix A, Pricing Index (iii) Upon mutual agreement of the Transfer Estimate, ETAN shall transfer all Customer Data in ETAN's possession to a Third Party identified in writing by Customer.

12. **Dispute Resolution.** Enforcement of Contract and Dispute Resolution shall be in accordance with Section 9A of Appendix A, DIR Contract No. DIR-TSO-2613.

13. **General.**

13.1 Force Majeure. Force Majeure shall be in accordance with Section 9C of Appendix A, DIR Contract No. DIR-TSO-2613.

13.2 Relationship of Parties. Nothing in this Agreement shall create or be deemed to create the relationship of partners, joint ventures, employer-employee, joint employees, or principal-agent between the Parties. Neither Party shall have any authority to assume or create any obligation or responsibility whatsoever, express or implied, on behalf or in the name of the other Party or to bind the other Party in any manner whatsoever nor shall either Party make any representation, warranty, covenant, agreement, or commitment on behalf of the other Party. Customer shall use Customer's best efforts to cooperate and work in good faith with ETAN in connection with the transactions contemplated by this Agreement.

13.3 Binding Effect. This Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the Parties and the Parties' respective successors and permitted assigns. This Agreement may be changed, waived, or discharged only pursuant to a written agreement between the Parties. The waiver or failure of a Party to exercise in any respect any right provided for under this Agreement shall not be deemed a waiver of any further right under this Agreement by such Party. Each Party shall pay all of such Party's own expenses relating to the negotiation and preparation of this Agreement, including the fees and expenses of such Party's counsel.

13.4 Severability. If any provision of this Agreement is held to be illegal, invalid, or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid, or unenforceable provision never comprised a part of this Agreement; and the remaining provisions of this Agreement shall remain in full force and effect and shall not be affected by the illegal, invalid, or unenforceable provision or by its severance from this Agreement. Furthermore, in lieu of such illegal, invalid, or unenforceable provision, there

shall be added automatically as part of this Agreement a provision as similar in its terms to such illegal, invalid, or unenforceable provision as may be possible and be legal, valid, and enforceable.

13.5 Notices. Notification shall be in accordance with Section 10 of Appendix A, DIR Contract No. DIR-TSO-2613.

13.6 Governing Law. Choice of Law shall be in accordance with Section 3F of Appendix A, DIR Contract No. DIR-TSO-2613.

13.7 Entire Agreement. DIR Contract No. DIR-TSO-2613 and this Agreement (including the Purchase Schedules and Service Level Schedules) (i) embody the entire agreement and understanding between the Parties relating to the subject matter of this Agreement and (ii) supersede all prior agreements and understandings relating to the subject matter of this Agreement. In the event of a conflict, the DIR Contract controls. This Agreement may be signed simultaneously in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Faxed or .pdf copies of manually signed signature pages to this Agreement are fully binding and enforceable without the need for delivery of the original manually signed signature page. This Agreement does not create, and shall not be construed as creating, any right enforceable by anyone not a Party. Customer may not assign this Agreement (or delegate Customer's rights, duties, or obligations under this Agreement) without ETAN's Consent.

13.8 Interpretation. In the interpretation of this Agreement, except where the context otherwise requires, (i) "including" or "include" does not denote or imply any limitation, (ii) "or" has the inclusive meaning "and/or," (iii) "and/or" means "or" and is used for emphasis only, (iv) "\$" refers to United States dollars, (v) the singular includes the plural, and vice versa, and each gender includes each other gender, (vi) captions or headings are only for reference and are not to be considered in interpreting this Agreement, (vii) "Section" refers to a section of this Agreement, unless otherwise stated in this Agreement, (viii) all Purchase Schedules and all Service Level Schedules are incorporated into this Agreement by reference, (ix) all references to times are times in Dallas, Texas, and (x) "day" refers to a calendar day unless expressly identified as a Business Day. A "**Business Day**" means any day that is not a Saturday, Sunday, or official federal holiday in the United States.

13.9 Survival. This Section 13 and Sections 1, 2.4, 4.3, 4.4, 5, 6 through 10, 11.2, and 12 shall survive termination of this Agreement.

(Balance of page intentionally blank—Signatures on next page)

This Agreement is entered into by the Parties to be effective on the Effective Date.

ETAN:

ETAN INDUSTRIES, LLC

By: _____

Name: _____

Title: _____

Address:

[REDACTED]

[REDACTED]

[REDACTED]

Facsimile: [REDACTED]

Attention: [REDACTED]

CUSTOMER:

[REDACTED], [a/an] [REDACTED]

By: _____

Name: _____

Title: _____

Address:

[REDACTED]

[REDACTED]

[REDACTED]

Facsimile: [REDACTED]

Attention: [REDACTED]