



# ETHOSIQ, LLC MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

12/9/2015  
ethosIQ, LLC  
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Houston, TX. 77095

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

1. **Definitions.** For purposes of this Agreement, the following terms shall have the following meanings:
  - a. “ACD” Automatic Call Distribution means a device or service that distributes incoming calls to a specific group of agent telephones. ACD systems are often found in offices handling large volumes of incoming phone calls from callers who have no specific need to talk to a certain person, but do need to speak with a person to receive service or information. ACDs provide detailed reporting on agent activity and the ability to route calls to specific agents depending upon the skills required.
  - b. “Administrator” means a person responsible for administering and configuring multiple call center(s).
  - c. “Agent Workstation” or “Seat” means a micro-computing unit or other assemblage of computer equipment that is enabled to allow use of the Licensed Software by a maximum of one (1) agent at any given time. An Agent Workstation may be configured to allow multiple agents working in shifts to use the Licensed Software; provided that it is not enabled for concurrent use. Once enabled, a workstation is defined as an Agent Workstation until disabled, whether or not it is in active use by any Customer agent.
  - d. “Annual Maintenance Fee” or “AMF” means the annual fee to be paid to ethosIQ to entitle Customer to access and use the Maintenance and Support Services in accordance with the provisions of this Agreement.
  - e. “Authorized Dealer” means the permission from Nice, Avaya, Cisco, and Genesys the manufacturer authorizing ethosIQ to resell their product(s) and or service(s) to the public or to an end user.
  - f. “Cloud computing” is a colloquial expression used to describe a variety of different types of computing concepts that ethosIQ uses that involve a large number of end users and computers that are connected through a real-time communication network (typically customer provided Internet connectivity). Cloud computing is a preferred method used to sell hosted services in the sense of application service provisioning that run client server software on a remote location. End users may access ethosIQ’s (ethosphere™) cloud-based applications through a web browser or a light-weight desktop or mobile app while the business software and user’s data are stored on servers at a remote location.
  - g. “CTI” Computer Telephony Integration means a device or service integrating the telephone system with a computer. Often used in consumer order taking centers. The telephone system passes the calling telephone number to the computer. The computer matches the telephone number in its database and populates the agent’s computer screen with recent order activity, contact or billing information or other useful data.
  - h. “Current Version” means the most current version of the latest Major Release of the Licensed Software, and the most current version of the penultimate Major Release of such Licensed Software.
  - i. “Derivative Work” means a new or modified work that is based on or derived from all or any part of the Licensed Software, including without limitation, a revision, modification, translation, localization, adaptation, abridgment, port, condensation or expansion, in any form, of the Licensed Software, or any work that would infringe any copyright if created without the

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

authorization of the copyright holder or any other intellectual property right in the Licensed Software or that uses trade secrets or other proprietary information embodied in or used by the Licensed Software.

- j. "Designated CPU" means the designated hardware upon which the Licensed Software is installed.
- k. "Designated Site" means that single facility of Customer at which the Licensed Software is installed and which shall be identified in the Order.
- l. "Documentation" means applicable technical published manuals that accompany the Licensed Software delivered to Customer.
- m. "IP-PBX" Internet Protocol Private Branch Exchange means internet protocol allows packetized information, either voice or data to be transmitted over a pair of wires. This protocol is used to transfer information across the Internet. A private branch exchange is a privately owned electronic device capable of switching telephone calls. An IP-PBX operates using the IP protocol; see TDM PBX to compare to legacy technology.
- n. "IVR" Interactive Voice Response means a phone technology allowing a computer to detect voice and/or touch tones using a normal phone call. The IVR system can respond with pre-recorded or dynamically generated audio to further direct callers on how to proceed. IVR systems can be used to control almost any function where the interface can be broken down into a series of simple menu choices.
- o. "License Fee" means the fee to be paid to ethosIQ to entitle Customer to use the Licensed Software in accordance with the provisions of this Agreement.
- p. "Licensed Software" means the applicable ethosIQ and generally available software products (excluding Developer Materials, as defined in Schedule C) listed on ethosIQ and applicable partners standard price list ("ethosIQ Products"), in object code format only, and applicable Documentation ordered by Customer pursuant to a valid Order.
- q. "Maintenance and Support" means the maintenance and support service purchased by Customer that provides (i) Maintenance, Minor and Major Releases, if any, and appropriate Documentation to the Licensed Software; (ii) telephone or email assistance with respect to the Licensed Software between 8:00 AM and 8:00 PM Central Standard Time, Monday through Friday and (iii) Customer access to ethosIQ support personnel via a message pager twenty-four (24) hours per day, seven (7) days per week, for "Critical" issues as defined in Schedule A ("Maintenance and Support Terms"). Telephone assistance shall comprise: (A) clarification of functions and features of the Licensed Software, (B) clarification of Documentation pertaining to the Licensed Software and (C) error verification, analysis and resolution.
- r. "Maintenance Release" means a Release which comprises fixes to previously determined defects, but does not include new features or functions, or changes to the architectural design of the Licensed Software.
- s. "Major Release" means a Release which comprises a substantial change to the Licensed Software content and fixes to previously determined defects, and may include architectural changes.

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

- t. "Minor Release" means a Release which comprises new features and functions, and fixes to previously determined defects, but maintains the same Licensed Software architecture as the Major Release on which it is based.
- u. "MRC" Monthly Recurring Charge means the monthly charge required to support a service.
- v. "NRC" Nonrecurring Charge means a one-time charge, often activation or an installation fee. This fee is non-refundable.
- w. "Order(s)" means the document submitted by Customer to ethosIQ, pursuant to which Customer orders Licensed Software and Maintenance and Support. An Order shall include: (i) effective date of Order; (ii) incorporation of this Agreement by reference; (iii) Licensed Software and version being ordered; (iv) quantity of Agent Workstations and/or Ports, as applicable, and price; (v) Designated Site and Designated CPU; (vi) billing address; (vii) ship to location and (viii) thirty (30) day payment terms. All Orders are irrevocable and non-refundable except as provided herein. ethosIQ reserves the right to waive any or all of the aforementioned requirements either in writing or by fulfillment of the Order.
- x. Prepayment prepay –ethosIQ requirement to pay for something before receiving it. Prepay - give money prior to the exchange of goods or services. All Clients are required to prepay for software before delivery of software.
- y. "Port" means a communication path enabled to support a single user session specific to one (1) application.
- z. "Release" means a version of any Licensed Software containing functional enhancements, modifications, extensions, error corrections or bug fixes. Releases are not provided as part of the Licensed Software unless Customer has timely paid the applicable Annual Maintenance Fees in accordance with Section 4.
- aa. "Statement of Work", "Letter of Engagement" or "Work Order" means a mutually executed document describing the professional services to be provided by ethosIQ pursuant to provisions of this Agreement.

### 2. License

(a) Subject to the provisions of this Agreement, ethosIQ grants and passes through as an Authorized Dealer (Value Added Reseller) (VAR) to Customer a perpetual (except as otherwise expressly set forth herein), non-transferable, non-exclusive, irrevocable license, without any right to sublicense, to use the Licensed Software described in a valid Order issued by Customer, within the United States and Canada, solely for the purpose of Customer's internal business operations. Except as expressly set forth in Section 2(a), no other right or license of any kind is granted by ethosIQ to Customer hereunder with respect to the Licensed Software, and all rights not expressly granted herein (including without limitation, development rights and distribution rights) are reserved by ethosIQ. Without limiting the generality of the foregoing, Customer shall not have rights in or to new software functionality within ethosIQ Partner(s) Products enabled by non-ethosIQ Partner(s) connectors/adapters/interfaces/integrations without paying applicable License Fees and AMFs. Such license is granted separately from

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

any professional services proposal Customer may request or receive from ethosIQ, and does not require Customer to purchase such services.

(b) The Licensed Software is licensed per Agent Workstation or Port, as applicable, or in accordance with a license model identified in ethosIQ' or partners applicable standard price list and/or quote tool as of the date of the Order. Customer may use the Licensed Software for the number of Agent Workstations or Ports, as applicable, specified in an applicable Order, or as otherwise mutually agreed upon in writing. Additional costs are typically required for any software used in a non-production environment (includes Development, Testing, Performance verification, Quality assurance, Failover, Standby, and Disaster Recovery).

(c) Without limitation of Section 2(a), Customer shall not directly or indirectly, without the prior written consent of ethosIQ or unless otherwise expressly provided herein: (i) copy or modify all or any portion of the Licensed Software, except for copies of the Licensed Software for normal backup, recovery, high availability, non-production (development, test, etc..) and archival purposes; (ii) decompile, disassemble or otherwise reverse engineer the Licensed Software or any portion thereof, or determine or attempt to determine any source code, algorithms, methods, interfaces, data structures or techniques embodied in or used by the Licensed Software or any portion thereof (except to the extent, if at all, expressly permitted by applicable law, notwithstanding a contractual obligation to the contrary); (iii) create any Derivative Works; (iv) distribute, disclose, market, sell, rent, lease, time-share, assign, sublicense, pledge, encumber or otherwise transfer or make available the Licensed Software or rights granted under this Agreement, as applicable, in whole or in part, to any third party; (v) remove or alter any copyright, trademark, trade name, confidentiality or other proprietary notices, legends, symbols or labels appearing on or in copies of the Licensed Software; (vi) perform, or release the results of, benchmark tests or other comparisons of the Licensed Software with other programs; (vii) transfer the Licensed Software to any site other than the Designated Site; (viii) permit the Licensed Software to be used in connection with a service bureau or otherwise used for processing the data of any third party; (ix) incorporate the Licensed Software or any portion thereof into any other program or product; (x) use the Licensed Software other than in accordance with the provisions of this Agreement; and (xi) use ethosIQ Partner(s) Enterprise Telephony Software for contact center purposes.

(e) Any Hyperion software provided with Contact Center Analyzer is limited to use only with Contact Center Analyzer. Without limiting the foregoing, Customer may not use the Hyperion software or any other third party programming language tools or products to create additional applications designed to be used with Hyperion software.

(f) In the event that the Licensed Software is replaced by any software (the "New Software") licensed by ethosIQ as the Authorized Dealer hereunder and elects not to continue to support the Licensed Software, then Company shall be granted license to such New Software on the terms and conditions set forth in this Agreement. Any cost with replacing said software shall rest solely on Customer.

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

(g) Audit. Customer agrees that if ethosIQ has a reasonable cause to believe that Customer's use of the Licensed Software is exceeding Customer's License grant, ethosIQ may, with 30 days' written notice to Customer, and solely for the purpose of determining Customer's compliance with the provisions of this Agreement, Audit Customer's use of the Licensed Software. In no case may ethosIQ perform such Audit more than one (1) time in any Calendar year. The performance of the Audit will be at ethosIQ's sole expense.

### **3. Delivery and Acceptance.**

ethosIQ shall deliver the Licensed Software and Documentation to Customer after execution of this Agreement and receipt of prepayments from Customer. In the case of physical shipment, delivery shall be deemed to occur at the shipping point. In the case of electronic delivery, delivery shall occur when Licensed Software has been uploaded onto the FTP site and Customer is provided all necessary passwords for download from such site. Acceptance shall be deemed to occur upon delivery of the Licensed Software.

### **4. Maintenance and Support.**

(a) Unless otherwise specified in a Schedule or Order pursuant to this Agreement, Customer shall purchase and receive Maintenance and Support (as described in Section(s) 1 d, q, r, t and z) for the Licensed Software as of the delivery date of the Licensed Software. The AMF shall be as set forth on ethosIQ applicable standard price list or as mutually agreed in writing between the parties, as of the date of the Order. In the event that AMF is not mutually agreed upon or a dispute arises then determination of the AMF shall be decided by ethosIQ in its reasonable discretion and its decision shall be final, conclusive and binding.

(b) ethosIQ shall use commercially reasonable efforts to correct material errors in the Licensed Software, including any reproducible programming error attributable to ethosIQ, in accordance with the "Technical Support Escalation Procedures" set forth in Schedule A or as mutually agreed upon. In the event that remote resolution is not possible, ethosIQ may, if mutually agreed by the parties, attend Designated Site to attempt such resolution. This does not include any travel related expense that will be passed onto the customer.

(c) ethosIQ shall only provide Maintenance and Support for version of the Software that is supported by the manufacturer of the Licensed Software. ethosIQ shall not provide Maintenance and Support relating to problems arising out of: (i) changes to the operating system or environment which adversely affects the Licensed Software; (ii) any alterations of or additions to the Licensed Software performed by parties other than ethosIQ or at the direction of ethosIQ ; (iii) use of the Licensed Software in a manner for which it was not designed; (iv) accident, negligence or misuse of the Licensed Software; (v) operation outside of the environment or equipment for which the Licensed Software was designed and licensed; (vi) modification of the database structure designed to be used by the Licensed Software.

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

(d) Customer shall appoint no less than two (2) employees to initiate and manage Maintenance and Support inquiries (“Designated Contacts”). Designated Contacts shall attend Vendor(s) recommend Training for the Licensed Software at the then-current published training fees. Designated Contacts shall have “competent knowledge” of the technical infrastructure where the Licensed Software is installed. Customer shall maintain two (2) Designated Contacts for as long as it receives Maintenance and Support. Upon the reasonable prior written consent of ethosIQ, Customer may increase the number of Designated Contacts.

(e) ethosIQ shall be entitled to charge reasonable additional fees for all support services provided beyond the scope of ethosIQ’s support obligations set forth in this Section 4.

(f) Maintenance and Support shall be provided to Customer for a period of twelve (12) months commencing on the Effective Date (“Initial Maintenance Term”) and for consecutive twelve (12) month terms commencing on each anniversary of the Effective Date (“Renewal Date”) (each such term being a “Renewal Maintenance Term”), as agreed upon by the parties (collectively, “Maintenance Period”). Maintenance and Support provisions of this Agreement shall expire at the end of the Maintenance Period unless renewed by the parties by issuance and acceptance of an Order. ethosIQ shall notify Customer of an impending expiration at least ninety (90) days prior to the last date of the Initial Maintenance Term or a Renewal Maintenance Term (“Expiration Date”) and Customer shall, at least thirty (30) days prior to the then-current Expiration Date, either notify ethosIQ of its intent not to renew or issue a Maintenance and Support renewal Order. If Customer takes no action, the Maintenance and Support shall not renew. ethosIQ shall not increase the price of the Maintenance and Support Fees (MSF) for the initial term, which Customer can elect to renew or not at Customer’s sole discretion, of the Maintenance and Support. ethosIQ may increase the MSF one time per year, to become effective for the next Renewal Term, by an amount not to exceed the lesser of US CPI or 3% of the most recent term’s MSF.

(g) If Maintenance and Support is terminated or expires, the parties may agree in writing to subsequently renew Maintenance and Support. All delinquent or outstanding past-due Fees, AMF and, Support fees are required to be brought current (paid in full) to renew Maintenance.

### 5. Warranty.

(a) ethosIQ warrants that the media for the Licensed Software shall be free from material defects for a period of ninety (90) days from the installation date of the Licensed Software by the Customer (or on behalf of the Customer) (“Warranty Period”). Under this warranty, ethosIQ shall provide an additional copy of the media to Customer at no additional charge in the event Customer’s copy is lost and/or damaged. ethosIQ’s entire liability and Customer’s entire remedy under this warranty shall be to replace the media on which the Licensed Software was delivered. ethosIQ does not warrant that the use of the Licensed Software shall meet Customer’s requirements or that the operation of the Licensed Software shall be uninterrupted or error free.

(b) ethosIQ warrants that for the Warranty Period, the Licensed Software (excluding third party components, the warranty coverage for which shall be the same as that which is provided by the third

## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

party supplier to ethosIQ) shall materially conform to the Documentation. ethosIQ entire liability and Customer's entire remedy under this warranty shall be, at ethosIQ election, to: (i) use best efforts to correct any material non-conformities discovered within the Warranty Period; (ii) replace the nonconforming Licensed Software or (iii) refund one times the License Fees paid for such Licensed Software upon return of the Licensed Software to ethosIQ . FULL REFUND PROVIDED HEREUNDER SHALL BE DEEMED A REVOCATION OF THE LICENSE GRANTED FOR SUCH REFUNDED LICENSED SOFTWARE (AND ANY RELATED MAINTENANCE) AND SHALL BE ethosIQ' ENTIRE LIABILITY AND CUSTOMER'S ENTIRE REMEDY FOR REJECTION OF THE LICENSED SOFTWARE. NEITHER PARTY SHALL HAVE ANY FUTURE OBLIGATIONS OR LIABILITY HEREUNDER WITH RESPECT TO SUCH LICENSED SOFTWARE. The remedies specified herein only apply if ethosIQ is notified in writing of the non-conformities within the Warranty Period; ethosIQ examination of the Licensed Software confirms that such nonconformities exist and the Licensed Software has not been (A) altered or modified; (B) subjected to negligence, or computer or electrical malfunctions, or accident; or (C) used, adjusted or installed other than in accordance with the Documentation.

(c) ethosIQ warrants that it shall provide Maintenance and Support and Services in a professional and workmanlike manner.

(d) EXCEPT FOR THE EXPRESS LIMITED WARRANTIES SET FORTH IN THIS SECTION, ETHOSIQ MAKES NO WARRANTIES, WHETHER EXPRESS, IMPLIED OR STATUTORY WITH RESPECT TO ANY LICENSED SOFTWARE, MAINTENANCE AND SUPPORT OR ANY SERVICES, AND ETHOSIQ EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY / MERCHANTABILITY QUALITY OR FITNESS FOR A PARTICULAR PURPOSE.

### 6. Liability.

(a) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, REGARDLESS OF THE FORM OR CAUSE OF ACTION WHETHER IN CONTRACT OR TORT OR THE NUMBER OF CLAIMS, AND WHETHER IN RESPECT OF A BREACH OR DEFAULT IN THE NATURE OF A BREACH OF CONDITION OR FUNDAMENTAL TERM OR A FUNDAMENTAL BREACH: (A) CUSTOMER, ETHOSIQ AND ANY OF ETHOSIQ ' SUPPLIERS OR LICENSORS SHALL NOT HAVE ANY LIABILITY TO ANY PARTY FOR ANY ECONOMIC, CONSEQUENTIAL, INDIRECT, INCIDENTAL OR SPECIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, ANY LOST REVENUES OR PROFITS) ARISING OUT OF THIS AGREEMENT, AND (B) ETHOSIQ ' ENTIRE LIABILITY FOR ANY CLAIM ARISING OUT OF THIS AGREEMENT (OTHER THAN LIABILITY FOR INDEMNIFICATION, GROSS NEGLIGENCE, DEATH OR PERSONAL INJURY CLAIMS) SHALL NOT EXCEED ACTUAL, DIRECT, PROVABLE DAMAGES, NOT TO EXCEED ONE QUARTER OF THE FEES PAID BY CUSTOMER TO ETHOSIQ PURSUANT TO THE APPLICABLE ORDER IN RESPECT OF THE LICENSED SOFTWARE, THE MAINTENANCE AND SUPPORT, OR SERVICES THAT ARE THE SUBJECT OF SUCH CLAIM, WHETHER OR NOT SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT ETHOSIQ HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

### 7. Indemnification.



## ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)

(a) Customer shall defend or, at its sole discretion, settle, any claim, action or proceeding brought against ethosIQ based upon a substantive allegation relating to Customer's unauthorized possession, use, copying or distribution of the Licensed Software or any part thereof, and indemnify ethosIQ against, and hold ethosIQ harmless from, any and all costs and damages finally awarded against ethosIQ that are directly attributable to such claim, action or proceeding.

(b) Except as otherwise provided in this Section, ethosIQ, in its sole discretion, defend Customer against any claim, action or proceeding brought against Customer based upon allegation that the Licensed Software (excluding third party components, the indemnification coverage for which shall be the same as that which is provided by the third party supplier to ethosIQ as delivered to Customer infringes any United States or Canadian patent, copyright, trade secret or trademark of a third party (a "Claim"), and indemnify Customer against, and hold Customer harmless from, any and all costs and damages finally awarded against Customer that are directly attributable to such Claim.

(c) Each party seeking indemnification shall take all reasonable steps to mitigate any potential expenses and shall: (i) promptly after first receipt of Notice of a Claim (and in any event before any of the other party's rights are prejudiced), deliver to the other party Notice of such Claim and any actions taken in connection therewith; (ii) grant to the other party the sole authority to assume the defense thereof, and the sole right to settle the Claim, through counsel chosen solely by such other party, and (iii) reasonably cooperate with the other party in connection with the defense and/or settlement of such Claim. Except as specified herein, the indemnifying party shall not be liable for any costs or expenses incurred without its prior written authorization.

(d) If any third party obtains an injunction against Customer's use of any Licensed Software as a result of any Claim or if ethosIQ, in its sole discretion, believes that Customer's use of any Licensed Software may be subject to a Claim, then ethosIQ may at its expense, either: (i) procure for Customer the right to continue to use the Licensed Software as provided herein; (ii) replace or modify the Licensed Software with a functionally-equivalent or better product so that Customer's use is not subject to a Claim; or (iii) if ethosIQ determines that it cannot accomplish either of the foregoing in a commercially reasonable manner, then, upon the request of ethosIQ, (a) Customer shall deliver the Licensed Software to ethosIQ and (b) ethosIQ, in its sole discretion, promptly consider a refund to Customer the one quarter times the value of the Licensed Software and terminate this Agreement. Upon exercise of option (iii) of this Section, ethosIQ shall have no further obligations or liability to Customer. Notwithstanding the foregoing, ethosIQ assumes no liability for infringement claims arising from any of the following: (A) combination of the Licensed Software with other products not provided by ethosIQ; (B) modifications to any Licensed Software unless such modification was made or authorized by ethosIQ; (C) use of the Licensed Software if the infringement would have been avoided if the Licensed Software had been used in accordance with the Documentation; (D) failure by Customer to install a Maintenance, Minor or Major Release provided by ethosIQ if such Maintenance, Minor or Major Release would have avoided infringement and Customer was notified by ethosIQ in advance of such avoidance; (E) continuing activities that are the subject of the Claim after ethosIQ's Notice that Customer must cease

## **ETHOSIQ MASTER SOFTWARE LICENSE AGREEMENT (MSLA)**

use of the Licensed Software due to a potential infringement claim; or (F) use of the Licensed Software after Notice of termination.

(e) NOTWITHSTANDING ANY PROVISION OF THIS AGREEMENT TO THE CONTRARY, THE PROVISIONS OF THIS SECTION 7 CONSTITUTE ETHOSIQ ' ENTIRE LIABILITY AND CUSTOMER'S ENTIRE REMEDY WITH RESPECT TO ANY CLAIM OF INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, TRADEMARK OR OTHER INTELLECTUAL PROPERTY RIGHT OF ANY THIRD PARTY.