

## Spirit Service License Agreement

This Agreement ("Agreement") is by and between **e-Tech Solutions, Inc.**, an Arizona corporation, with its principal place of business at 6400 E El Dorado Circle, Suite 300, Tucson, Arizona 85715 ("ETSI"), and User as specified below. Effective as of the "Effective Date" as specified below.

This Spirit Service License Agreement ("SSLA") is a legal agreement between User (either an individual or a single entity) and ETSI.

### RECITALS

WHEREAS, ETSI has developed and provides as Service the Spirit e-business software, which allows User to create and manage customer specific ordering sites.

WHEREAS, User wishes to engage ETSI for services and license to such software.

NOW THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

#### 1. Definitions.

- 1.1. "**SOFTWARE**" shall mean the Internet based Spirit e-Business Software.
- 1.2. "**Proofit! Module**" shall mean ETSI's Proofit! Module as identified Exhibit A ("**Spirit and Modules Product Description**").
- 1.3. "**Tabs Module**" shall mean ETSI's Tabs Module as identified Exhibit A ("**Spirit and Modules Product Description**").
- 1.4. "**Brand Features**" shall mean trademarks, service marks, logos and other distinctive brand features of ETSI, its SOFTWARE and related services.
- 1.5. "**User Brand Features**" shall mean trademarks, service marks, logos and other distinctive brand features of User.
- 1.6. "**SERVICES**" shall mean email marketing, template creation, custom SOFTWARE development, and related services provided by ETSI to User.
- 1.7. "**Customer**" shall mean the customer of User for which ordering web sites are maintained.
- 1.8. "**Order Site**" and "**Ordering Site**" shall mean the ecommerce web site created by User with SOFTWARE for the Customer.
- 1.9. "**User Manual**" shall mean the User Manual and Training Guide for SOFTWARE (and any subsequent versions thereof), which shall be developed by ETSI and submitted to User that shall sufficiently describe features, functions, procedures and operations necessary for User to develop an Ordering Site.

## 2. LICENSE and Ownership

- 2.1. **GRANT OF LICENSE BY ETSI.** Subject to the terms and conditions of this Agreement, ETSI hereby grants to User a non-exclusive, royalty-free, worldwide license (with no right to sublicense) for the term of the Agreement to use SOFTWARE, reproduce and display the ETSI Brand Features in connection with marketing and promotion of the SOFTWARE and other ETSI SERVICES; provided, however, all such use, reproduction and/or display of ETSI Brand Features which has not been previously approved by ETSI or which is not substantially similar to a use, reproduction and/or display which has been previously approved by ETSI are (i) in accordance with reasonable trademark guidelines and restrictions specified by ETSI, and (ii) subject to ETSI prior approval, which shall not be unreasonably withheld or delayed. User agrees that all code, scripts, and programs related to SOFTWARE are the property of ETSI and cannot be sold or distributed.
- 2.2. **RESTRICTIONS.** User may not reverse engineer the SOFTWARE, except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation. You may not rent, lease, or lend the SOFTWARE. You may not use the SOFTWARE to perform any unauthorized transfer of information (e.g. transfer of files in violation of a copyright) or for any illegal purpose.
- 2.3. **ETSI's Intellectual Property Ownership.** Subject only to the rights granted to User herein, ETSI shall retain all worldwide rights, title and interests in and to the SOFTWARE, and all modifications, enhancements, upgrades and new versions created by ETSI with respect to any of the foregoing, and all patent rights, copyrights and trade secret rights embodying any of the foregoing.

## 3. Fees and Payment.

- 3.1. **Service Fee.** In consideration of the services to be provided and the licenses and rights granted hereunder, User shall pay to ETSI as outlined in Exhibit A.
- 3.2. **Additional Amounts.** Additional fees and expenses provided by the terms of this Agreement shall be invoiced by ETSI to User on a periodic basis, and User shall pay all such amounts.
- 3.3. **Payments Due.** All amounts due to ETSI shall be paid by User at the applicable time specified under this agreement or, for invoices issued under Section 3.2, within thirty (30) days of receipt of such invoice by User.
4. **SERVICES.** ETSI may provide User with services related to the SOFTWARE. Use of Services is outlined under SERVICES in Exhibit A of this agreement. Any supplemental SOFTWARE code developed for User as part of the SERVICES shall be considered part of the SOFTWARE and subject to the terms and conditions of this SSLA. With respect to technical information User provides to ETSI as part of SERVICES, ETSI may use such information for its business purposes, including SOFTWARE support and development. ETSI will not utilize such technical information in a form that personally identifies User.
5. **TERM.** This Agreement becomes effective on the Effective Date and shall remain in effect for one (1) year following the Effective Date, unless terminated earlier pursuant to the provisions of this Agreement. At the end of the initial term, this Agreement shall renew based on the renewal terms outlined in Attachment A.
6. **TERMINATION.** Without prejudice to any other rights, ETSI may terminate this SSLA if User fails to comply with any of the terms and conditions of this SSLA.
7. **COPYRIGHT.** The SOFTWARE is protected by United States copyright law and international treaty provisions. User acknowledges that no title to the intellectual property in the SOFTWARE is transferred to User. User further acknowledges that title and full ownership rights to the SOFTWARE will remain the exclusive property of ETSI and User will not acquire any rights to the SOFTWARE except as expressly set forth in this license.

8. **Representations and Warranties.**

8.1. **By ETSI.** ETSI hereby warrants to User that: (a) ETSI is the owner of or has a valid license for all intellectual property rights in and to the SOFTWARE and trademarks, and that it has full power and right to license the SOFTWARE to User, and perform all other terms of this Agreement; (b) to the knowledge of ETSI, neither the SOFTWARE nor any element thereof, nor the exercise of any rights granted by ETSI hereunder, shall directly or indirectly infringe the intellectual property rights of any third party; (c) there has been no threat, demand, suit or proceeding regarding ETSI's ownership of the SOFTWARE; (d) for the term of this Agreement the SOFTWARE will perform substantially in accordance with the Specifications set forth in the Specifications for such SOFTWARE. (e) when executed and delivered, this Agreement will constitute the legal, valid and binding obligation of such party, enforceable against it in accordance with its terms; and (f) User acknowledges that ETSI makes no representations, warranties or agreements related to the subject matter hereof that are not expressly provided for in this Agreement. In the event of an error, delay, defect, breakdown or failure of SOFTWARE, and with respect to ETSI, ETSI's obligation shall be limited to the use of reasonable diligence under the circumstances to restore its site(s) to operation. Notwithstanding any other provision, software or modules supplied by third parties, including but not limited to PERL modules, are not warranted by ETSI and any claim relating to such products shall be made directly against its maker under the applicable warranty, if any.

8.2. **By User.** User hereby warrants to ETSI that User has acquired or will acquire the rights to use Adobe PDF Version 1.6 Software specified by ETSI as necessary for ETSI's performance of the terms of this Agreement.

8.3. **Disclaimer.** EXCEPT AS SET FORTH IN SECTION 7.1, NEITHER PARTY MAKES, AND EACH PARTY EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, STATUTORY OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

8.4. **No Additional Warranties.** ETSI EXPRESSLY DISCLAIMS ANY WARRANTY FOR THE SOFTWARE EXCEPT AS SET FORTH IN SECTION 7 OF THIS AGREEMENT. THE SOFTWARE AND ANY RELATED DOCUMENTATION IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, REGARDING THE PRODUCTS AND SERVICES CONTEMPLATED BY THIS AGREEMENT, INCLUDING ANY IMPLIED WARRANTY OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, OR IMPLIED WARRANTIES ARISING FROM COURSE OF DEALING OR COURSE OF PERFORMANCE. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE SOFTWARE REMAINS WITH User.

9. **LIMITATION OF LIABILITY.** IN NO EVENT SHALL ETSI OR ITS SUPPLIERS BE LIABLE FOR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE DELIVERY, PERFORMANCE, OR USE OF THE SOFTWARE. IN ANY EVENT, NOT WITHSTANDING ANY OTHER PROVISION, ANY CLAIM FOR DAMAGES, WHETHER IN CONTRACT, TORT, OR ANY OTHER THEORY OF CONTRACT ASSESSED AGAINST ETSI UNDER THIS AGREEMENT, SHALL BE LIMITED TO AN AGGREGATE MAXIMUM THAT SHALL NOT EXCEED THE TOTAL INITIAL SERVICE FEE ACTUALLY PAID BY USER TO ETSI UNDER THIS AGREEMENT.

10. **Indemnification.** User will indemnify, defend and hold ETSI and its directors, officers, employees and agents harmless from any and all costs, expenses (including reasonable attorney's fees) losses, damages or liabilities incurred insofar as such costs, expenses, losses, damages or liabilities is based on a claim that the User Content or the User Brand Features infringes any Intellectual Property Rights of a third party. ETSI shall promptly notify User in writing of any claim for which it seeks indemnification, provided the failure or delay in doing so shall not relieve User from any obligation to indemnify ETSI except to the extent that such delay or failure materially prejudices the defense of such claim. User will have control of the defense of any action and all negotiations for settlement and compromise. ETSI shall provide User with reasonable assistance and information necessary to perform the above, with User to be responsible for any out-of-pocket expenses of ETSI in providing such assistance. If ETSI desires to have separate legal representation in any such action, ETSI shall be responsible for the costs and fees of its separate counsel.

## 11. **Miscellaneous Provisions.**

- 11.1. **Amendment.** ETSI reserves the right to change, amend, alter, or modify the terms of this Agreement by providing User with thirty (30) days written notice or email of the change, amendment, alteration, or modification of the Agreement. User shall have the right to terminate this Agreement as of the effective date of such change, amendment, alteration, or modification by providing ETSI with written notice of User's intent to terminate the Agreement no later than fourteen (14) days prior to such effective date..
- 11.2. **Entire Agreement.** This Agreement sets forth the entire agreement of the parties and supersedes any prior agreements, written or oral, with respect to the transactions set forth herein.
- 11.3. **Construction.** In the event that any provision of this Agreement conflicts with the law under which this Agreement is to be construed, or if any provision is held invalid by a court of competent jurisdiction, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the parties, and the remainder of this Agreement shall remain in full force and effect. There shall be no presumption for or against either party as a result of such party being the principal drafter of this Agreement.
- 11.4. **Independent Contractors.** The parties to this Agreement are independent contractors. Neither party is an agent, representative, or partner of the other party. Neither party shall have any right, power or authority to enter into any agreement for, or on behalf of, or incur any obligation or liability of, or to otherwise bind, the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture or partnership between the parties or to impose any liability attributable to such a relationship upon either party.
- 11.5. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Arizona, without reference to conflicts of laws or choice of laws rules. All legal actions relating to this Agreement shall be brought in the state or federal courts located in Tucson, Arizona.
- 11.6. **Notices.** Unless otherwise stated, notices under this Agreement shall be in writing and sent via U.S. Express Mail or private express courier service with confirmed receipt and will be effective upon receipt at the addresses listed on the cover page (unless the parties are notified in writing of a change in address, in which case notice will be sent to the new address).
- 11.7. **Force Majeure.** Neither party shall be deemed in default or otherwise liable under this Agreement due to its inability to perform its obligations by reason of any cause beyond that party's control.
- 11.8. **Assignment.** This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Neither party may assign this Agreement, in whole or in part, without the other party's written consent; provided, however, that either party may assign this Agreement without such consent in connection with any merger, consolidation, sale of all or substantially all of the party's assets or any transaction in which more than fifty percent (50%) of the party's voting securities are transferred.
- 11.9. **Waiver.** Except as otherwise provided in this Agreement, any failure of either party to comply with any obligations, covenants, agreements or conditions herein may be waived by the party entitled to the benefit thereof only by a written instrument signed by the party granting such waiver, but such waiver or failure to insist upon strict compliance with such obligation, representation, warranty, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.
- 11.10. **Counterparts.** This Agreement may be executed in any number of counterparts, all of which taken together shall constitute a single instrument. Execution and delivery of this Agreement may be evidenced by facsimile transmission.
- 11.11. **Survival.** Sections 2, 3, 7, 8, 9, 10 and this Section 11 shall survive any termination or expiration of this Agreement.

AGREED TO BY THE PARTIES.  
Executed on the later of the signature dates below.

**USER**

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

City / State / Zip: \_\_\_\_\_

Phone: \_\_\_\_\_

URL: \_\_\_\_\_

Include Profit! Module    Yes / No (circle one)

Include Tabs Module        Yes / No (circle one)

Primary Order Site domain name: \_\_\_\_\_

Initial Order Site path: \_\_\_\_\_  
(e.g. [http://yourdomain.com/customer\\_store\\_name/](http://yourdomain.com/customer_store_name/))

URL Redirect for User Logo on Order Site: \_\_\_\_\_  
(e.g. <http://www.YOURWEBSITE.com>)

User Logo URL: \_\_\_\_\_  
(This is optional, User may also provide web graphic.)

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Email Address: \_\_\_\_\_

Date: \_\_\_\_\_

**E-TECH SOLUTIONS INCORPORATED**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**Exhibit A**  
**Payments & Additional Terms**

**1. Payments.**

**INITIAL SERVICE FEE**

- 1.1. In consideration for ETSI's obligations and licenses granted under this Agreement User shall pay to ETSI as follows:
- 1.2. One Thousand Five hundred Dollars (\$1,500) immediately upon execution of this Agreement for base SOFTWARE Service;
- 1.3. One Thousand Dollars (\$1,000) immediately upon execution of this agreement for optional Profit! Module if requested; and
- 1.4. One Thousand Dollars (\$1,000) immediately upon execution of this agreement for optional Tabs Module if requested.
- 1.5. 30 day free trial of Spirit service. During 30 day free trial, customer may receive a full refund of initial service fee if not satisfied.

**MONTHLY SERVICE FEE**

- 1.6. The following monthly fee schedules shall be paid to ETSI as applicable:

12 months Pre-paid:

Spirit base service	-	\$125 per month
Profit! Module	-	\$100 per month
Tabs Module	-	\$100 per month

Month-to-Month automatic payment:

Spirit base service	-	\$150 per month
Profit! Module	-	\$100 per month
Tabs Module	-	\$100 per month

- 1.6.1. Amounts to be charged to customer credit card on or about the first calendar day of each month for the term of this Agreement, beginning with a prorated payment for the first month immediately upon execution of this Agreement. Service fee for a fractional part of a calendar month at the commencement of the Term shall be a prorated amount of the applicable monthly service fee for a full calendar month based upon a thirty (30) day month.

- 1.6.2. Monthly service fees are not subject to the 30 day trial refund policy.

**2. Spirit and Modules Product Description**

**Spirit:** Spirit is a web based storefront development and e-commerce system. Spirit composes a system of templates to dynamically generate storefront/content pages. The Spirit administrator facilitates the creation and administration of products, catalog, customers, and orders. Spirit supports the creation of multiple customer assignable catalogs.

**Profit! Module:** Profit! is a dependant module of Spirit which provides proofing capabilities of printing industry products contained within a Spirit environment. Profit! provides a web based graphical representation of the proof-able product in the Spirit environment based on template settings and variable data provided. Profit! also generates PDF compliant files representing the product ordered for download from the Spirit administrator.

**Tabs Module:** Tabs is a dependant module of Spirit which provides online ordering and proofing of tab products. Tabs also generates PDF compliant files representing the product ordered for download from the Spirit administrator

**3. Renewal Terms**

**Automatic Renewal.** Provided User is not in default under the terms of this Agreement, the Agreement will automatically renew for an additional one (1) year term without notice unless not later than ninety (90) days prior to the renewal date the Agreement is terminated by written notice of either party.

4. **SERVICES**

ETSI provides several services to assist User with creating, maintaining, and promoting their Ordering Site. service descriptions and fees are as follows:

**Email marketing** – ETSI provides an email marketing service which includes email list management, newsletter and promotion builder, and campaign manager.

Setup	- Free
List size 0 – 50	- Free
List size 51 – 250	- \$10 monthly
List size 251 – 2,500	- \$25 monthly
List size 2,501 – 5,000	- \$50 monthly
List size 5,001 – 10,000	- \$75 monthly
List size 10,001 – 25,000	- \$150 monthly
List size 25,001 – 50,000	- \$250 monthly
Custom designed email template	- \$150 (includes 2hrs graphic design)

**Custom Layout Creation** – ETSI provides custom template creation services for unique branding and product display needs.

Page layout	- \$150
Content layout	- \$65
Product layout	- \$65

**Site build and maintenance** – ETSI provides complete sites building and maintenance services for your Customer Order Site.

Site creation - \$500 includes store setup, custom page layout, and build-out of 15 products including 3 Proofit! enabled products.

Maintenance - \$65 per hour.

**SOFTWARE feature development** - \$100 per hour. Subject to ETSI approval, ETSI will make software modifications, enhancements, modules, and interfaces for the SOFTWARE, as requested by User pursuant to mutually agreeable: (a) time frame, (b) list of deliverables, and (c) other terms and conditions. These additional modifications, enhancements, modules, and interfaces for SOFTWARE will be subject to the provisions of Section 2.3 of this Agreement (“ETSI’s Intellectual Property Ownership”). ETSI reserves the right to change service fees. Service fees are subject to change without notice.

5. **User Deliverables** User shall include with their executed License Agreement the following:
- 5.1. Unless otherwise waived pursuant to Section 1 above, a check payable to e-Tech Solutions, Inc. for the amount specified above under Payments. For credit card payments, the User must provide the credit card type, credit card number, expiration date and name on the card.
  - 5.2. The information to be included on the User’s Order Site outlined above.
  - 5.3. An electronic copy of the User’s and initial Customer logo in .eps, .jpeg, or .gif format.
6. Service: User has initialed below, next to Service acceptance, to indicate their acceptance of the terms and conditions outlined in the program details below. Program details are outlined above:
7. \_\_\_\_\_ Service acceptance