



ETQ Mobile App Terms and Conditions

These Mobile App Terms and Conditions apply to your use of the Mobile App. You may only use the Mobile App if the entity on whose behalf you are accessing the Mobile App (“**Customer**”) has a Master Software License Agreement or Master Subscription Agreement (each, an “**Agreement**”) with ETQ. We reserve the right to change the terms of these Mobile App Terms and Conditions at any time by posting a revised version at <https://www.etq.com/company/legal-agreements.shtml> or including them in the Mobile App; provided, that, we will endeavor to provide you with prior notice of any material changes. By CLICKING “I ACCEPT” OR BY OTHERWISE ACCESSING OR USING THE MOBILE APP, YOU AGREE THAT (1) YOU HAVE READ AND UNDERSTOOD, AND AGREE TO BE BOUND, BY THE FOLLOWING TERMS AND CONDITIONS (THE “**TERMS**”), (2) YOU ARE OF LEGAL AGE TO FORM A BINDING CONTRACT WITH ETQ, LLC (“**ETQ**”), AND (3) YOU HAVE THE AUTHORITY TO ENTER INTO THE TERMS PERSONALLY OR ON BEHALF OF CUSTOMER, AND TO BIND THAT CUSTOMER TO THE TERMS. IF YOU ARE NOT ELIGIBLE, OR DO NOT AGREE TO THE TERMS, THEN YOU MAY NOT USE THE MOBILE APP.

Effective Date: December 1, 2019

DEFINITIONS.

“**Device**” means an Apple iOS-based, Google Android-based computing tablet, or such other computing tablet using a hardware platform and operating system supported by ETQ for use of the Mobile App.

“**Mobile App**” means the mobile application made available by ETQ for installation on a Device owned or controlled by Customer or its authorized users.

1. Mobile App License Terms.

1.1 ETQ hereby grants you, and you hereby accept, subject to the terms and conditions of the Agreement and these Terms, an internal, non-exclusive and nontransferable license to download and use the Mobile App and any applicable documentation provided by ETQ on a compatible Device solely for its intended purpose as described in such documentation and as permitted by these Terms.

1.2 Except as expressly permitted in these Terms, you shall not: (a) reverse assemble, reverse engineer, decompile, or otherwise translate, use, copy, modify, prepare derivative works from, transmit or distribute by any means any portion of the Mobile App; (b) rent, lease, sublicense or transfer the Mobile App or the use thereof to any third party; (c) charge, or allow others to charge, any third party for use of the Mobile App; or (d) use the Mobile App in the operation of a service bureau or time-sharing arrangement, or otherwise allow direct or indirect use of the Mobile App (including via the Internet) to generate revenue for Customer or yourself; (e) defeat or attempt to defeat any security mechanism of the Mobile App or knowingly permit any third party to do so; (f) use the Mobile App to store, send, or provide access to obscene or otherwise illegal materials or to store, send, or provide access to materials that would infringe upon any intellectual property rights or violate any privacy rights of any third party; (g) use the Mobile App in any other manner that does not comply with applicable laws, rules, and regulations; (h) use the Mobile App to store or transmit malicious or disruptive code; (i) copy the Mobile App or any part, feature, function or user interface thereof or frame or mirror any part of any Software; or (j) access or use the Mobile App for benchmarking or similar competitive analysis purposes or in order to build a competitive product or service; or (k) breach ETQ’s Acceptable Use Policy, available at <https://www.etq.com/company/legal-agreements.shtml> and incorporated herein by reference. The Mobile App may contain or rely on components that are owned by ETQ or third parties and have been licensed to ETQ. You may not use the components other than your use of the Mobile App as expressly permitted by these Terms.

2. **Privacy.** The Mobile App may collect information concerning its use, including information submitted by you or transmitted automatically as the Mobile App is used, including location information (unless your Device is configured to prevent sharing of location information), time stamp, Device and OS identification, Mobile App usage data, login credentials, and other information as may be described in ETQ’s Privacy Policy at <http://www.ETQ.com/privacy.shtml>. In any event, ETQ may use such information as stated in ETQ’s Privacy Policy to manage and track your login process, for security, auditing, the provision of services and functionality through the Mobile App, product improvement, for communicating to Customer and/or you the availability of updates to the Mobile App and information regarding other ETQ products and services, and as otherwise permitted in the Agreement.

3. **WARRANTY DISCLAIMER.** TO THE FULLEST EXTENT PERMITTED BY LAW, THE MOBILE APP IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS, AND YOU USE IT AT YOUR SOLE RISK. ETQ EXPRESSLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND ANY OTHER WARRANTY ARISING UNDER USAGE OF TRADE, COURSE OF CONDUCT OR OTHERWISE. WITHOUT LIMITATION, ETQ MAKES NO WARRANTY THAT THE MOBILE APP WILL MEET YOUR REQUIREMENTS, THAT IT WILL BE UNINTERRUPTED, TIMELY, SECURE, OR ERROR-FREE, THAT THE RESULTS OBTAINED FROM THE USE OF THE MOBILE APP WILL BE ACCURATE OR RELIABLE, OR THAT THE QUALITY OF THE MOBILE APP OBTAINED WILL MEET YOUR EXPECTATIONS, OR PRESERVE YOUR DATA. TO THE FULLEST EXTENT PERMITTED BY LAW, THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE MOBILE APP REMAINS SOLELY WITH YOU.

4. **TERM AND TERMINATION.** These Terms continue for so long as an Agreement is in effect with Customer.

5. **GOVERNMENT USE.** If you are part of an agency, department, or other entity of the United States Government (“**Government**”), the use, duplication, reproduction, release, modification, disclosure or transfer of the Product is restricted in accordance with the Federal Acquisition Regulations as applied to civilian agencies and the Defense Federal Acquisition Regulation Supplement as applied to military agencies. The Mobile App is “commercial item,” “commercial computer software” and “commercial computer software documentation.” In accordance with such provisions, any use of the Mobile App by the Government shall be governed solely by these Terms.



- 6. EXPORT CONTROLS.** You shall comply with all export laws and restrictions and regulations of the Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control (“OFAC”), or other United States or foreign agency or authority, and you shall not export, or allow the export or re-export of the Mobile App or any related technical information in violation of any such restrictions, laws or regulations. By installing or using the Mobile App, you agree to the foregoing and represent and warrant that you are not located in, under the control of, or a national or resident of any restricted country.
- 7. DISPUTE RESOLUTION.** For any claim not subject to the dispute resolution provisions of the Agreement, the following arbitration agreement (“**Arbitration Agreement**”) applies. The Arbitration Agreement requires you to arbitrate disputes with ETQ and limits the manner in which you can seek relief from us.
- 7.1 Applicability of Arbitration Agreement.** You agree that any dispute or claim relating in any way to your access or use of the Mobile App will be resolved by binding arbitration, rather than in court, except that (i) you may assert claims in small claims court if your claims qualify, and (ii) you or ETQ may seek equitable relief in court for infringement or other misuse of intellectual property rights (such as trademarks, trade dress, domain names, trade secrets, copyrights, and patents). **This Arbitration Agreement will apply, without limitation, to all claims that arose or were asserted before the effective date of these Terms or any prior version of these Terms.**
- 7.2 Arbitration Rules and Forum.** The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, you must send a letter requesting arbitration and describing your claim to our registered agent The Corporation Trust Company, Corporation Trust Center 1209 Orange Street, Wilmington, DE 19801 with a copy to ETQ, LLC, 700 District Avenue, Burlington, MA 01803 Attn: Legal Department and legal@etq.com. The arbitration will be conducted by JAMS, an established alternative dispute resolution provider. Disputes involving claims and counterclaims under \$250,000, not inclusive of attorneys’ fees and interest, will be subject to JAMS’s most current version of the Streamlined Arbitration Rules and procedures available at <http://www.jamsadr.com/rules-streamlined-arbitration/>; all other claims will be subject to JAMS’s most current version of the Comprehensive Arbitration Rules and Procedures, available at <http://www.jamsadr.com/rules-comprehensive-arbitration/>. JAMS’s rules are also available at www.jamsadr.com or by calling JAMS at 800-352-5267. If JAMS is not available to arbitrate, the parties will select an alternative arbitral forum. If the arbitrator finds that you cannot afford to pay JAMS’s filing, administrative, hearing and/or other fees and cannot obtain a waiver from JAMS, ETQ will pay them for you. In addition, ETQ will reimburse all such JAMS’s filing, administrative, hearing and/or other fees for claims totaling less than \$10,000 unless the arbitrator determines the claims are frivolous.
- 7.3** You may choose to have the arbitration conducted by telephone, based on written submissions, or in person in the country where you live or at another mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.
- 7.4 Authority of Arbitrator.** The arbitrator will have exclusive authority to (i) determine the scope and enforceability of this Arbitration Agreement and (ii) resolve any dispute related to the interpretation, applicability, enforceability or formation of this Arbitration Agreement including, but not limited to, any claim that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of you and ETQ. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim. The arbitrator will have the authority to award monetary damages and to grant any non-monetary remedy or relief available to an individual under applicable law, the arbitral forum’s rules, and the Agreement (including the Arbitration Agreement). The arbitrator will issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. Neither a party nor an arbitrator may disclose the existence, results or content of an arbitration (including any testimony, briefs, documents exchanged, written decisions, or other arbitration-related materials) without the prior written consent of both parties, except to the extent required by law, or to the extent required by a party to solicit expert advice or communicate with third parties believed to possess relevant information. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon you and us.
- 7.5 Waiver of Jury Trial.** YOU AND ETQ HEREBY WAIVE ANY CONSTITUTIONAL AND STATUTORY RIGHTS TO SUE IN COURT AND HAVE A TRIAL IN FRONT OF A JUDGE OR A JURY. You and ETQ are instead electing that all claims and disputes will be resolved by arbitration under this Arbitration Agreement, except as specified in Section 7.1 above. An arbitrator can award on an individual basis the same damages and relief as a court and must follow this Agreement as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.
- 7.6 Waiver of Class or Other Non-Individualized Relief.** ALL CLAIMS AND DISPUTES WITHIN THE SCOPE OF THIS ARBITRATION AGREEMENT MUST BE ARBITRATED ON AN INDIVIDUAL BASIS AND NOT ON A CLASS OR COLLECTIVE BASIS, ONLY INDIVIDUAL RELIEF IS AVAILABLE, AND CLAIMS OF MORE THAN ONE CUSTOMER OR USER CANNOT BE ARBITRATED OR CONSOLIDATED WITH THOSE OF ANY OTHER CUSTOMER OR USER. If a decision is issued stating that applicable law precludes enforcement of any of this subsection’s limitations as to a given claim for relief, then the claim must be severed from the arbitration and brought into the State or Federal Courts located in Massachusetts. All other claims will be arbitrated.
- 7.7 30-Day Right to Opt Out.** You have the right to opt out of the provisions of this Arbitration Agreement by sending written notice of your decision to opt out to: ETQ, LLC, 700 District Avenue, Burlington, MA 01803 Attn: Legal Department with a copy to legal@etq.com, within 30 days after first becoming subject to this Arbitration Agreement. Your notice must include your name and address, your username (if any), the email address you used to set up your account (if you have one), and an unequivocal statement that you want to opt out of this Arbitration Agreement. If you opt out of this Arbitration Agreement, all other parts of this Agreement will continue to apply to you. Opting out of this Arbitration Agreement has no effect on any other arbitration agreements that you may currently have, or may enter in the future, with us.



- 7.8 Arbitration Agreement Severability.** Except as provided in Section 7.6, if any part or parts of this Arbitration Agreement are found under the law to be invalid or unenforceable, then such specific part or parts will be of no force and effect and will be severed and the remainder of the Arbitration Agreement will continue in full force and effect.
- 7.9 Survival of Agreement.** This Arbitration Agreement will survive the termination of your relationship with ETQ.
- 7.10 Modification.** Notwithstanding any provision in this Agreement to the contrary, we agree that if ETQ makes any future material change to this Arbitration Agreement, you may reject that change within 30 days of such change becoming effective by writing ETQ at the following address: ETQ, LLC, 700 District Avenue, Burlington, MA 01803 Attn: Legal Department with a copy to legal@etq.com.
- 8. CONTACT INFORMATION.** For any questions or comments, please contact ETQ at ETQ, LLC, 700 District Avenue, Burlington, MA 01803 Attn: Legal Department legal@etq.com.
- 9. GOOGLE PLAY APPLICATIONS.** The following applies if you access or download the Mobile App through or from the Google Play Store ("**Google-Sourced Software**"): (i) you acknowledge that these Terms are between you and ETQ only, and not with Google, Inc. ("**Google**"); (ii) your use of Google-Sourced Software must comply with Google's then-current Google Play Store Terms of Service; (iii) Google is only a provider of the Google Play Store where you obtained the Google-Sourced Software; (iv) ETQ, and not Google, is solely responsible for its Google-Sourced Software; (v) Google has no obligation or liability to you with respect to Google-Sourced Software or these Terms; and (vi) you acknowledge and agree that Google is a third-party beneficiary to these Terms as it relates to ETQ's Google-Sourced Software.
- 10. APPLE DEVICES.** This Section 10 only applies to the extent you are using the Mobile App on an iOS device. You acknowledge that these Terms are between you and ETQ only, and not with Apple, Inc. ("**Apple**"), and Apple is not responsible for the Mobile App and the content thereof. Apple has no obligation whatsoever to furnish any maintenance and support services with respect to the Mobile App. In the event of any failure of the Mobile App to conform to any applicable warranty, then you may notify Apple and Apple will refund the purchase price for the relevant Mobile App to you; and, to the maximum extent permitted by applicable law, Apple has no other warranty obligation whatsoever with respect to the Mobile App. Apple is not responsible for addressing any claims by you or any third party relating to the Mobile App or your possession and/or use of the Mobile App, including, but not limited to: (i) product liability claims; (ii) any claim that the Mobile App fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation. Apple is not responsible for the investigation, defense, settlement and discharge of any third party claim that the Mobile App or your possession and use of the Mobile App infringes that third party's intellectual property rights. You agree to comply with any applicable third party terms, when using the Mobile App. Apple, and Apple's subsidiaries, are third party beneficiaries of these Terms, and upon your acceptance of these Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce these Terms against you as a third party beneficiary of these Terms. You hereby represent and warrant that (i) you are not located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country; and (ii) you are not listed on any U.S. Government list of prohibited or restricted parties. If Company provides a translation of the English language version of these Terms, the translation is provided solely for convenience, and the English version will prevail.