

MASTER AGREEMENT

ATTENTION! THE FOLLOWING TERMS AND CONDITIONS ("TERMS OF SERVICE") WILL BE LEGALLY BINDING ON LICENSEE ("LICENSEE" OR "LICENSEE") UPON EXECUTION OF THE E-PLANSOFT ("LICENSOR") MASTER AGREEMENT INCLUDING ANY REFERENCED SCHEDULES AND ADDENDUMS ("AGREEMENT"). LICENSEE SHOULD CAREFULLY READ THE FOLLOWING TERMS OF SERVICE BEFORE EXECUTING THE AGREEMENT.

Section Headings and Numbers.

Certain Sections may have been renamed and/or renumbered in this document for convenience only and such renaming and/or renumbering will not affect the validity, construction or interpretation of the Agreement. References in the Terms of Service to any Section names or numbers under this document will be deemed to be a reference to the identified or corresponding provisions in this document to accomplish the reasonable intent and objectives of such provisions to the greatest extent possible under applicable law.

1. Definitions

"Sales Order" means estimate, quote, renewal notification, sales order, or order form provided by Licensor in the name of and executed by Licensee or its Affiliate and accepted by Licensor which specifies the Service, and any Support Services and/or Professional Services to be provided by Licensor subject to the terms of this Agreement.

"Subscription" means using the use of Service by Licensee by a defined number of unique Licensee users in compliance with Sales Order details for a period of time defined in Sales Order.

"Service" means, collectively, Licensor's SaaS products, maintenance updates, online documentation, and technical support. The Service is provided to Licensee as a Subscription for a period of time defined in the Sales Order, including renewal terms and renewal rates. No perpetual license is granted to Licensee when using Service.

"Execution of Licensor Master Agreement" means acceptance of the terms and conditions defined by Agreement when, a) upon the first use of Service by the first authorized user after Licensor provides a license key and username and password, and b) when the Licensee signs the Agreement prior to receiving the license key and username and password for the first authorized user.

"User" or "Users" means individuals who are authorized by Licensee to use the Service pursuant to this Agreement or as otherwise defined, restricted or limited in an Sales Order or amendment to this Agreement, for whom subscriptions to a Service have been procured, and who have been supplied user identifications and passwords by Licensee (or by Licensor at Licensee's request). Users may include but are not limited to License and Licensee Affiliates' employees, consultants, contractors and agents.

"Affiliates" means any entity which directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with a party to this Agreement, by way of majority voting stock ownership or the ability to otherwise direct or cause the direction of the management and policies of such party.

"Confidential Information" means: (a) Licensee Data; (b) the terms of this Agreement and (c) any commercial, financial, marketing, business, technical or other data, security measures and procedures, know-how or other information disclosed by or on behalf of the disclosing party to the receiving party for purposes arising out of or in connection with this Agreement, that: (i) in the case of information in tangible form, is marked "confidential" or "proprietary;" (ii) in the case of information disclosed orally, visually or any other intangible form, is designated confidential or proprietary at the time of disclosure, and if disclosed orally, is summarized in reasonable detail in a writing delivered to the receiving party within ten (10) days following disclosure; (iii) under the circumstances, a person exercising reasonable business



judgment would understand to be confidential or proprietary; and (iv) will include any reproduction of such information in any form or medium, or any part of such information. The following will not be deemed Confidential Information: (1) information that was in the public domain at the time of its disclosure, or which becomes public domain property through no fault of the receiving party; (2) information that was rightfully in the receiving party's possession without restriction prior to disclosure; (3) information that was rightfully disclosed to the receiving party by a Third-Party without restriction (4) information that was independently developed by employees and/or contractors of the receiving party who did not have access to and without use of or reference to the disclosing party's Confidential Information and (5) aggregate data collected or generated by Licensor or on behalf of Licensor regarding Licensor's products and services (for purposes of providing or improving Licensor products and services, benchmarking system performance, preparing statistics and system metrics, marketing and other purposes) that does not contain any personally identifiable or Licensee-specific information.

"Licensee Data" means all electronic data or information submitted to and stored in the Service by Users.

"Electronic Communications" means any transfer of signs, signals, text, images, sounds, data or intelligence of any nature transmitted in whole or part electronically received and/or transmitted through the Service.

"Help Documentation" means the online English language help center documentation describing the Service features, including User Guides which may be updated from time to time.

"Professional Services" means the general consulting, project management, implementation and/or training services.

"Third-Party Applications" means applications, integrations, services, or implementation, customization and other consulting services related thereto, provided by a party other than Licensor, as further described in Section 2.4 ("Third-Party Applications") that interoperate with the Service.

"User Guides" means the online English language user guides for the Service, accessible via <https://eplansoft.atlassian.net/wiki>, as updated from time to time. Licensee acknowledges that it has had the opportunity to review the User Guides through a free trial account made available by Licensor. Licensee agrees not to duplicate or share User Guides beyond the expected use of these materials by Licensee's Users.

2. Terms of Service

Licensee acknowledges and agrees to the following Terms of Service, which together with the terms of this Agreement entered into between Licensee and Licensor, will govern Licensee's access and use of the Service. Capitalized terms not otherwise defined in these Terms of Service will have the meaning given to them in the Agreement.

2.1. Accuracy of Licensee's Contact Information. Licensee will provide accurate, current and complete information on Licensee's legal business name, address, email address, and phone number, and maintain and promptly update this information if it should change.

2.2. Users: Access and Notification. Licensee will authorize access to and assign unique user names to the number of Users procured by Licensee on the Sales Order. User logins are for designated Users and cannot be shared or used by more than one User. If the Licensee chooses to deactivate a User account, create a new account for a new User, or re-activate an existing account, Licensee may do so as long as the terms and conditions of Subscription and the number of licenses specified in the Sales Order are in compliance. Licensee will also be responsible for all Electronic Communications, including those containing business information, account registration, account holder information, financial information, Licensee Data, and all other data of any kind contained within emails or otherwise entered electronically through the Service or under Licensee's account. Licensor will act as though any Electronic Communications it receives under Licensee's passwords, user name, and/or account number will have been sent by Licensee. Licensee will use commercially reasonable efforts to prevent unauthorized access to or use of the Service and will promptly notify Licensor of any unauthorized access or use of the Service and any loss or theft or unauthorized use



of any User's password or name and/or Service account numbers.

2.3. General Restrictions.

General. Licensee is responsible for all activities conducted under its User logins and for its Users' compliance with this Agreement. Licensee's use of the Service will not include service bureau use, outsourcing, renting, reselling, sublicensing, concurrent use of a single User login, or time-sharing of the Service. Licensee will not and will not permit any Third-Party within its control to: (a) copy, translate, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the Service or any part thereof or otherwise attempt to discover any source code or modify the Service in any manner or form unless expressly allowed in the Help Documentation; (b) access or use the Service to circumvent or exceed Service account limitations or requirements; (c) use the Service for the purpose of building a similar or competitive product or service, (d) obtain unauthorized access to the Service (including without limitation permitting access to or use of the Service via another system or tool, the primary effect of which is to enable input of requests or transactions by other than authorized Users); (e) use the Service in a manner that is contrary to applicable law or in violation of any Third-Party rights of privacy or intellectual property rights; (f) intentionally publish, post, upload or otherwise transmit Licensee Data that contains any viruses, Trojan horses, worms, time bombs, corrupted files or other computer programming routines that are intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any systems, data, personal information or property of another; or (g) use or permit the use of any tools in order to probe, scan or attempt to penetrate or benchmark the Service. Licensee will comply with all applicable local, state, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Service, including without limitation those related to privacy, electronic communications and anti-spam legislation. Licensee will comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Service and obtain any permits, licenses and authorizations required for such compliance. Without limiting the foregoing, (i) Licensee represents that it is not named on any U.S. government list of persons or entities prohibited from receiving exports, (ii) Licensee will not permit Users to access or use the Service in violation of any U.S. export embargo, prohibition or restriction, and (iii) Licensee will comply with all applicable laws regarding the transmission of technical data exported from the United States and the country in which its Users are located. Licensee will not send any Electronic Communication from the Service that is unlawful, harassing, libelous, defamatory or threatening. Except as permitted by this Agreement, no part of the Service may be copied, reproduced, distributed, republished, displayed, posted or transmitted in any form or by any means. Licensee agrees not to access the Service by any means other than through the interfaces that are provided by Licensor. Licensee will not do any "mirroring" or "framing" of any part of the Service, or create Internet links to the Service which include log-in information, user names, passwords, and/or secure cookies. Licensee will not in any way express or imply that any opinions contained in Licensee's Electronic Communications are endorsed by Licensor. Licensee will ensure that all access and use of the Service by Users is in accordance with the terms and conditions of this Agreement. Any action or breach by any of such User will be deemed an action or breach by Licensee.

(b) HIPAA. Licensee agrees that: (i) Licensor is not acting on Licensee's behalf as a Business Associate or subcontractor; (ii) the Service may not be used to store, maintain, process or transmit protected health information ("PHI") and (iii) the Service will not be used in any manner that would require Licensor or the Service to be compliant with the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented ("HIPAA"). In the preceding sentence, the terms "Business Associate," "subcontractor," "protected" health information" or "PHI" will have the meanings described in HIPAA.

2.4. Third-Party Applications. Licensor may offer certain Third-Party Applications under Sales Orders. Any procurement of such Third-Party Applications by Licensee will be subject to the terms specified in such Sales Orders.

In addition, Licensor or Third-party providers may offer Third-Party Applications through the Service or otherwise related to Licensees' use of the Service. Except as expressly set forth in the Sales Order, Licensor does not warrant any such Third-Party Applications, regardless of whether or not such Third-Party Applications are provided by a third-party that is a member of a Licensor partner program or otherwise designated by Licensor as "Built For Licensor," "certified," "approved" or "recommended." Any procurement by Licensee of such Third-Party Applications or services is solely between Licensee and the applicable Third-Party provider. Licensee may not use Third-Party Applications to enter



and/or submit transactions to be processed and/or stored in the Service, unless Licensee has procured the applicable subscription to the Service for such use and access.

Licensor is not responsible for any aspect of such Third-Party Applications that Licensee may procure or connect to through the Service, or any descriptions, promises or other information related to the foregoing. If Licensee installs or enables Third-Party Applications for use with the Service, Licensee agrees that Licensor may enable such Third-Party providers to access Licensee Data as required for the interoperation of such Third-Party Applications with the Service, and any exchange of data or other interaction between Licensee and a Third-Party provider is solely between Licensee and such Third-Party provider pursuant to a separate privacy policy or other terms governing Licensee's access to or use of the Third-Party Applications. Licensor will not be responsible for any disclosure, modification or deletion of Licensee Data resulting from any such access by Third-Party Applications or Third-Party providers. No procurement of such Third-Party Applications is required to use the Service. If Licensee was referred to Licensor by a member of one of Licensor's partner programs, Licensee hereby authorizes Licensor to provide such member or its successor entity with access to Licensor's business information related to the procurement and use of the Service pursuant to this Agreement, including but not limited to User names and email addresses, support cases and billing/payment information.

2.5. Transmission of Data. Licensee understands that the technical processing and transmission of Licensee's Electronic Communications is fundamentally necessary to use of the Service. Licensee is responsible for securing DSL, cable or another highspeed Internet connection and up-to-date "browser" software to utilize the Service. Licensee expressly consents to Licensor's interception and storage of Electronic Communications and/or Licensee Data, and Licensee acknowledges and understands that Licensee's Electronic Communications will involve transmission over the Internet, and over various networks, only part of which may be owned and/or operated by Licensor. Licensee further acknowledges and understands that Electronic Communications may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone or other electronic means. Licensor is not responsible for any Electronic Communications and/or Licensee Data which are delayed, lost, altered, intercepted or stored during the transmission of any data whatsoever across networks not owned and/or operated by Licensor, including, but not limited to, the Internet and Licensee's local network.

2.6. Service Level. During the Term, the Service will meet the service level specified in the "Service Level Agreement". If the Service fails to achieve the service level, then Licensee will be entitled, as its sole and exclusive remedy, to a credit for the Service in accordance with the terms set forth herein. The Service's system logs and other records will be used for calculating any service level events. Service Credits are based on a percentage of the total monthly service fees you paid for the affected e-PlanSoft service during the month in which the Downtime occurred, calculated as specified in the schedule below. Monthly service fees do not include any one-time payments such as upfront payments and prepayments, and exclude any fees paid for professional services and/or technical support or maintenance.

Monthly Uptime Percentage	Service Credit Percentage
Less than 99.95% but equal to or greater than 99.0%	10%
Less than 99.0%	20%

We will apply any Service Credits only against future e-PlanSoft payments otherwise due from you. At our discretion, we may issue the Service Credit to the credit card you used to pay for the billing cycle in which the Downtime occurred. Service Credits will not entitle you to any refund or other payment from e-PlanSoft. A Service Credit will be applicable and issued only if the credit amount for the applicable monthly billing cycle is greater than one dollar (\$1 USD). Service Credits may not be transferred or applied to any other account. Unless otherwise provided in the Terms of Service, your sole and exclusive remedy for any unavailability, non-performance, or other failure by us to provide e-PlanSoft Services is the receipt of a Service Credit (if eligible) in accordance with the terms of this Agreement.



2.7. Licensor's Support Services and Professional Services. As part of the Service, Licensor will provide Licensee with online help documentation and other online resources to assist Licensee in its use of the Service. Licensor also offers optional "for fee" Support Services and Professional Services including but not limited to Project Management, Training, and Configuration. The training of designated Licensee Contacts during initial implementation of the Service by e-PlanSoft or e-PlanSoft certified trainers as defined in the Sales Order.

Licensee shall ensure that one or more Designated Contacts have been trained and or certified in the use of Service supported by e-PlanSoft. Any training received by the Designated Contacts should be provided by either e-PlanSoft or e-PlanSoft certified trainers. In a case where the Licensee does not comply with the aforementioned requirement, the Licensee acknowledges that e-PlanSoft reserves the right to withhold certain services related to e-PlanSoft Support Services.

Only Designated Contacts in the Licensee agency/organization are authorized to communicate with e-PlanSoft support organization, including (but not limited to): opening Incidents, requesting resolution status, and requesting information about Service functionality.

2.8. Security. Licensor will maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of Licensee Data.

2.9. Confidentiality. Each party agrees to use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (at all times exercising at least a commercially reasonable degree of care in the protection of such confidential information) not to use or disclose Confidential Information except to the extent necessary to perform its obligations or exercise rights under this Agreement or as directed by Licensee. Either party may disclose Confidential Information on a need to know basis to its Affiliates, contractors and service providers who have executed binding written agreements requiring confidentiality and non-use obligations at least as restrictive as those in this Section. Additionally, Licensee must input personally identifiable information, including but not limited to credit card information, social security numbers, birth dates only in the fields designated for such data in the Service if the Service requests such data to be entered. Nothing in this Agreement will prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority or regulation. Notwithstanding the foregoing, Licensor acknowledges that Licensee is a municipal corporation subject to certain public disclosure laws, including but not limited to the California Public Records Act, which may require Licensee to disclose certain Confidential Information. Licensor agrees that disclosure of Confidential Information as required by such laws in Licensee's sole discretion, shall not constitute a breach of this Agreement.

2.10. Intentionally left blank.

2.11. Ownership of Licensee Data. As between Licensor and Licensee, all title and intellectual property rights in and to the Licensee Data is owned exclusively by Licensee. Licensee agrees that Licensor may use Licensee data to perform necessary and reasonable activities during software engineering activities to ensure that the Service functionality continues to work with Licensee's data.

2.12. Licensor Intellectual Property Rights. All rights, title and interest in and to the Service (including without limitation all intellectual property rights therein and all modifications, extensions, customizations, scripts or other derivative works of the Service provided or developed by Licensor) are owned exclusively by Licensor or its licensors. Except as provided in this Agreement, the rights granted to Licensee do not convey any rights in the Service, express or implied, or ownership in the Service or any intellectual property rights thereto. Licensee grants Licensor a royalty free, worldwide, perpetual, irrevocable, transferable right to use, modify, distribute and incorporate into the Service (without attribution of any kind) any suggestions, enhancement request, recommendations, proposals, correction or other feedback or information provided by Licensee or any Users related to the operation or functionality of the Service. Any rights in the Service or Licensor's intellectual property not expressly granted herein by Licensor are reserved by Licensor. Licensee agrees not to display or use the Licensor trademarks, logos, and service marks in any manner without Licensor's express prior written permission. The trademarks, logos and service marks of Third-Party Application providers ("Marks") are the property of such third parties. Licensee is not permitted to use these Marks without the prior written consent of such Third-Party which may own the Mark.

2.13. U.S. Government Rights. The Service is a “commercial item” as that term is defined at FAR 2.101. If Licensee or User is a US Federal Government (Government) Executive Agency (as defined in FAR 2.101), Licensors provides the Service, including any related software, technology, technical data, and/or professional services in accordance with the following: (a) if acquired by or on behalf of any Executive Agency (other than an agency within the Department of Defense (DoD), the Government acquires, in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Computer Software), only those rights in technical data and software customarily provided to the public as defined in this Agreement; or (b) if acquired by or on behalf of any Executive Agency within the DoD, the Government acquires, in accordance with DFARS 227.7202-3 (Rights in commercial computer software or commercial computer software documentation), only those rights in technical data and software customarily provided in this Agreement. In addition, DFARS 252.227-7015 (Technical Data – Commercial Items) applies to technical data acquired by DoD agencies. Any Federal Legislative Agency or Federal Judicial Agency will obtain only those rights in technical data and software customarily provided to the public as set forth in this Agreement. If any Federal Executive Agency, Federal Legislative Agency, or Federal Judicial Agency has a need for rights not conveyed under the terms described in this Section, it must negotiate with Licensors to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement to be effective. This U.S. Government Rights Section is in lieu of, and supersedes, any other FAR, DFARS, or other clause, provision, or supplemental regulation that addresses Government rights in computer software or technical data under this Agreement.

2.14. Dispute Resolution.

(a) The parties agree to maintain the confidential nature of all disputes and disagreements between them, including, but not limited to, informal negotiations, mediation or arbitration, except as may be necessary to prepare for or conduct these dispute resolution procedures or unless otherwise required by law or judicial decision. Except as provided in 2.14(b), each party agrees that before it seeks mediation, arbitration, or any other form of legal relief, it will provide written notice to the other of the specific issues in dispute (and referencing the specific portions of any contract between the parties and which are allegedly being breached). Within thirty days after such notice knowledgeable executives of the parties will hold at least one meeting (in person or by video- or tele-conference) for the purpose of attempting in good faith to resolve the dispute. Except as provided in 2.14(b), any and all disputes, claims or controversies arising out of or relating to this Agreement will be submitted to a mutually acceptable mediator for mediation before arbitration or any other form of legal relief may be instituted. Mediation may be commenced by a party providing a written request for mediation setting forth the subject of the dispute and the relief requested. The parties will cooperate by selecting a single mediator and scheduling a mediation, which should take place within 45 days following a request for mediation. The mediator will be a retired judge who has had experience with technology disputes. The parties agree that they will participate in the mediation in good faith and share equally in its costs. The mediation will take place in San Diego County, California.

(b) The dispute resolution procedures in this Agreement will not apply prior to a party seeking a provisional remedy related to claims of misappropriation or ownership of intellectual property, trade secrets or Confidential Information.

3. Fees and Payments

3.1 Fees. Licensee will pay all fees specified in all Sales Orders. Except as otherwise specified herein, (i) fees are based on services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) the number of Licensed Users cannot be decreased during the relevant term stated in the Sales Order.

3.2. Invoicing and Payment. Licensee will provide Licensors with a valid purchase order or alternative document reasonably acceptable to Licensors. Licensors will invoice Licensee in advance and otherwise in accordance with the relevant Sales Order. Unless otherwise stated, invoiced charges are due Net 30 days from the invoice date. Licensee is responsible for providing complete and accurate billing and contact information to Licensors and notifying Licensors of any changes to such information within five (5) days.

3.3. Overdue Charges. If any charges are not received from Licensee by the due date, then at Licensors sole discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (b) Licensors may condition future Subscription renewals on payment terms shorter than those specified in the Agreement.

3.4. Suspension of Service and Acceleration. If any amount owing by Licensee under this or any other Agreement, is 30 or more days overdue (or 10 or more days overdue in the case of amounts Licensee has authorized to charge to a credit card), Licensors may, without limiting Licensors other rights and remedies, accelerate Licensees unpaid fee obligations so that all such obligations become immediately due and payable and suspend Service to Licensee until such amounts are paid in full, but only after Licensors has provided Licensee two (2) delinquency notices, and at least thirty (30) days have passed since the transmission of the first notice. Licensee agrees that Licensors will not be liable to Licensee or to any Licensee Affiliate or other Third-Party for any suspension of the Service pursuant to this Section.

3.5. Payment Disputes. Licensors will not exercise Our rights under Section 3.3 (Overdue Charges) or 3.4 (Suspension of Service and Acceleration) if Licensee is disputing the applicable charges reasonably and in good faith and are cooperating diligently to resolve the dispute.

3.6. Taxes. Unless otherwise stated, Licensors fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales, use or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). The Licensee is a governmental entity and is therefore exempt from state and local sales and use tax. The Licensee will not pay for or reimburse any sales or use tax that may not directly be imposed against the Licensee.

3.7. Additional Users. During the term of this Agreement, Licensee will pay Licensors for any additional Users who may use the Service at the rate specified in the Sales Order. This fee will be charged or invoiced to the Licensee on the date these additional Users are authorized to use Service.

3.8. Audit of Authorized Users. Licensee will maintain reasonable business practices and records necessary to ensure that the number of Users is in compliance with this Agreement and any executed Sales Orders. The Licensee will notify Licensors If any additional Users will be added to use the Service. The Licensors at its sole discretion reserves the right to request Licensee records to determine if Licensee is in compliance with the terms of Master Agreement and any executed Sales Orders. If Licensors determines that Licensee has more Users than authorized by this Agreement and any executed Sales Orders, the fees for additional Users become immediately due.

4. Warranties

4.1. Warranty of Functionality. Licensors warrants that: (i) the Service will achieve in all material respects the functionality described in the User Guides applicable to the Service procured by Licensee, and (ii) such functionality of the Service will not be materially decreased during the then-current subscription term. Licensees sole and exclusive remedy for Licensors breach of this warranty will be that Licensors will be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the User Guides and if Licensors is unable to restore such functionality, Licensee will be entitled to terminate the Agreement and receive a pro-rata refund of the subscription fees paid under the Agreement for its use of the Service for the terminated portion of the then-current subscription term. Licensors will have no obligation with respect to a warranty claim unless notified of such claim within sixty (60) days of the first instance of any material functionality problem, and such notice must be sent to mchegini@eplansoft.com. The warranties set forth in this Section are made to and for the benefit of Licensee only. Such warranties will only apply if the applicable Service has been utilized in accordance with the User Guides, this Agreement and applicable law.

4.2. Warranty of No Malicious Code. Each party warrants that it will not intentionally introduce viruses, Trojan horses, worms, spyware, or other such malicious code ("Malicious Code") into the Service.

5. Disclaimer of Warranties

EXCEPT AS STATED IN SECTION 3.1 AND 3.2 ABOVE, LICENSOR DOES NOT REPRESENT THAT LICENSEE'S USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR THAT THE SERVICE WILL MEET LICENSEE'S REQUIREMENTS OR THAT ALL ERRORS IN THE SERVICE AND/OR DOCUMENTATION WILL BE CORRECTED OR THAT THE OVERALL SYSTEM THAT MAKES THE SERVICE AVAILABLE (INCLUDING BUT NOT LIMITED TO THE INTERNET, OTHER TRANSMISSION NETWORKS, AND LICENSEE'S LOCAL NETWORK AND EQUIPMENT) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE WARRANTIES STATED IN SECTION 3 ABOVE ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY Licensor. THERE ARE NO OTHER WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, THOSE OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT OF THIRD-PARTY RIGHTS. EXCEPT AS STATED IN SECTIONS 2.6, 3.1, and 3.2 ABOVE, THE SERVICE IS PROVIDED TO LICENSEE ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. LICENSOR EXPRESSLY DISCLAIMS ANY REPRESENTATIONS OR WARRANTIES THAT LICENSEE'S USE OF THE SERVICE WILL SATISFY ANY STATUTORY OR REGULATORY OBLIGATIONS, OR WILL ASSIST WITH, GUARANTEE OR OTHERWISE ENSURE COMPLIANCE WITH ANY APPLICABLE LAWS OR REGULATIONS, INCLUDING WITHOUT LIMITATION HIPAA OR THE GRAMM-LEACH-BLILEY ACT OF 1999. LICENSEE ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE SERVICE OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR LICENSEE'S PURPOSES.

6. Limitations of Liability

TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO ANYONE FOR LOST PROFITS OR REVENUE OR FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, COVER, SPECIAL, RELIANCE OR EXEMPLARY DAMAGES, OR INDIRECT DAMAGES OF ANY TYPE OR KIND HOWEVER CAUSED, WHETHER FROM BREACH OF WARRANTY, BREACH OR REPUDIATION OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION FROM OR IN CONNECTION WITH THIS AGREEMENT (AND WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES). CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, IN WHICH CASE SUCH DAMAGES WILL BE SUBJECT TO THE LIMITATIONS SET FORTH IN THE FOLLOWING PARAGRAPH.

THE MAXIMUM LIABILITY OF EITHER PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY LICENSE, USE OR OTHER EMPLOYMENT OF THE SERVICE, WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON BREACH OR REPUDIATION OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, TORT, STATUTORY DUTY, OR OTHERWISE, WILL BE AN AMOUNT EQUAL TO THE EQUIVALENT OF THREE (3) MONTHS OF SUBSCRIPTION FEES APPLICABLE AT THE TIME OF THE EVENT, AND IN THE EVENT OF A BREACH OF SECTION 2.9 (CONFIDENTIALITY) OF THESE TERMS OF SERVICE, SUCH MAXIMUM LIABILITY OF EITHER PARTY WILL BE AN AMOUNT EQUAL TO THE EQUIVALENT OF SIX (6) MONTHS OF SUBSCRIPTION FEES APPLICABLE AT THE TIME OF THE EVENT. NOTWITHSTANDING THE PREVIOUS SENTENCE, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY TO THE EXTENT SUCH LIABILITY WOULD NOT HAVE OCCURRED BUT FOR THE OTHER PARTY'S FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT.

BOTH PARTIES ACKNOWLEDGE THAT THE FEES REFLECT THE ALLOCATION OF RISK SET FORTH IN THIS AGREEMENT AND THAT THE PARTIES WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON THEIR LIABILITY. THE LIMITATIONS OF LIABILITY SET FORTH IN THE SECOND PARAGRAPH OF THIS SECTION WILL NOT APPLY TO: (A) FEES DUE UNDER THIS AGREEMENT; (B) A BREACH OF SECTION 2.3 OF THESE TERMS OF SERVICE; OR (C) EITHER PARTY'S INDEMNITY OBLIGATIONS EXCEPT AS SET FORTH IN SECTION 7 BELOW.

7. Indemnification

7.1. Infringement. Subject to the terms and conditions set forth in this Section, Licensor will, at its own expense, defend Licensee from and against any and all allegations, threats, claims, suits, and proceedings brought by third parties (collectively "Claims") alleging that the Service, as used in accordance with this Agreement, infringes such Third-Party's copyrights or trademarks, or misappropriates such Third-Party's trade secrets and will indemnify Licensee from and against liability, damages, and costs finally awarded or entered into in settlement (including, without limitation, reasonable attorneys' fees) (collectively, "Losses") to the extent based upon such a Claim.

Licensor will have no liability for Claims to the extent arising from (a) use of the Service in violation of this Agreement or applicable law, (b) use of the Service after Licensor notifies Licensee to discontinue use because of an infringement claim, (c) modifications to the Service not made by Licensor or made by Licensor based on Licensee specifications or requirements, (d) use of the Service in combination with any non-Licensor software, application or service, or (e) services offered by Licensee or revenue earned by Licensee for such services.

If a Claim of infringement as set forth above is brought or threatened, Licensor will, at its sole option and expense, use commercially reasonable efforts either (a) to procure a license that will protect Licensee against such Claim without cost to Licensee; (b) to modify or replace all or portions of the Service as needed to avoid infringement, such update or replacement having substantially similar or better capabilities; or (c) if (a) and (b) are not commercially feasible, terminate the Agreement and refund to the Licensee a pro-rata refund of the subscription fees paid for under the Agreement for the terminated portion of the Term. The rights and remedies granted Licensee under this Section 7.1 state Licensor's entire liability, and Licensee's exclusive remedy, with respect to any claim of infringement of the intellectual property rights of a Third-Party.

7.2. Indemnification Procedures and Survival. In the event of a potential indemnity obligation under this Section, the indemnified party will: (i) promptly notify the indemnifying party in writing of such Claim; (ii) allow the indemnifying party to have sole control of its defense and settlement; and (iii) upon request of the indemnifying party, cooperate in all reasonable respects, at the indemnifying party's cost and expense, with the indemnifying party in the investigation, trial, and defense of such Claim and any appeal arising therefrom. The indemnification obligations under this Section are expressly conditioned upon the indemnified party's compliance with this Section 7.3 except that failure to notify the indemnifying party of such Claim will not relieve that party of its obligations under this Section but such Claim will be reduced to the extent of any damages attributable to such failure. The indemnification obligations contained in this Section will survive termination of this Agreement for one year.

8. Suspension and Termination

8.1. Suspension for Ongoing Harm. Licensor may with reasonably contemporaneous telephonic notice to Licensee suspend access to the Service if Licensor reasonably concludes that Licensee's Service is being used to engage in denial of service attacks, spamming, or illegal activity, and/or use of Licensee's Service is causing immediate, material and ongoing harm to Licensor or others. In the extraordinary event that Licensor suspends access to the Service, Licensor will use commercially reasonable efforts to limit the suspension to the offending portion of the Service and work with Licensee to resolve the issues causing the suspension of Service. Licensee agrees that Licensor will not be liable to Licensee nor to any Third-Party for any suspension of the Service under such circumstances as described in this Section.

8.2. Termination for Cause, Expiration. Either party may immediately terminate this Agreement and all Estimates/Order Forms issued hereunder in the event the other party commits a material breach of any provision of this Agreement which is not cured within thirty (30) days of written notice from the non-breaching party. Such notice by the complaining party will expressly state all of the reasons for the claimed breach in sufficient detail so as to provide the alleged breaching party a meaningful opportunity to cure such alleged breach and will be sent to the General Counsel of the alleged breaching party at the address listed in the heading of this Agreement (or such other address that may be provided pursuant to this Agreement) ("Notice"). Upon termination or expiration of this Agreement, Licensee will have no rights to continue use of the Service. If this Agreement is terminated by Licensee for any reason other than a termination expressly permitted by this Agreement, then Licensor will be entitled to all of the fees due under this Agreement for the entire Term. If this Agreement is terminated as a result of Licensor's breach of this



Agreement, then Licensee will be entitled to a refund of the pro rata portion of any subscription fees paid by Licensee to Licensor under this Agreement for the terminated portion of the Term.

8.3. Handling of Licensee Data Upon Termination/Expiration. Following expiration or termination of the Agreement or a Licensee account, if applicable, Licensor may immediately deactivate the applicable Licensee account(s) and will be entitled to delete such Licensee account(s) from Licensor's "live" site following a forty (40) day period. Licensee further agrees that Licensor will not be liable to Licensee nor to any Third-Party for any termination of Licensee access to the Service or deletion of Licensee Data, provided that Licensor is in compliance with the terms of this Section.

9. Modifications & Discontinuation of Service

9.1 To the Service. Licensor may make modifications to the Service or particular components of the Service from time to time and will use commercially reasonable efforts to notify Licensee of any material modifications. Licensor reserves the right to discontinue offering the Service at the conclusion of Licensee's then current subscription term for such Service. Licensor will not be liable to Licensee nor to any Third-Party for any modification of the Service as described in this Section.

10. Entire Agreement

This Agreement cannot be amended or modified without a written signature on paper by both parties agreeing to the change.

10.1 Severability. If any provision of this Agreement is found to be invalid or unenforceable by a court of competent jurisdiction, such provision will be severed from the remainder of this Agreement, which will otherwise remain in full force and effect.

10.2 Waiver. No waiver of any provision of this Agreement will be effective unless in writing and executed by the party waiving the right. Failure to properly demand compliance or performance will not constitute a waiver of a party's rights hereunder. The waiver by either party of a breach or right under this Agreement will not constitute a waiver of any subsequent breach or right.

10.3 Governing Law. This Agreement will be governed by, and construed in accordance with, the substantive laws of the State of California without regard to conflict of law principles. The federal and state courts situated in San Diego County, California will have exclusive jurisdiction for the resolution of all disputes related to this Agreement.

10.4 Notices. Notices will be sent by Certified Mail, Return Receipt Requested, postage prepaid and will be deemed received three (3) days after the date of deposit in the US Mail.

10.5 Non-Assignability. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Estimates / Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. A party's sole remedy for any purported assignment by the other party in breach of this paragraph shall be, at the non-assigning party's election, termination of this Agreement upon written notice to the assigning party. In the event of such a termination, Licensor will refund to Licensee any prepaid fees covering the remainder of the term of all subscriptions after the effective date of termination. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

10.6 Term; Renewal. The initial term of this Agreement shall expire one year after the Effective Date. This Agreement



shall automatically renew for successive one-year terms unless Licensee provides written notice of termination to Licensor no less than sixty (60) days prior to the expiration of the then-current term. The initial term and any renewal terms are referred to herein as, the "Term".

10.7 Travel Expenses. Licensee shall reimburse licensor for reasonable travel expenses and per diems that are approved by Licensee in advance and in writing.



This Agreement is entered into, and effective as of _____ (“Effective Date”), by and between e-PlanSoft, a California Corporation with its principal place of business at 220 Technology Drive, Suite 110 Irvine, CA 92618 (“Licensor”) and,

_____ (“Licensee”), with its principal place of business located at,

Individual signing this Agreement on behalf of Licensee states that he / she is authorized to enter into such Agreement on behalf of Licensee.

_____ Licensee	_____ e-PlanSoft
_____ Full name	_____ Full name
_____ Title	_____ Title
_____ Signature	_____ Signature
_____ Date	_____ Date

ACCOMPANYING SCHEDULES