



E-PLANSOFT SUBSCRIPTION TERMS AND CONDITIONS LICENSING AGREEMENT

e-Plan, Inc. (“Licensor”) is a provider of electronic plan review software as a service (“EPR”). As used herein, “EPR” includes all of Licensor’s software products, including without limitation e-PlanREVIEW® and goPost™ Public Portal.

This non-exclusive Licensing Agreement (“LA”), entered into between Licensor and The City of Irvine, CA (“Licensee”), governs Licensee’s use of the EPR.

Licensor and Licensee (“the Parties”) may enter into one or more separate agreements, Sales Orders, or other arrangements whereby Licensor will provide Licensee with a subscription to the EPR. In all cases, however, as to the EPR, the terms of this LA shall control and prevail over any conflicting terms or conditions.

1.0. Contract Documents. This LA incorporates the attached Sales Order form in its entirety, including its exhibits, and Exhibit A “Software as a Service (Saas) Service Level Agreement.” This LA also incorporates any future Sales Orders entered into by the Parties during the term of this LA.

2.0. Key Definitions

- 2.1. “Service”** means, collectively, Licensor’s EPR and SaaS (software as a service) products, maintenance updates, online documentation, and technical support materials. The Service is provided to Licensee on the basis of a non-exclusive license only, and subject to the subscription terms set forth in the applicable Sales Order. No perpetual license is granted to Licensee when using Service.
- 2.2. “Sales Order”** means any form of agreement, including without limitation a written contract, proposal, estimate, quote, renewal notification, or purchase order, pursuant to which Licensor provides Licensee with a subscription to the Service. For Licensee to obtain a valid subscription, the corresponding Sales Order must set forth a defined number of unique Users and a defined period of time in which the subscription will be in effect.
- 2.3. “User” or “Users”** means individuals who are authorized by Licensee to use the Service, and who have been supplied unique user identifications and passwords.
- 2.4. “Licensee Data”** means all electronic data or information submitted to and stored in the Service by Users.

3.0. Non-Exclusive License and Licensor Intellectual Property Rights. Licensee’s access to and use of the Service shall be on the basis of a non-exclusive license only. 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. Except as provided in this LA, 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.

4.0. Access to the Service by Designated Users. Licensee will purchase a subscription to the Service for a particular number of Users, to be specified in the applicable Sales Order. Licensee will specify and assign a unique User name for each authorized User. Each User login is for the designated User only, and cannot be shared or used by more than one User.

4.1. Alterations to User Accounts. 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 Licensee does not exceed the total number of authorized Users.

4.2. Unauthorized Access. 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.

4.3. 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 LA and any applicable Sales Orders, and Licensor at its sole discretion reserves the right to request Licensee records to verify such compliance. The Licensee will notify Licensor if any additional Users will be added to use the Service. Licensee must obtain additional Sales Order(s), or a signed written modification to existing Sales Order(s), in order to increase the total number of authorized Users. If Licensor determines that Licensee has more Users than authorized, the fees for additional Users become immediately due.

5.0. General Terms of Service. Licensee and its Users may only use the Service to perform electronic plan review, as advertised and outlined on Licensor's website. Licensee is responsible for all activities conducted under its User logins and for its Users' compliance



with this LA. 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 Licensor's user guides; (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 LA, 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 LA. Any action or breach by any of such User will be deemed an action or breach by Licensee.



6.0. Scope of Technical Support; Service Level Agreement. Licensor will provide all maintenance and technical support for the EPR. Licensor's Service Level Agreement ("SLA") is attached hereto as Exhibit A, and sets forth Licensor's obligations in this regard. In addition, Licensor will provide Licensee with online help documentation and other online resources to assist Licensee in its use of the Service.

6.1. Training. Licensee shall ensure that one or more designated Users have been trained and or certified in the use of Service. Such training should be provided by either Licensor or Licensor-certified trainers. If Licensee uses the service without at least one properly trained User, Licensor reserves the right to withhold any technical support services. The intent of this provision is to ensure that Licensor is not required to provide excessive levels of support service due to Licensee's lack of training.

7.0. Transmission, Maintenance, and Confidentiality of Data

7.1. Transmission of Data. Licensee understands that the technical processing and transmission of Licensee's Electronic Communications (including 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) is fundamentally necessary to use 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. 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.



7.2. Licensee Data

- 7.2.1. 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.
- 7.2.2. Licensor will maintain commercially reasonable administrative, physical and technical safeguards designed for the protection, confidentiality and integrity of Licensee Data.
- 7.2.3. Following expiration or termination of any Sales Order and/or this LA, 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, after which 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.

- 7.3. **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.

8.0. Modifications and Discontinuation of Service

- 8.1. **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.
- 8.2. **To Applicable Terms.** If Licensor makes a material change to any applicable terms of this LA or a Sales Order, then Licensor will notify Licensee by either sending an email to the notification email address or posting a notice to the administrator in Licensee's account. If the change has a material adverse impact on Licensee and Licensee does not agree to the change, Licensee must so notify Licensor via mchegini@eplansoft.com within thirty (30) days after receiving notice of the



change. If Licensee notifies Licensor as required, then Licensee will remain governed by the terms in effect immediately prior to the change until the end of the then current subscription term for the affected Service. If the affected Service is renewed, it will be renewed under Licensor's then current version of this LA.

8.3. 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.

9.0. Third-Party Applications. "Third-Party Applications" include applications, integrations, services, or implementation, customization and other consulting services related thereto, that interoperate with the Service and are provided by a party other than Licensor. Licensor or Third-Party providers may offer Third-Party Applications through the Service or otherwise related to Licensee's use of the Service. Except as expressly set forth in the applicable 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 a subscription to the Service for such use and access. Licensor is not responsible for any aspect of 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 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.

10.0. Indemnification for Claims Concerning Licensor and Licensee Intellectual Property.

10.1. Infringement. 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. However, Licensor will have no liability for, or duty to defend or indemnify Licensee against, Claims to the extent arising from (a) use of the Service in violation of this LA 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 may, at its sole option and expense, use commercially reasonable efforts to (a) procure a license that will protect Licensee against such Claim without cost to Licensee; (b) 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 this LA and refund to the Licensee a pro-rata refund of the subscription fees paid for under any applicable Sales Orders for the terminated portion of the term. The rights and remedies granted Licensee under this Section 8.1 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.

10.2. Licensee’s Indemnity. To the fullest extent permitted by law, Licensee will, at its own expense, defend Licensor from and against any and all Claims (i) alleging that the Licensee Data or any trademarks or service marks, or any use thereof, infringes the copyright or trademark or misappropriates the trade secrets of a third party, or has caused harm to a third party, or (ii) arising out of Licensee’s breach of this LA, and will indemnify Licensor from and against liability for any Losses to the extent based upon such Claims.

10.3. Indemnification Procedures and Survival. In the event of a Claim within the purview of these indemnification provisions, the indemnitee shall control its own defense, and at the time of Claim resolution the indemnitor shall reimburse the indemnitee for those attorney fees and other defense costs reasonably incurred in that defense. To the extent that the indemnitee may incur fees and



costs in the defense of claims other than a covered Claim, the indemnitor shall have no responsibility for such costs. The indemnification obligations contained in this section will survive for one year after termination or expiration of this LA.

11.0. 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), Licensor 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 LA; 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 LA. 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 LA. 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 Licensor 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 LA.

12.0. Licensor’s Warranty of Functionality. Licensor warrants that: (i) the EPR will achieve in all material respects the functionality described in Licensor’s online user guides applicable to the EPR procured by Licensee, and (ii) such functionality of the EPR will not be materially decreased during the then-current subscription term. Licensee’s sole and exclusive remedy for Licensor’s breach of this warranty will be to require that Licensor use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the user guides. Licensor 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 billing@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 EPR has been utilized in accordance with the user guides, the LA, and applicable law.

12.1. Disclaimer of Warranties. Except as stated above, Licensor makes no other warranties, express or implied, about the EPR or any service provided by Licensor under the attached Sales Order Form, including without limitation any warranty of merchantability, fitness for a particular purpose, or non-infringement of third-party rights.



- 12.2. Waiver of Consequential Damages.** Neither party shall be liable for consequential damages, such as lost profits or damages arising from the delay of a plan-review project, on any claim alleging or related to a breach of the LA and/or a Sales Order Form, regardless of the particular legal theories or causes of action. This waiver of consequential damages shall not apply, however, to any claim brought by Licensor against Licensee based on Licensee's unauthorized duplication, distribution, or other misappropriation of Licensor's intellectual property.
- 12.3. Limitation of Liability.** Except for Licensor's indemnity obligations set forth in the LA, Licensor's total aggregate liability arising out of or connected with this Agreement, whether based upon breach of contract, warranty, negligence, misrepresentation or any other cause of action or theory of liability, and to the maximum extent permitted by applicable laws, shall in no case exceed the amount of subscription fees received by Licensor in the twelve (12) months immediately preceding the event from which the liability arises.
- 13.0. Fees and Payment.** Licensor's maintenance and support services are conditioned on Licensor's timely receipt of all subscription fees owed. Payment obligations are non-cancelable and fees paid are non-refundable. The number of authorized Users cannot be decreased during the relevant term stated in the Sales Order Form. Payment of invoices is due within thirty (30) days of receipt.
- 13.1. Taxes.** Unless otherwise stated, Licensor 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"). Licensee is responsible for paying all Taxes associated with the use of Service. If Licensor has the legal obligation to pay or collect Taxes for which Licensee is responsible as a result of using Service, the appropriate amount will be invoiced to and paid by Licensee, unless Licensee provides Licensor with a valid tax exemption certificate authorized by the appropriate taxing authority.
- 14.0. Termination for Cause, Expiration.** Either party may immediately terminate this LA and all applicable Sales Orders in the event the other party commits a material breach of any provision of this LA 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 LA (or such other address that may be provided pursuant to this LA). Upon termination or expiration of this LA, Licensee will have no rights to continue use of the Service. If this LA is terminated by Licensee for any reason other than a termination expressly permitted by this LA, then Licensor will be entitled to all of the fees due under any applicable Sales Orders for the entire term. If this LA is terminated as a result of



Licensor's breach of this LA, then Licensee will be entitled to a refund of the pro rata portion of any subscription fees paid by Licensee to Licensor under any applicable Sales Orders for the terminated portion of the term.

15.0. General Provisions on the Integrity of this LA. Except as otherwise provided herein, this LA may only be amended or modified via a writing signed by both Parties. If any term or provision of this LA is found to be invalid or unenforceable by a court of competent jurisdiction, such term or provision will be severed from the remainder of the LA, which will otherwise remain in full force and effect. No waiver of any provision of this LA 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 LA will not constitute a waiver of any subsequent breach or right. This LA 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 Orange County, California will be the exclusive venue for the resolution of all disputes related to this LA. The substantially prevailing party in any dispute arising out of this Agreement shall be entitled to recover its reasonable attorneys' fees. 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 LA in its entirety, and any related Sales Orders, without consent of the other party, to an affiliate (defined as 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 LA, 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) 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 LA and any related Sales Order/subscription 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 LA shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns; however, unless expressly stated otherwise, nothing herein is intended to benefit or create any rights in any third parties. As of the effective date of this LA, this LA sets forth the entire understanding between the Parties, subject only to subsequently agreed-to Sales Orders, and supersedes all prior agreements, representations, or promises, written or oral, with respect to the EPR.

This LA is entered into, and effective as of January 1, 2024, by and between e-PlanSoft, a California Corporation with its principal place of business at 220 Technology Drive, Suite 110

INSURANCE, INDEMNIFICATION AND FINGERPRINTING REQUIREMENTS

Insurance. Without limiting Licensor's indemnification obligations, Licensor shall procure and maintain, at its sole cost and for the duration of this Agreement, insurance coverage as provided below, against all claims for injuries against persons or damages to property which may arise from or in connection with the performance of the work hereunder by Licensor, its agents, representatives, employees, and/or subcontractors. In the event that Licensor's subcontracts any portion of the work in compliance with Section 1.8 of this Agreement, the contract between the Licensor and such subcontractor shall require the subcontractor to maintain the same policies of insurance that the Licensor is required to maintain pursuant to this Section.

Insurance Coverage Required. The policies and minimum amounts of insurance required hereunder shall be as follows:

A. Comprehensive General Liability Insurance which affords coverage at least as broad as Insurance Services Office "occurrence" form CG 00 01 including completed operations and contractual liability, with limits of liability of not less than \$2,000,000 per occurrence and \$4,000,000 annual aggregate for liability arising out of Licensor's performance of this Agreement. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set forth above. If written with an aggregate, the aggregate shall be double the each occurrence limit. Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents (collectively hereinafter "City and City Personnel") as additional insured for claims arising out of Licensor's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

B. Automobile Liability Insurance with a limit of liability of not less than \$1,000,000 each occurrence and \$1,000,000 annual aggregate. The limits shall be provided by either a single primary policy or combination of policies. If limits are provided with excess and/or umbrella coverage the limits combined with the primary will equal the minimum limits set above. Such insurance shall include coverage for all "owned," "hired" and "non-owned" vehicles, or coverage for "any auto." Such insurance shall be endorsed to:

- (1) Name the City of Irvine and its employees, representatives, officers and agents as additional insured for claims arising out of Licensor's performance of this Agreement.
- (2) Provide that the insurance is primary and non-contributing with any other valid and collectible insurance or self-insurance available to City.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement.

- C. Workers' Compensation Insurance** in accordance with the Labor Code of California and covering all employees of the Licensor providing any service in the performance of this Agreement. Such insurance shall be endorsed to:

- (1) Waive the insurer's right of Subrogation against the City and City Personnel.

A statement on an insurance certificate will not be accepted in lieu of the actual endorsement unless your insurance carrier is the State of California Insurance Fund (SCIF) and the endorsement numbers 2570 and 2065 are referenced on the certificate of insurance.

In the performance of the work under this Agreement, if Licensor does not employ any person in any manner so as to become subject to the workers' compensation laws of California, Licensor agrees to indemnify, defend, and hold harmless the City of Irvine and all of its officials, employees, and agents from and against any and all claims, liabilities, and losses relating to personal injury or death, economic losses, and property damage arising out of Licensor failure to provide such worker's compensation insurance. Licensor agrees that, if firm should become subject to the workers' compensation provisions of Section 3700 of the Labor Code, firm shall forthwith comply with those provisions, immediately furnish insurance certificates evidencing such coverage as set forth herein, and notify the City of the change in status.

- D. Professional Liability Insurance** with minimum limits of \$1,000,000 each claim. Covered professional services shall include all work performed under this Agreement and delete any exclusion that may potentially affect the work to be performed.

If the Licensor maintains broader coverage and/or higher limits than the minimums shown above, the City requires and shall be entitled to the broader coverage and/or higher limits maintained by the Licensor.

- E. Cyber Liability Insurance** with limits of not less than \$1,000,000 for each occurrence and an annual aggregate of \$1,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security.
- F. Evidence of Insurance:** Licensor shall provide to City a Certificate(s) of Insurance evidencing such coverage together with copies of the required policy endorsements no later than five (5) business days prior to commencement of service and at least fifteen (15) business days prior to the expiration of any policy. Coverage shall not be suspended, voided, canceled, reduced in coverage or in limits, non-renewed, or materially changed for any reason, without thirty (30) days prior written notice thereof given by the insurer to City by U.S. mail, or by personal delivery, except for nonpayment of premiums, in which case ten (10) days prior notice shall be provided. The City project title or description MUST be included in the "Description of Operations" box on the certificate.

The City's insurance certificate tracking services provider, Exigis, LLC, will send Licensor an email message providing instructions for submitting insurance certificates and endorsements.

Certificate Holder: City of Irvine, California
c/o: Exigis LLC
PO Box 4668 ECM #35050
New York, NY 10168-4668

- G. Endorsements:** A statement on an insurance certificate will not be accepted in lieu of the actual endorsement. Insurance policies shall not be in compliance if they include any limiting provision or endorsement that has not been submitted to the City for approval.

Additional Insured Endorsements **shall not:**

1. Be limited to "Ongoing Operations"
2. Exclude "Contractual Liability"
3. Restrict coverage to the "Sole" liability of Licensor
4. Contain any other exclusion contrary to the Agreement.

- H. Any Deductible in Excess of \$100,000 and/or Self-Insured Retentions** must be approved in writing by the City.

- I. Acceptability of Insurers.** Each policy shall be from a company with current A.M. Best's rating of A- VII or higher and authorized to do business in the State of California, or otherwise allowed to place insurance through surplus lines brokers under applicable provisions of the California Insurance Code or any federal law. Any other rating must be approved in writing by the City.

- J. Insurance of Subcontractors.** Licensor shall be responsible for causing Subcontractors to maintain the same types and limits of coverage in compliance with this Agreement, including naming the City as an additional insured to the Subcontractor's policies.

- K. Live Scan Fingerprinting Requirements.** Prior to commencing services, Licensor are required to successfully pass a Department of Justice fingerprinting background check ("Live Scan") performed by a certified fingerprinting service provider or at the City of Irvine Police Department. The Licensor shall be responsible for obtaining the Live Scan for its staff and shall bear the cost thereof. The agency completing the fingerprints must provide the City of Irvine Human Resources with the background check results and subsequent records for review. Licensor must obtain a Licensor's badge issued by the City of Irvine Human Resources prior to performing work.

Indemnification. Licensor shall indemnify, defend, and hold City and City Personnel harmless from and against any and all actions, suits, claims, demands, judgments, attorney's fees, costs, damages to persons or property, losses, penalties, obligations, expenses or liabilities (herein "claims" or "liabilities") that may be asserted or claimed by any person or entity arising out of the willful or negligent acts, errors or omissions of Licensor, its employees, agents, representatives or subcontractors which directly or indirectly relate to the work being performed or services being

provided under this Agreement, whether or not there is concurrent active or passive negligence on the part of City and/or City Personnel, but excluding such claims or liabilities arising from the sole active negligence or willful misconduct of City or City Personnel in connection therewith:

- A. Licensor shall defend any action or actions filed in connection with any such claims or liabilities, and shall pay all costs and expenses, including attorney's fees incurred in connection therewith.
- B. Licensor shall promptly pay any judgment rendered against City or any City Personnel for any such claims or liabilities.
- C. In the event City and/or any City Personnel is made a party to any action or proceeding filed or prosecuted for any such damages or other claims arising out of or in connection with the work being performed or services being provided under this Agreement, Licensor shall pay to City any and all costs and expenses incurred by City or City Personnel in such action or proceeding, together with reasonable attorney's fees and expert witness fees.

These Indemnification provisions are independent of, and shall not in any way be limited by, the Insurance Requirements of this Agreement. City approval of the insurance contracts required by this Agreement does not in any way relieve the Licensor from liability under this section.

Business License Requirement. Contractors who provide services for the City of Irvine within the city limits of Irvine shall obtain, within five (5) days of executing this Agreement and prior to commencing any work herein, a City of Irvine business license and shall maintain a current business license throughout the term of this Agreement.



Irvine, CA 92618 ("Licensor") and, The City of Irvine, CA ("Licensee"), with its principal place of business located at 1 Civic Center Plaza, Irvine, CA 92606 .

The individual signing this LA on behalf of Licensee represents and warrants that he / she is authorized to enter into such agreement on behalf of Licensee.

City of Irvine

Licensee

e-PlanSoft

Dahle Bulosan

Full name

Paula Montoya

Full name

Director of Administrative Services

Title

Vice President

Title

DocuSigned by:
Dahle Bulosan
C0EUS529708C428...

Signature

DocuSigned by:
Paula Montoya
008000170F00440...

Signature

12/20/2023

Date

12/19/2023

Date

By: DocuSigned by:
Oliver C. Chi
7809AA719A2B4C7...

Oliver C. Chi

Its: City Manager

John Kalkanian

Full name

CFO

Title

By: DocuSigned by:
Carl Petersen
0FCAD91F02E547D...

Carl Petersen

Its: City Clerk

DocuSigned by:
John Kalkanian
780B23ADA6E143E...

Signature

12/19/2023

Date

APPROVED AS TO FORM:
RUTAN & TUCKER, LLP

By: DocuSigned by:
Jeffrey Melching
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Jeffrey Melching



EXHIBIT A: SOFTWARE AS A SERVICE (SaaS) SERVICE LEVEL AGREEMENT

e-PlanSoft ("The Company") agrees to provide 99.5% uptime with respect to the Client's Hosted Service during each calendar quarter for the term of service excluding regularly scheduled maintenance times for eplansoft REVIEW (EPR) and goPost Customer Portal.

Scheduled and Unscheduled Maintenance

Regularly scheduled maintenance time does not count as downtime. Maintenance time is regularly scheduled if it is communicated in accordance with the notice section set forth below at least four (4) business days in advance. Regularly scheduled maintenance time will occur on the weekends or off the hours on weekdays. The Company hereby provides advanced Notice for routine scheduled maintenance as needed.

The Company in its sole discretion may take the Service down for unscheduled maintenance and in that event will attempt to notify Client in advance in accordance with the Notice section set forth below. Such unscheduled maintenance will be counted against the uptime guarantee.

Updates/Notice

This Service Level Agreement may be amended by The Company, in its discretion, but only after providing thirty (30) day notice. Notices will be sufficient if provided to a user designated as an administrator of your account either: (a) as a note on the screen presented immediately after completion of the log in authentication credentials at the log in screen, or (b) by email to the registered email address provided for the administrator(s) for Client's account.

Exclusion of Sandbox and Beta Accounts

Product sandbox, beta, pilot and debugger and other test environments are expressly excluded from this or any other service level commitment.

Support Hours

Client support is available Monday-Friday's from 6am -6pm Pacific, excluding holidays.

Live-Production Incident Handling – Standard Support

The following incident handling and time frames are applicable to live-production environments only. Client will designate personnel who will interface with The Company's Client Support Department.

1. On Line Self Support: The Company will provide to Client at no expense an online Knowledge Base and Online Self Support Site where Client may research issues and questions, report maintenance incidents and receive information regarding new releases and patches.
2. Incident Handling: The Company will provide an incident handling mechanism for Client maintenance requests. The incident handling process will include the following:
 - a. Access to the e-PlanSoft online ticketing system.
 - b. All support tickets and bug reports will be recorded in the ticketing system.
 - c. The Company will only respond to incidents reported via the online ticketing system.

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- d. Client will receive an e-mail with the assigned ticket number.
 - e. Bug Ticket Priority and Severity will be determined by the definitions below.
 - f. Support Tickets will be responded to in the order received. Initial confirmation response will occur within an Hour
 - g. Enhancement Requests will be responded to in the order received. Initial confirmation response will occur within an hour. Enhancement requests are each evaluated and determined for feasibility within the products. Not all enhancement requests are implemented.
3. Bug Handling: A priority is assigned to a specific bug ticket which therefore sets the order, timing and level of effort in resolving a case:

Severity	Description of Severity	Response Time	Resolution Time
Level 1 - Critical	Critical bug occurring on production system preventing business operations. <u>A large number of users</u> are prevented from working with no reasonable workaround.	The Company will respond with confirmation of receipt of incident. Follow-up will be provided via the ticket system every 60 minutes.	Upon confirmation of receipt, The Company begins continuous work on the problem and will put forth the effort to provide a workaround, fix, or estimated completion date within 72 hours after the problem has been diagnosed and/or replicated or provided there is an client representative available to assist with issue diagnosis and testing during the resolution process.
Level 2 - High	Major bug occurring on production system severely impacting business. A large number of users are impacted by issue, but they are still able to work in a limited capacity.	The Company will respond with confirmation of receipt of incident. Follow-up will be provided via the ticket system every 2 business days.	Upon confirmation of receipt, The Company will put forth the best effort to provide a workaround or fix or estimated completion date within 14 business days after the problem has been diagnosed and/or replicated.
Level 3 - Medium	A bug causing a partial or non-critical loss of functionality on production system. A small number of users are affected.	The Company will respond with confirmation of receipt of incident. Follow-up will be provided via the ticket system every 5 business days.	Upon confirmation of receipt, The Company will put forth the best effort to provide a workaround or fix or estimated completion date within 21 business days after the problem has been diagnosed and/or replicated.
Level 4 - Low	A bug occurring on non-production system or question, comment, feature request, documentation issue or other non-impacting issue.	The Company will respond with confirmation of receipt of incident. Follow-up will be provided via the ticket system every 7 business days.	Resolution for the issue may be released as a patch set or be incorporated into a future release of the product.



Definitions:

Bug - A software bug is a flaw, failure, error or fault in a computer software or system that causes it to return unexpected or incorrect results.

Enhancement Request - A enhancement request is for additional product functionality or changed behavior beyond the current intended behavior of the Maintained Software.

Technical Support - General software support (How to) for the e-PlanSoft software products that are not bugs or enhancement requests.

Primary Customer Contact:

Bill To: Michael Sheeran

Agency Name: City of Irvine

Address: One Civic Center Plaza, Irvine, CA 92606

Contact: Michael Sheeran

Email: msheeran@cityofirvine.org

Phone: (949) 724-6306

Order Form Effective Date: Date of Signature in License Agreement

Term: The term is for five years following the Order Form Effective Date. Thereafter, the term of this Order Form automatically renews for successive one year periods, each commencing with an anniversary of the Order Form Effective Date ("**Renewal Periods**"), unless either party notifies the other of its intent not to renew at least 90 days prior to the start of any Renewal Period

Payment Terms: Due in full upon execution of this Order Form.

FEE SCHEDULE:

Year	Item	Quantity	Unit Price	Total
2024	ePlanReview Licenses (1-50)	50	\$1500	\$75,000
2024	ePlanReview Licenses (51-100)	50	\$1250	\$62,500
2024	ePlanReview Licenses (101-150)	42	\$1000	\$42,000
2024	goPost	1	\$0	\$0
2024	Additional UAT Environment	1	\$0	\$0
2024	TOTAL	142	NA	\$179,500
2025	ePlanReview Licenses (1-50)	50	\$1515	\$75,750
2025	ePlanReview Licenses (51-100)	50	\$1262.50	\$63,125
2025	ePlanReview Licenses (101-150)	42	\$1010	\$42,420
2025	goPost	1	\$5359.10	\$5359.10
2025	TOTAL	142	NA	\$186,654.10
2026	ePlanReview Licenses (1-50)	50	\$1530.15	\$76,507.50
2026	ePlanReview Licenses (51-100)	50	\$1275.13	\$63,756.50
2026	ePlanReview Licenses (101-150)	42	\$1020	\$42,840
2026	goPost	1	\$5412.70	\$5412.70
2026	TOTAL	142	NA	\$188,516.70
2027	ePlanReview Licenses (1-50)	50	\$1545.45	\$77,272.50
2027	ePlanReview Licenses (51-100)	50	\$1287.88	\$64,394
2027	ePlanReview Licenses (101-150)	42	\$1030	\$43,260
2027	goPost	1	\$5466.83	\$5466.83
2027	TOTAL	142	NA	\$190,393.33
2028	ePlanReview Licenses (1-50)	50	\$1560.90	\$78,045

2028	ePlanReview Licenses (51-100)	50	\$1300.75	\$65,037.50
2028	ePlanReview Licenses (101-150)	42	\$1040	\$43,680
2028	goPost	1	\$5521.50	\$5521.50
2028	TOTAL	142	NA	\$192,284

Irvine, CA Pricing:

Tier (Year 1)	Cost per license
1 – 50 Licenses	\$1500
51-100 Licenses	\$1250
101 – 150 Licenses	\$1000
151 – 200 Licenses	\$850
goPost	No cost

Tier (Year 2)	Cost per license
1 – 50 Licenses	\$1515
51-100 Licenses	\$1262.50
101 – 150 Licenses	\$1010
151 – 200 Licenses	\$858.50
goPost	\$5359.10

Tier (Year 3)	Cost per license
1 – 50 Licenses	\$1530.15
51-100 Licenses	\$1275.13
101 – 150 Licenses	\$1020
151 – 200 Licenses	\$867.10
goPost	\$5412.70

Tier (Year 4)	Cost per license
1 – 50 Licenses	\$1545.45
51-100 Licenses	\$1287.88
101 – 150 Licenses	\$1030
151 – 200 Licenses	\$875.77
goPost	\$5466.83

Tier (Year 5)	Cost per license
1 – 50 Licenses	\$1560.90
51-100 Licenses	\$1300.75
101 – 150 Licenses	\$1040
151 – 200 Licenses	\$884.53
goPost	\$5521.50

- goPost may be canceled upon a minimum of 30 days notice prior to any renewal. goPost is offered at no cost for year 1, however, if goPost is needed beyond year 1, the cost will fall in line with the last year of paid goPost service and the current 1% yearly uplift.
- If the additional test environment is needed beyond the first year, a quote can be provided.



Irvine, CA

1 Civic Center Plaza
Irvine, CA 92606

Quote created: November 6, 2023
Quote expires: January 5, 2024
Quote created by: Kellie Gilles

kellie@eplansoft.com

Michael Sheeran, PMP

msheeran@cityofirvine.org
(949) 724-6306

Sam Floyd

sfloyd@cityofirvine.org
949-724-7175

Products & Services

Item & Description	Quantity	Unit Price	Discount	Total
e-PlanREVIEW (Full named License) Single Named User License (1-50 Licenses) 01/01/2024-01/01/2025	50	\$1,500.00 / year		\$75,000.00 / year for 1 year
e-PlanREVIEW (Full named License) Single Named User License (51-100 Licenses) 01/01/2024-01/01/2025	50	\$1,250.00 / year		\$62,500.00 / year for 1 year

Item & Description	Quantity	Unit Price	Discount	Total
e-PlanREVIEW (Full named License) Single Named User License (101-150 Licenses) 01/01/2024-01/01/2025	42	\$1,000.00 / year		\$42,000.00 / year for 1 year
goPost 01/01/2024-01/01/2025	1	\$0.00 / year		\$0.00 / year for 1 year
Additional Test Environment 01/01/2024-01/01/2025	1	\$0.00 / year		\$0.00 / year for 1 year
		Annual subtotal		\$179,500.00
		Total		\$179,500.00

Terms

- This Quote is governed by the e-PlanSoft Master Services Agreement.
- Subscription License fees are charged annually and include cloud hosting, feature releases, product updates, user documentation, telephone, email, and online support.
- Subscription License Fees are subject to an annual adjustment of 1%.
- Subscription fees and escalation rate can be adjusted based on multiyear term agreements and or pre-paid annual fees.
- Subscription fees are due at time of signing.
- Professional services fees due based on Payment Schedule contained in the sales order
- Travel expenses & Per Diem billed at Cost.

Questions? Contact me



Kellie Gilles

kellie@eplansoft.com

ePlanSoft

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Suite 100

Irvine, CA 92618

United States