

EVIFILE SOFTWARE AS A SERVICE AGREEMENT

PARTIES

This Software as a Service Agreement ("Agreement") is between eviFile Limited incorporated and registered in England and Wales with company number 10224630 whose registered office is at The West Wing, Bowcliffe Hall, Bramham, Leeds, LS23 ("eviFile") and the customer ("Customer") identified on the order form that references this Agreement and is signed by Customer ("Order").

BACKGROUND

- (A) eviFile supplies certain software applications and platforms which it makes available to subscribers, including the Service relating to the eviFile platform.
- (B) The Customer wishes to use eviFile's Service in its operations.
- (C) eviFile has agreed to provide and the Customer has agreed to take and pay for eviFile's Service subject to the terms and conditions of this agreement.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

Business Day: a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 9.

Customer Data: the data inputted by the Customer, Authorised Users, or eviFile on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document(s) made available to the Customer by eviFile in physical format or online as notified by eviFile to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: the date specified in the Order.

Fees: means the fees payable for the Services as specified in the Order.

Initial Subscription Term: the initial term of this agreement is 36 months from the Effective Date unless otherwise specified in the Order.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Project: the project for which the Customer may use the Services as specified in the Order.

Services: the subscription services provided by eviFile to the Customer under this agreement.

Software: the software applications provided by eviFile as part of the Services.

Subscription Term: has the meaning given to it at clause 12.1.

Territory: the specified and only territory in which the Customer may use the Services, as specified in the Order.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force as at the date of this agreement.
- 1.8 A reference to a statute or statutory provision shall include all subordinate legislation made as at the date of this agreement under that statute or statutory provision.
- 1.9 A reference to writing or written includes faxes but not e-mail.
- 1.10 References to clauses are to the clauses of this agreement.

2. LICENCE GRANT

- 2.1 eviFile hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's operations within the Territory concerning the Project.
- 2.2 In relation to the Authorised Users, the Customer undertakes that it shall maintain a written, up to date list of current Authorised Users and shall remain responsible for all use of the Services by its Authorised Users.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property;

and eviFile reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.

- 2.4 The Customer shall not:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) and except to the extent expressly permitted under this agreement, attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
 - (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or

- (c) use the Services and/or Documentation to provide services to third parties; or
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Documentation available to any third party except the Authorised Users, or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify eviFile.
- 2.6 The rights provided under this clause 2 are granted to the Customer only and shall not be considered granted to any subsidiary or holding company or organisation of the Customer.

3. SERVICES

- 3.1 eviFile shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 3.2 eviFile shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) planned maintenance carried out during the maintenance window of 10.00pm to 2.00 am UK time; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that eviFile has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 3.3 eviFile will, as part of the Services and at no additional cost to the Customer, provide the Customer with eviFile's standard customer support services during Normal Business Hours.

4. CUSTOMER DATA

- 4.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 4.2 In the event of any loss or damage to Customer Data, the Customer's sole and exclusive remedy shall be for eviFile to use reasonable commercial endeavours to restore the lost or damaged Customer Data from the latest back-up of such Customer Data. eviFile shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party (except those third parties sub-contracted by eviFile to perform services related to Customer Data maintenance and back-up).

- 4.3 If eviFile processes any personal data on the Customer's behalf when performing its obligations under this agreement, the parties record their intention that the Customer shall be the data controller and eviFile shall be a data processor and in any such case:
- (a) eviFile shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Customer from time to time; and
 - (b) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

5. SUPPLIER'S OBLIGATIONS

- 5.1 eviFile undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 5.2 The undertaking at clause 5.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to eviFile's instructions, or modification or alteration of the Services by any party other than eviFile or eviFile's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, eviFile will, at its expense, use all reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance. Such correction or substitution constitutes the Customer's sole and exclusive remedy for any breach of the undertaking set out in clause 5.1. Notwithstanding the foregoing, eviFile:
- (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.

- 5.3 This agreement shall not prevent eviFile from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

6. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide eviFile with:
 - (i) all necessary co-operation in relation to this agreement; and

- (ii) all necessary access to such information as may be required by eviFile;

in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;

- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, eviFile may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for eviFile, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by eviFile from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to eviFile's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

7. CHARGES AND PAYMENT

- 7.1 The Customer shall pay the Fees specified in the Order.
- 7.2 The Customer shall on or before the Effective Date provide to eviFile an approved purchase order information acceptable to eviFile and any other relevant valid, up-to-date and complete contact and billing details. eviFile shall invoice the Customer pursuant to the terms of the Order and each invoice shall be payable by the Customer within 30 days after the date of such invoice.
- 7.3 If eviFile has not received payment within 30 days after the due date, and without prejudice to any other rights and remedies of eviFile:
 - (a) eviFile may, without liability to the Customer, disable the Service, or part of the Services and eviFile shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 3% over the then current Bank of England Base Rate from time to

time, commencing on the due date and continuing until fully paid, whether before or after judgment.

- 7.4 All amounts and fees stated or referred to in this agreement:
- (a) shall be payable in pounds sterling;
 - (b) are non-cancellable and non-refundable; and
 - (c) are exclusive of value added tax, which shall be added to eviFile's invoice(s) at the appropriate rate.

- 7.5 The fees will automatically be increased upon each anniversary of the Effective Date by 3%

8. PROPRIETARY RIGHTS

- 8.1 The Customer acknowledges and agrees that eviFile and/or its licensors own all intellectual property rights in the Services and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in, patents, copyright, database right, trade secrets, trade names, trade marks (whether registered or unregistered), or any other rights or licences in respect of the Services or the Documentation.

9. CONFIDENTIALITY

- 9.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.
- 9.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.

- 9.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 9.4 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 9.5 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute eviFile's Confidential Information.
- 9.6 eviFile acknowledges that the Customer Data is the Confidential Information of the Customer.
- 9.7 No party shall make, or permit any person to make, any public announcement concerning this agreement without the prior written consent of the other parties (such consent not to be unreasonably withheld or delayed), except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction. However, eviFile may include the Customer and its trademarks in promotional materials but will cease this use at Customer's written request.
- 9.8 The above provisions of this clause 9 shall survive termination of this agreement, however arising.

10. INDEMNITY

- 10.1 The Customer shall defend, indemnify and hold harmless eviFile against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Customer's use of the Services and/or Documentation, provided that:
- (a) the Customer is given prompt notice of any such claim;
 - (b) eviFile provides reasonable co-operation to the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (c) the Customer is given sole authority to defend or settle the claim.
- 10.2 eviFile shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom patent effective as of the Effective Date, copyright, trade mark, database right or right of confidentiality, and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
- (a) eviFile is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to eviFile in the defence and settlement of such claim, at eviFile's expense; and
 - (c) eviFile is given sole authority to defend or settle the claim.

- 10.3 In the defence or settlement of any claim, eviFile may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on immediate written notice to the Customer without any additional liability or obligation to pay liquidated damages or other additional costs to the Customer.
- 10.4 In no event shall eviFile, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than eviFile; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by eviFile; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from eviFile or any appropriate authority.
- 10.5 The foregoing states the Customer's sole and exclusive rights and remedies, and eviFile's (including eviFile's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

11. LIMITATION OF LIABILITY

- 11.1 This clause 11 sets out the entire financial liability of eviFile (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this agreement;
 - (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 11.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. eviFile shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to eviFile by the Customer in connection with the Services, or any actions taken by eviFile at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

11.3 Nothing in this agreement excludes the liability of eviFile:

- (a) for death or personal injury caused by eviFile's negligence; or
- (b) for fraud or fraudulent misrepresentation.

11.4 Subject to clause 11.2 and clause 11.3:

- (a) eviFile shall not be liable whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement; and
- (b) eviFile's total aggregate liability in contract (including in respect of indemnities given by it hereunder), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Fees paid by the Customer during the Subscription Term.

12. TERM AND TERMINATION

12.1 This agreement shall, unless otherwise terminated as provided in this clause 12, commence on the Effective Date and shall continue for the Initial Subscription Term, expiring thereafter unless otherwise agreed in writing by the parties. This agreement does not auto-renew and the **"Subscription Term"** of this agreement shall comprise only the Initial Subscription Term and any period of extension agreed in writing signed by the parties.

12.2 Without affecting any other right or remedy available to it, either party may terminate this agreement with immediate effect by giving written notice to the other party if:

- (a) the other party fails to pay any amount due under this agreement on the due date for payment and remains in default not less than fifteen (15) days after being notified in writing to make such payment;
- (b) the other party commits a material breach of any other term of this agreement which breach is irremediable or (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so;
- (c) the other party suspends, or threatens to suspend, payment of its debts or is unable to pay its debts as they fall due or admits inability to pay its debts or is deemed unable to pay its debts within the meaning of section 123 of the Insolvency Act 1986;
- (d) the other party commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enters into any compromise or arrangement with its creditors other than for

the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;

- (e) a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of that other party other than for the sole purpose of a scheme for a solvent amalgamation of that other party with one or more other companies or the solvent reconstruction of that other party;
- (f) an application is made to court, or an order is made, for the appointment of an administrator, or if a notice of intention to appoint an administrator is given or if an administrator is appointed, over the other party;
- (g) the holder of a qualifying floating charge over the assets of that other party has become entitled to appoint or has appointed an administrative receiver;
- (h) a person becomes entitled to appoint a receiver over the assets of the other party or a receiver is appointed over the assets of the other party;
- (i) a creditor or encumbrancer of the other party attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of the other party's assets and such attachment or process is not discharged within 14 days; or
- (j) the other party suspends or ceases, or threatens to suspend or cease, carrying on all or a substantial part of its business.

12.3 On termination of this agreement for any reason:

- (a) all licences granted under this agreement shall immediately terminate;
- (b) each party shall return and make no further use of any equipment, property, Documentation and other items (and all copies of them) belonging to the other party;
- (c) eviFile may destroy or otherwise dispose of any of the Customer Data in its possession unless eviFile receives, no later than ten days after the effective date of the termination of this agreement, a written request for the delivery to the Customer of the then most recent back-up of the Customer Data. eviFile shall use reasonable commercial endeavours to deliver the back-up to the Customer within 30 days of its receipt of such a written request, provided that the Customer has, at that time, paid all fees and charges outstanding at and resulting from termination (whether or not due at the date of termination). The Customer shall pay all reasonable expenses incurred by eviFile in returning or disposing of Customer Data; and
- (d) any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination shall not be affected or prejudiced.

13. FORCE MAJEURE

eviFile shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of eviFile or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

14. CONFLICT

If there is an inconsistency between any of the provisions in the main body of this agreement and the Order, the provisions in the main body of this agreement shall prevail.

15. VARIATION

No variation of this agreement shall be effective unless it is in writing and signed by the parties (or their authorised representatives).

16. WAIVER

No failure or delay by a party to exercise any right or remedy provided under this agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

17. RIGHTS AND REMEDIES

Except as expressly provided in this agreement, the rights and remedies provided under this agreement are in addition to, and not exclusive of, any rights or remedies provided by law.

18. SEVERANCE

18.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.

18.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

19. ENTIRE AGREEMENT

- 19.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 19.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

20. ASSIGNMENT

- 20.1 The Customer shall not, without the prior written consent of eviFile, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 20.2 eviFile may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

21. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

22. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

23. NOTICES

- 23.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes.
- 23.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post

shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.

24. GOVERNING LAW

This agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

25. JURISDICTION

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

Signed by
for and on behalf of eviFile Limited

Position:

Date:

Signed by
for and on behalf of

Position:

Date: