

EASYVISTA SPECIFIC TERMS AND CONDITIONS
FOR SOFTWARE LICENSING AND ASSOCIATED SOFTWARE SERVICES

SOFTWARE: EV Observe

2023 v1.2

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These Specific Terms and Conditions are part of the Contract between Client and Supplier for Supplier to provide a License with Associated Software Services. Contract is defined in and subject to EasyVista General Terms and Conditions for Software Licensing and Associated Software Services.

1. DEFINITIONS

As used in these Specific Terms and Conditions, the following terms shall have the meanings set forth below. Any term used in these Specific Terms and Conditions that are not defined herein are defined in the General Terms and Conditions.

"Advance Notice Period" means the period of advance notice in the context of Planned Maintenance. Generally, the Supplier will propose a maintenance period to the Client which has three (3) calendar days to make his observations. If the Client does not respond, the Supplier shall notify the Client of the period of intervention seven (7) calendar days in advance. The cumulative duration of Planned Maintenance of the production environment shall not exceed 2 hours per month.

"Authorized Users": refers to the natural persons under the authority of the Client or of its own customers, such as employees, who are authorized to use the Software.

"Box": device or virtual machine used to monitor the information system of the Client or of its customers, that is connected to this information system in which certain programs of the Software and, where applicable, Third-Party Software are installed.

"Evolution": means any change or addition of functionality, improvement in the performance of the Software that is not directly related to an Incident.

"Fix": a piece of code or configuration specific to the Software and produced for one or more clients in order to resolve an Incident. Fixes are integrated in subsequent Version(s).

"Business Hours": 8am - 6pm, US Eastern time, Monday to Friday, excluding public holidays commonly observed in the USA.

"Extended Business Hours": 9am - 10pm, US Eastern time, Monday to Friday, except on public holidays commonly observed in the USA.

"Incident": any issue with operation of the Software, with regard to Documentation, that is reproduced and documented by the Client and duly noted by the Parties. Incident can be Critical, Major or Minor.

"Critical Incident": means any Incident during which the Software is unavailable to all Authorised Users in a production environment.

"Major Incident": means any Incident during which one or more of the major functionalities of the Software malfunctions and substantially impairs the normal use of the Software.

"Minor Incident": means any Incident that is minor and has no significant impact on the operation of the Software.

"Planned Maintenance": means an intervention requiring an interruption of the service, according to the Advance Notice Period agreed between the Parties. Planned Maintenance takes place during Extended Working Hours, unless the Client has subscribed to a specific billable planned maintenance service during non-working days.

"Unplanned Maintenance": means an intervention necessary to resolve or prevent a Critical Incident.

"Recovery Point Objective (RPO)": means the maximum time for recording data lost as a result of a Critical Incident.

"Recovery Time Objective (RTO)": means the maximum amount of time that the service will be down in the event of a Critical Incident.

"Platform":

- When the Order Form provides that the License is granted for SaaS use of the Software, this term refers to the information technology on-line environment where the Client can consult in dashboards the information collected by the Box and processed by the Software.

- When the Order Form provides that the License is granted for On Premise use of the Software, this term refers to the IT environment located in the Client's information system where the Client can consult in dashboards the information collected by the Box and processed by the Software.

"Reply": confirmation that an Incident has been submitted and that investigations have commenced.

"Resolution": a solution to an Incident provided by the Supplier through the release of a new Version, Workaround, Fix or any other means proposed by the Supplier.

"SaaS": Software as a Service. The Software is implemented on a remote server.

"Software": EV Observe.

"Update": any altered or new functionality or Software performance enhancement not directly related to an Incident.

"Major Update": any significant Update of the Software covering one or more of the following aspects: functionalities, user interface, technical architecture or performance. Major versions are identified by a dedicated appellation.

"Minor Update": an Update that primarily contains Fixes.

"Workaround": a temporary solution provided by the Supplier in the event of an Incident.

2. DESCRIPTION OF THE SOFTWARE AND BOX

2.1 FUNCTIONALITIES OF THE SOFTWARE

The Software collects real-time information in the form of metrics using control points implemented in Client's information system.

This information is sent by a Box to the Platform where Client can consult a visual software map represented in a dashboard customized by Client.

The Software enable Client Data processing in the following manner:

- Collect technical data using control points executed in the Box. The actions of the Box can be supplemented by virtual agents as described in the Documentation. Client Data provide information on the availability, state, and performance of the monitored equipment as well as hardware and software components in the monitored equipment,
- Provide a set of control point templates that Client can customize,
- Store Client Data on the Platform thus enabling Client to consult it,
- Send alerts using the different means of communication indicated in the notification policy defined by the Client in the Box, such as email, SMS, notifications in mobile devices.

Documentation of the Software is available on the Supplier's Wiki website.

[EasyVista Wiki](#)

Features evolve with the Major Updates under the conditions of the present document. The Client is invited to check the features and functionalities attached to each Major Update in the Documentation.

2.2 Box

2.2.1 Device or virtual machine

Depending on the option selected by Client, Supplier shall provide the Box in the form of a physical device (only applicable to mainland France and Corsica) or virtual machine master that can be downloaded by Client.

2.2.2 Installation

Client is responsible for configuring the basic functionalities of the Box (communication, sending of emails, secure connection to the Platform) before customizing Configuration Data based on its objectives (the Configuration Data). Supplier can provide Client with assistance through a fee-based service proposal that, if accepted, is subject to a separate purchase order and invoice.

2.2.3 Legal framework

Once the installation is completed, Client must obtain the Supplier's prior written approval to install the Box physically on another site or to install the Box as a virtual machine in another information system.

Supplier shall remain the sole owner of the intellectual rights relating to the works and of the patrimonial rights relating to the physical components of the Box.

Client may not assign, lease, make available or pledge the Box to a third party in any manner.

Client undertakes to use the Box in accordance with the operating instructions provided by Supplier and shall ensure it is kept in good condition and proper working order.

Client shall take all necessary measures to ensure the protection and security of the physical Box. Client shall bear all the risks of loss or damage to the Box and shall be responsible for any damage to the Box or incurred by the Box, by accident or due to the improper use of the Box with regard to its operating instructions.

Supplier alone shall ensure the maintenance of the Box in accordance with the provisions of the ASSOCIATED SOFTWARE SERVICES clause.

2.3 BOX AND THIRD-PARTY SOFTWARE

Client is authorized to install one or more Third-Party Software on the Box.

To ensure interoperability with the Software, Client must inform Supplier if it wishes to install a Third-Party Software on the Box. If so required for interoperability, the Supplier shall send the Client a fee-based service proposal that, if accepted, is subject to a separate purchase order and invoice.

Client shall ensure that the installation of a Third-Party Software will not result in any modification, reprogramming or adaptation of the Box, and notably its operating system, or of the Supplier's Software, all of which remaining the Supplier's property.

Client shall take particular care to ensure that this installation will not have any impact on the proper working state of the Software and Box and will not be the cause of Incidents. If this were to be the case, Supplier shall, after consultation with Client, reserve the right to uninstall or impose the uninstallation of the Third-Party Software, or to take the technical measures necessary to eliminate Incidents, or at the very least, to minimize their effects. This is a fee-based intervention that lies outside the scope of the Associated Software Services and is therefore subject to a separate purchase order and invoice.

2.4 MINIMUM TECHNICAL CONDITIONS

In accordance with Documentation, the Software works with the minimum technical conditions described in the Supplier's Wiki website which evolve pursuant to Major Update(s) as set forth in the Section "ASSOCIATED SOFTWARE SERVICES".

3. LICENSE DURATION

The Software License is granted either (i) for the number of years specified in the Order Form or (ii) for the term of the intellectual property protection provided by the law applicable to the License if the Order Form provides that the License is granted as a Perpetual License.

4. DELIVERY

Following the Software presentation during which Client was able to ascertain that the Supplier's solution met its requirements, Supplier shall deliver the Box and the Software.

Software will be delivered in the form of a link that will enable Client to access the Platform.

The License start from the Software delivery date.

The Box will be delivered in one of the following ways:

- The Box may be physically delivered to the address indicated by the Client signing the delivery order, or
- The Box may be downloaded in the form of a virtual machine by the Client.

5. SOFTWARE USAGE

5.1 RIGHT OF USE

Purpose: Client must use the Software for its internal needs or for those of its customers, namely, to insure the operational running of its information system or of that of its customers.

Usage: Software may only be used with the Box.

When the Order Form provides that the License is granted for the SaaS mode use of the Software, the Software can be used only with the Box installed in accordance with the Contract and on the Supplier's Platform.

When the Order Form provides that the License is granted for On Premise use of the Software, the Software can be used only with the Box installed in accordance with the Agreement and on the Platform located on the site(s) specified in the Commercial Proposal or the Order Form.

Scope: the right of use is limited to the modules of the Software referred to in the Order Form. The Software may only be used for (i) the number of servers or (ii) the number of equipments (iii) the number of control points specified in the Order Form..

5.2 RIGHTS AND OBLIGATIONS

Only Authorized Users may use the Software and access the monitoring Platform.

Client shall assign a username and a password to each Authorized User and shall be responsible for ensuring protection from security breaches. Individual workstations used for accessing the Software shall be made secure against any unauthorized use. Client is responsible for the manner in which the Software is used by all Authorized Users, both internal and external.

5.3 USE OF THE INFORMATION BY CLIENT

The use of the information resulting from Client Data is under control and sole responsibility of the Client. In line with its general duty of care as a professional, Client is responsible for checking and ensuring the consistency and accuracy of the information prior to each use.

5.4 CONTROL POINT TEMPLATES

Client acknowledges that the control point templates customized by Client during the installation of the Box are not covered by intellectual property rights. As such, Supplier may include them as custom templates in the Software.

6. ASSOCIATED SOFTWARE SERVICES

THE SUPPLIER PROVIDES, ACCORDING TO THE FOLLOWING PROVISIONS WHICH MAY EVOLVE ACCORDING TO THE STATE OF THE ART: (I) TECHNICAL FUNCTIONAL SUPPORT, AND (II) CORRECTIVE AND UPGRADE MAINTENANCE.

6.1 TECHNICAL FUNCTIONAL SUPPORT

• Service Desk contact channels:

Support service is accessible 24 hours a day, 7 days a week, for routine support needs from the Supplier's support website by issuing a ticket or sending an e-mail at the electrical address indicated on the Supplier's support website.

Supplier may occasionally ask Client to allow it to access its systems remotely, for diagnostic purposes. Any such remote access shall take place under Client's supervision.

Supplier reserves the right not to answer any request for assistance arising from the inappropriate use of the Software with regard to Documentation or training.

The effectiveness of the Associated Software Services requires Client to follow Software Updates. If an Update includes a Workaround or Fix, Supplier may request from Client to update the Software to the relevant Version in order to resolve the Incident.

Category	1st Reply target time	Resolution target time
1 – Critical Incident	2 hours (24/7/365)	4 hours (24/7/365)
2 – Major Incident	4 hours (Business Hours)	8 hours (Business Hours)
3 – Minor Incident	1 day (Business Hours)	Not applicable

The times indicated will start once the Supplier receives notice of the Incident including a full detailed description of the issue encountered.

6.2 MAINTENANCE

Planned Maintenance takes place during Extended Working Hours, unless the Client has subscribed to a specific billable planned maintenance service during non-working days.

• Installation and intervention process

- When the Order Form provides for SaaS use of the Software, Fixes and new Versions are installed by Supplier directly on the Client's Platform without the Client necessarily being informed and are transparent to the Client. However, in case of technical necessity, the Client will be informed that the installation of a Fix or the deployment of a new Versions required to modify its customized configuration of the Box.

- When the Order Form provides for On Premise use of the Software, Supplier shall install Fixes and new Versions directly on the Client's Platform, as scheduled with Client.

6.3 PLATFORM AND SOFTWARE ACCESS

When the License is granted for SaaS use of the Software, Client can access the Software remotely by logging on to the web url communicated by email by Supplier to the Client's Technical Contact person known at the License Start Date.

- Remote access to the Software by connecting to the Internet address provided by the Supplier, with a minimum availability of 99.9%,
- Provision and implementation of Patches and Updates.
- Continuity of service in the event of a Critical Incident:
 - o RTO: 4 hours 24/7/365
 - o RPO: 2 hours 24/7/365
- Data location: unless otherwise agreed, the Software is hosted entirely by the Supplier in data centers based in North America, including for the hosting of the backup centre in the context of a Disaster Recovery Plan (DRP).
- Backup of data in the country of hosting, for 7 calendar days.

6.4 AVAILABILITY

Client can access the Platform and Software seven days a week, 24 hours a day.

Supplier undertakes to provide a Service Availability Rate (SAR) of 99.9% every quarter.

The Service Availability Rate ("SAR") is calculated as follows:

$$SAR = (A-U) * 100 / A$$

Where:

A = total number of hours in the quarter - number of maintenance hours

(calculation of the service availability rate commences on the start date specified in the Order Form and ends on the end date of the current calendar quarter, and is then calculated for each calendar quarter);

U = number of unavailable hours in the quarter

(calculation commences on the start date specified in the Order Form and ends on the end date of the current calendar quarter, and is then calculated for each calendar quarter);

The number of hours is measured by monitoring tools shipped with the Software.

Service is deemed unavailable when Supplier's Platform is unable to accept any native authentication connection. Any other reason for unavailability (e.g. VPN, SSO, LDAP, ACL modification by Client, obsolete Supplier Version used in production) shall not be taken into consideration when calculating the SAR. Supplier's monitoring data shall be the sole authoritative source for calculating the SAR.

Service unavailability corresponds to a Critical Incident. Planned Maintenance operations are not computed as downtime whose Priority is P1. See Table 1: Incident priority in the TECHNICAL FUNCTIONAL SUPPORT clause.

Supplier and Client hereby agree to meet, on Client's request and no more than once quarterly, to review the performance of the Software availability. This meeting may be conducted via Web conferencing, emails or conference calls.

6.5 Client Data While operating the Associated Software Services, Supplier may need to access Client Data collected by the Box, extract it from the Box and reproduce it in a non-Client IT environment.

Supplier will obtain Client's agreement prior to the extraction and processing of this data. This agreement shall be subject, where appropriate, to the legal provisions specified in the General Terms and Conditions with regard to personal data protection.

In any event, the NON-DISCLOSURE clause in the General Terms and Conditions shall apply.

Only personnel authorized by the Supplier, including Support or R&D staff and the persons indicated in Client's agreement can perform this processing.

Once notified of the intervention, Client shall perform a backup of its Client Data and ensure that the backup operation is successful.

7. RESTITUTION AND REVERSIBILITY

At the end of the Agreement, the Client and/or the third-party designated by the Client (hereinafter referred to as the "Successor") may retrieve the Client Data via the Software API.

The Client shall return the Box to the Supplier in hardware form or delete the Box as a virtual machine.

At Client's written request, Supplier shall provide assistance to Client and/or Successor pursuant to the processes and financial conditions agreed upon by both Parties. This service may include:

- preparation of a plan for the transfer to Client or Successor,
- supply of support services to Client's or Successor's employees.

If the reversibility period extends beyond the term of the Contract, the provisions of the Contract shall survive its expiry or termination for the purpose of the service, and the fees specified in the Order Form shall be invoiced on a pro-rata basis.

The reversibility assistance service shall be invoiced based on Supplier's current applicable rate.
