

**Pro-Evaluate
Software as a Service
Terms and Conditions**

Software as a Service Terms and Conditions

Please read these terms and conditions carefully, as they set out our and your legal rights and obligations in relation our Pro-evaluate platform and services. You will be asked to agree to these terms and conditions before becoming a customer.

You should print a copy of these terms and conditions for future reference. We will not file a copy specifically in relation to you, and they may not be accessible on our website in future.

These terms and conditions are available in the English language only.

If you have any questions or complaints about our services, please contact us by writing to Unit 1 Pear Tree Business Park, Desford Lane, Ratby, Leicester, LE6 0PG or by email to leanne@evolve-consultants.co.uk.

1. Definitions and interpretation

1.1 In the Agreement:

"Affiliate" means an entity that Controls, is Controlled by, or is under common Control with the relevant entity;

"Agreement" means the agreement between the Provider and the Customer for the provision of the Platform as a service, incorporating these terms and conditions (including the Schedules) and the Statement of Services, and any amendments to the Agreement from time to time;

"Authorised Users" means those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation, as further described in Clause 3.2(d) and in respect of which the Customer has purchased a User Subscription.

"Business Day" means any week day, other than a bank or public holiday and the Christmas Shutdown, in England;

"Business Hours" means between 09:00 and 17:00 GMT on a Business Day;

"Charges" means the amounts payable by the Customer to the Provider under or in relation to the Agreement;

"Confidential Information" means information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in Clause 16.6 or Clause 16.7;

"Control" means the legal power to control (directly or indirectly) the management of an entity (and **"Controlled"** will be construed accordingly);

"Customer" means the customer specified in the Statement of Services;

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

"Customer Materials" all works and materials:

- (a) uploaded to, stored on, processed using or transmitted via the Platform by or on behalf of the Customer or by any person or application or automated system using the Customer's account; and
- (b) otherwise provided by the Customer to the Provider in connection with the Agreement;

"Customer Representatives" means the person or persons identified as such in the Statement of Services;

"Customisations" means customisations to the Platform that the Provider and Customer agree the Provider will produce on behalf of the Customer;

"Defect" means a defect, error or bug having an adverse effect on the appearance, operation or functionality of the Platform, but excluding any defect, error or bug caused by or arising as a result of an act or omission of the Customer, or an act or omission of one of the Customer's employees, officers, agents, suppliers or sub-contractors.

"Documentation" means the document made available to the Customer by the Provider online via <https://evolve-consultants.atlassian.net/servicedesk/customer/portal/3> or such other web address notified by the Provider to the Customer from time to time which sets out a description of the Services and the user instructions for the Services.;

"Effective Date" means the date of execution of the Agreement;

"Force Majeure Event" means an event, or a series of related events, that is outside the reasonable control of the party affected (including failures of or problems with the internet or a part of the internet, hacker attacks, virus or other malicious software attacks or infections, power failures, industrial disputes affecting any third party, changes to the law, disasters, explosions, fires, floods, riots, terrorist attacks and wars);

"Intellectual Property Rights" means all intellectual property rights wherever in the world, whether registered or unregistered, including any application or right of application for such rights (and the "intellectual property rights" referred to above include copyright and related rights, database rights, confidential information, trade secrets, know-how, business names, trade names, trade marks, service marks, passing off rights, unfair competition rights, patents, petty patents, utility models, semi-conductor topography rights and rights in designs);

"Minimum Term" means the period specified as such in the Statement of Services;

"Personal Data" has the meaning given to it in the Data Protection Act 1998;

"Platform" means the software platform known as Pro-Evaluate that is owned and operated by the Provider, and that will be made available to the Customer as a service under the Agreement;

"Provider" means Evolve-IT Consulting Limited a company incorporated in and registered in England and Wales with company number 06149634 and having its principal place of business at Unit 1 Pear Tree Business Park, Desford Lane, Ratby, Leicester LE6 0PG;

"Provider Representatives" means the person or persons identified as such in the Statement of Services;

"Representatives" means the Customer Representatives and the Provider Representatives;

"Services" the subscription services provided by the Provider to the Customer under this Agreement via a web address provided to you, or any other website notified to the Customer by the Provider from time to time, as more particularly described in the Documentation

"Schedule" means a schedule attached to the Agreement;

"Services" means all the services provided or to be provided by the Provider to the Customer under the Agreement, including the Support Services;

"Statement of Services" means the document made available by the Provider to the Customer during the order process;

"Software" means the online software applications provided by the Provider as part of the Services.

"Support Services" means support and maintenance services provided or to be provided by the Provider to the Customer in accordance with Schedule 1;

"Term" means the term of the Agreement; and

"Upgrades" means new versions of, and updates to, the Platform, whether for the purpose of fixing an error, bug or other issue in the Platform or enhancing the functionality of the Platform.

"User Subscriptions" means the user subscriptions purchased by the Customer pursuant to Clause 10.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this Agreement.

- 1.2 In the Agreement, a reference to a statute or statutory provision includes a reference to:
- (a) that statute or statutory provision as modified, consolidated and/or re-enacted from time to time; and
 - (b) any subordinate legislation made under that statute or statutory provision.
- 1.3 The Clause headings do not affect the interpretation of the Agreement.

2. Agreement and Term

- 2.1 This Agreement shall, unless otherwise terminated as provided with Clause 9(b) or Clause 18, commence on the Effective Date and shall continue for the Minimum Term and, thereafter, this Agreement shall be automatically renewed for successive periods of 36 months (each a **Renewal Period**), unless:
- (a) either party notifies the other party of termination, in writing, at least 60 days before the end of the Minimum Term or any Renewal Period, in which case this Agreement shall terminate upon the expiry of the applicable Minimum Term or Renewal Period; or
 - (b) otherwise terminated in accordance with the provisions of this Agreement
- and the Minimum Term together with any subsequent Renewal Periods shall

constitute the **Subscription Term**.

3. The Platform

- 3.1 Subject to the Customer paying the Charges and complying with the other terms and conditions of this Agreement, the Provider hereby grants to the Customer a non-exclusive, non-transferable right, without the right to grant sublicenses, to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations. The Provider will make available the Platform to the Customer by setting up an account for the Customer on the Platform, and providing to the Customer login details for that account within 3 Business Days following the Effective Date.
- 3.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) the maximum number of Authorised Users that it authorises to access and use the Services and the Documentation shall not exceed the number of User Subscriptions it has purchased from time to time;
 - (b) it will not allow or suffer any User Subscription to be used by more than one individual Authorised User unless it has been reassigned in its entirety to another individual Authorised User, in which case the prior Authorised User shall no longer have any right to access or use the Services and/or Documentation;
 - (c) each Authorised User shall keep a secure password for his use of the Services and Documentation, that such password shall be changed no less frequently than monthly and that each Authorised User shall keep his password confidential;
 - (d) it shall maintain a written, up to date list of current Authorised Users and provide such list to the Provider within 5 Business Days of the Provider's written request at any time or times;
 - (e) it shall permit the Provider to audit the Services in order to establish the name and password of each Authorised User. Such audit may be conducted no more than once per quarter, at the Provider's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business;
 - (f) if any of the audits referred to in Clause 3.2(e) reveal that any password has been provided to any individual who is not an Authorised User, then without prejudice to the Provider's other rights, the Customer shall promptly disable such passwords and the Provider shall not issue any new passwords to any such individual; and
 - (g) if any of the audits referred to in Clause 3.2(e) reveal that the Customer has underpaid Subscription Fees to the Provider, then without prejudice to the Provider's other rights, the Customer shall pay to the Provider an amount equal to such underpayment as calculated in accordance with the prices quoted within 10 Business Days of the date of the relevant audit.

- 3.3 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) is otherwise illegal or causes damage or injury to any person or property.

and the Provider 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.

- 3.3 The Customer shall not except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties and except to the extent expressly permitted under this Agreement:
- (a) 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;
 - (b) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software;
 - (c) 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;
 - (d) use the Services and/or Documentation to provide services to third parties;
 - (e) subject to Clause 22.5, 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
 - (f) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this Clause 3.

3.4 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 the Provider.

3.5 The rights provided under this Clause 3 are granted to the Customer only, and shall not be considered granted to any subsidiary or holding company of the Customer.

4. Additional User Subscriptions

- 4.1 Subject to Clause 4.2 and Clause 4.3, the Customer may, from time to time during any Subscription Term, purchase additional User Subscriptions in excess of those previously purchased in accordance with our standing pricing which can be requested at any time. The Provider shall grant access to the Services and the Documentation to such additional Authorised Users in accordance with the provisions of this Agreement.
- 4.2 If the Customer wishes to purchase additional User Subscriptions, the Customer shall notify the Provider in writing. The Provider shall evaluate such request for additional User Subscriptions and respond to the Customer with approval or rejection of the request. Where the Provider approves the request, the Provider shall activate the additional User Subscriptions within 2 working days of its approval of the Customer's request.
- 4.3 If the Provider approves the Customer's request to purchase additional User Subscriptions, the Customer shall, within 30 days of the date of the Provider's invoice, pay to the Provider the relevant quoted fees for such additional User Subscriptions, if such additional User Subscriptions are purchased by the Customer part way through the Minimum Term or any Renewal Period (as applicable), such fees shall be pro-rated from the date of activation by the Provider for the remainder of the Minimum Term or then current Renewal Period (as applicable).

5 The Services

- 4.1 The Provider 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.
- 4.2 The Provider 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 09:00 am to 5.00 pm UK time;
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Provider has used reasonable endeavours to give the Customer at least 6 Business Hours' notice in advance.

5. Support Services and Upgrades

- 5.1 During the Term the Provider will provide the Support Services to the Customer, and may apply Upgrades to the Platform, in accordance with the service level agreement set out in Schedule 1. The Customer may request enhanced support services which would be provided at the Provider's sole discretion and at its current rate, from time to time, for enhanced support services of that nature.
- 5.2 The Provider may sub-contract the provision of any of the Support Services without obtaining the consent of the Customer.

6. Customisations

- 6.1 From time to time the Provider and the Customer may agree that the Provider will

customise the Platform in accordance with a specification agreed in writing between the parties.

- 6.2 From the date when a Customisation is first made available to the Customer, the Customisation shall form part of the Platform under the Agreement, and accordingly from that date the Customer's rights to use the Customisation shall be governed by Clause 4.
- 6.3 The Customer acknowledges that the Provider may make any Customisation available to its other Customers.
- 6.4 All Intellectual Property Rights in the Customisations shall, as between the parties, be the exclusive property of the Provider.

7. Management

- 7.1 The Customer will ensure that any changes in relation to the Agreement will be given by a Customer Representative to a Provider Representative, and the Provider:
 - (a) may treat all such instructions as the fully authorised instructions of the Customer; and
 - (b) will not comply with any other instructions in relation to the Agreement without first obtaining the consent of a Customer Representative.

8. Customer Materials

- 8.1 The Customer grants to the Provider during the Term a non-exclusive licence to store, copy and otherwise use the Customer Materials for the purposes of providing the Services, fulfilling its other obligations under the Agreement and exercising its rights under the Agreement.
- 8.2 Subject to Clause 8.1, all Intellectual Property Rights in the Customer Materials will remain, as between the parties, the property of the Customer.
- 8.3 The Customer warrants and represents to the Provider that the Customer Materials, and their use by the Provider in accordance with the terms of the Agreement, will not:
 - (a) breach any laws, statutes, regulations or legally-binding codes;
 - (b) infringe any person's Intellectual Property Rights or other legal rights; or
 - (c) give rise to any cause of action against the Provider or the Customer or any third party,in each case in any jurisdiction and under any applicable law.
- 8.4 Where the Provider reasonably suspects that there has been a breach by the Customer of the provisions of this Clause 8, the Provider may:
 - (a) delete or amend the relevant Customer Materials; and/or
 - (b) suspend any or all of the Services and/or the Customer's access to the Platform while it investigates the matter.
- 8.5 The Provider shall ensure that the Customer Materials stored and processed by

the Platform are stored separately from, and are not co-mingled with, the materials of other customers of the Provider.

9. Trial period

If a trial period has been agreed the first 30 days of the Minimum Term shall be a trial period, during which all of the provisions of this Agreement shall apply, save as follows:

- (a) the Customer shall have no obligation to pay the license fee in respect of the trial period;
- (b) either party may terminate the Agreement immediately by giving written notice to the other party at any time before the end of the trial period (in which case no liability to pay the license fee in respect of Platform access or Support Services will arise);

10. Charges

- 10.1 The Customer shall pay the Charges, as quoted, to the Provider in accordance with this Clause 10.
- 10.2 The Provider will issue invoices for the Charges to the Customer in accordance with the provisions.
- 10.2 The Customer will pay the Charges to the Provider within 14 days of the date of issue of an invoice or via direct debit, issued in accordance with Clause 10.1.
- 10.3 All Charges stated in or in relation to the Agreement are stated exclusive of VAT, unless the context requires otherwise. VAT will be payable by the Customer to the Provider in addition to the principal amounts.
- 10.4 Charges must be paid by bank transfer using such payment details as are notified by the Provider to the Customer.
- 10.5 If the Customer does not pay any amount properly due to the Provider under or in connection with the Agreement, the Provider may:
 - (a) without liability to the Customer, terminate access to the Platform and the provision of the Services; and
 - (b) interest shall accrue on a daily basis on such due amounts at an annual rate equal to 8% over the then current base lending rate of HSBC Bank Plc from time to time, commencing on the due date and continuing until fully paid, whether before or after judgment
- 10.6 All amounts and fees stated or referred to in this Agreement:
 - (a) shall be payable in pounds sterling;
 - (b) are, subject to Clause 14.2(b), non-cancellable and non-refundable.
- 10.7 The Provider may vary the Charges payable on the anniversary of the Effective Date by giving to the Customer not less than 60 days' written notice of the variation.

11. Provider's obligations

- 11.1 The Provider undertakes that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 11.2 The undertaking at Clause 11.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Provider's instructions, or modification or alteration of the Services by any party other than the Provider or the Provider's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier 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 11.1. Notwithstanding the foregoing, the Provider:
- (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.
- 11.3 This Agreement shall not prevent the Provider 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.
- 11.4 The Provider warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this Agreement.

12. Customer's obligations

- 12.1 The Customer warrants to the Provider that it has the legal right and authority to enter into and perform its obligations under the Agreement.
- 12.2 The Customer shall :
- (a) provide the Provider with all necessary co-operation in relation to this Agreement and all necessary access to such information as may be required by the Provider in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
 - (b) 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, the Provider may adjust any agreed timetable or delivery schedule as reasonably necessary;
 - (c) 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;

- (d) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Provider, its contractors and agents to perform their obligations under this Agreement, including without limitation the Services;
- (e) ensure that its network and systems comply with the relevant specifications provided by the Provider from time to time; and
- (f) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Provider'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.

13. Indemnities

13.1 Subject to the Provider's compliance with Clause 13.2, the Customer will indemnify and will keep indemnified the Provider against all liabilities, damages, losses, costs and expenses (including legal expenses and amounts paid in settlement of any disputes) suffered or incurred by the Provider and arising as a result of any breach by the Customer of Clause 8.3 ("**Customer Indemnity Event**").

13.2 The Provider will:

- (a) upon becoming aware of an actual or potential Customer Indemnity Event, notify the Customer;
- (b) provide to the Customer reasonable assistance in relation to the Customer Indemnity Event;
- (c) allow the Customer the exclusive conduct of all disputes, proceedings, negotiations and settlements relating to the Customer Indemnity Event; and
- (d) not admit liability in connection with the Customer Indemnity Event or settle the Customer Indemnity Event without the prior written consent of the Customer.

13.3 The Provider shall defend the Customer, its officers, directors and employees against any claim that the Services or Documentation infringes any United Kingdom, copyright, trade mark, database right or right of confidentiality ("**Provider Indemnity Event**"), and shall indemnify the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that.

- (a) the Provider is given prompt notice of any such claim;
- (b) the Customer provides to the Provider reasonable assistance in relation to the Provider Indemnity Event;
- (c) allow the Provider the exclusive conduct of the claim; and
- (d) not admit liability in connection with the claim without the prior written consent of the Provider.

- 13.4 In no event shall the Provider, 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 the Provider;
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Provider; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Provider or any appropriate authority.
- 13.5 The foregoing Clause states the Customer's sole and exclusive rights and remedies, and the Provider's (including the Provider's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality

14. Limitations and exclusions of liability

14.1 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. The Provider shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Provider by the Customer in connection with the Services, or any actions taken by the Provider 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.

14.2 Nothing in the Agreement will:

- (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
- (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
- (c) limit any liability of a party in any way that is not permitted under applicable law; or
- (d) exclude any liability of a party that may not be excluded under applicable law.

14.3 Subject to Clause 14.2:

- (a) the Provider 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) the Provider's total aggregate liability in contract (including in respect of the indemnity at Clause 13.3), 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 Charges paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose.

14.4 Neither party will be liable for any losses arising out of a Force Majeure Event.

15. DATA PROTECTION

15.1. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 15 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.

15.2. The parties acknowledge that for the purposes of the Data Protection Legislation, The Customer is the controller and Evolve is the processor.

15.3. Without prejudice to the generality of clause 15.1, The Customer will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Evolve for the duration and purposes of this Agreement.

15.4. Without prejudice to the generality of clause 15.1, Evolve shall, in relation to any personal data processed in connection with the performance by Evolve of its obligations under this Agreement:

15.4.1. process that personal data only on the documented written instructions of The Customer unless the Provider is required by Applicable Laws to otherwise process that personal data. Where Evolve is relying on Applicable Laws as the basis for processing personal data, Evolve shall promptly notify The Customer of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Evolve from so notifying The Customer;

15.4.2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by The Customer, to protect against unauthorised or unlawful processing of personal data and against accidental loss or destruction of, or damage to, personal data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting personal data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to personal data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

15.4.3. not transfer any personal data outside of the European Economic Area unless the prior written consent of The Customer has been obtained and the following conditions are fulfilled:

- 15.4.3.1. The Customer or Evolve has provided appropriate safeguards in relation to the transfer;
- 15.4.3.2. the data subject has enforceable rights and effective legal remedies;
- 15.4.3.3. Evolve complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
- 15.4.3.4. Evolve complies with reasonable instructions notified to it in advance by The Customer with respect to the processing of the personal data;
- 15.4.4. assist The Customer, at The Customers cost, in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
- 15.4.5. notify The Customer without undue delay and in any event within 24 hours on becoming aware of a personal data breach;
- 15.4.6. at the written direction of The Customer, delete or return personal data and copies thereof to The Customer on termination of the agreement unless required by Applicable Law to store the personal data; and
- 15.4.7. maintain complete and accurate records and information to demonstrate its compliance with this clause 15 and allow for audits by The Customer or The Customer's designated auditor and immediately inform The Customer if, in the opinion of Evolve, an instruction infringes the Data Protection Legislation.
- 15.5. The Customer does not consent to Evolve appointing any third party processor of personal data under this Agreement.
- 15.6. Either party may, at any time on not less than 30 days' notice, revise this clause 15 by replacing it with any applicable controller to processor standard clauses or similar terms forming party of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).
- 15.7. Evolve shall follow its archiving and security policies and procedures for The Customer Data.

16. Confidentiality and publicity

- 16.1 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) which 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; or
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence.
- 16.2 Subject to Clause 16.4, 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.

- 16.3 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.
- 16.4 A party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this Clause 16.4, it takes into account the reasonable requests of the other party in relation to the content of such disclosure.
- 16.5 Neither party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.
- 16.6 The Customer acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Provider's Confidential Information.
- 16.7 The Provider acknowledges that the Customer Data is the Confidential Information of the Customer.
- 16.8 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.
- 16.9 The above provisions of this Clause 16 shall survive termination of this Agreement, however arising.

17. Proprietary rights

- 17.1 The Customer acknowledges and agrees that the Provider 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, under or in, any 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.
- 17.2 The Provider confirms that it has all the rights in relation to the Services and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this Agreement

18 Termination

- 18.1 Either party may terminate the Agreement immediately by giving written notice to the other party if the other party:
 - (a) commits any material breach of any term of the Agreement, and:

- (i) the breach is not remediable; or
- (ii) the breach is remediable, but the other party fails to remedy the breach within 30 days of receipt of a written notice requiring it to do so;

18.2 Either party may terminate the Agreement immediately by giving written notice to the other party if:

- (a) the other party:
 - (i) is dissolved;
 - (ii) ceases to conduct all of its business;
 - (iii) is or becomes unable to pay its debts as they fall due;
 - (iv) is or becomes insolvent or is declared insolvent; or
 - (v) convenes a meeting or makes or proposes to make any arrangement or composition with its creditors;
- (b) an administrator, administrative receiver, liquidator, receiver, trustee, manager or similar is appointed over any of the assets of the other party;
- (c) an order is made for the winding up of the other party, or the other party passes a resolution for its winding up other than for the purpose of a solvent company reorganisation where the resulting entity will assume all the obligations of the other party under the Agreement;

18.3 If the Provider stops or makes a good faith decision to stop operating the Platform generally, then the Provider may terminate the Agreement by giving at least 90 days' written notice of termination to the Customer.

18.4 The Provider may terminate the Agreement immediately by giving written notice of termination to the Customer where the Customer fails to pay to the Provider any amount due to be paid under the Agreement by the due date and remains in default not less than 14 days after being notified in writing to make such payment.

19. Effects of termination

19.1 On termination of this Agreement for any reason.

- (a) all licences granted under this Agreement shall immediately terminate and the Customer shall immediately cease all use of the Services and/or the Documentation;
- (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) the Provider may destroy or otherwise dispose of any of the Customer Data in its possession unless the Provider 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. The Provider 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 the Provider in returning or disposing of Customer Data;

- (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.

20. Notices

- 20.1 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 the address set out in this Clause, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this Agreement.

The Provider:
Evolve-IT Consulting Limited
Unit 1 Pear Tree Business Park
Desford Lane, Ratby, Leicester LE6 0PG
Leanne@evolve-consultants.co.uk

The Customer:
The addressee, address and email set out in the sign up process.

- 20.2 A notice will be deemed to have been received at the relevant time set out below or where such time is not within Business Hours, when Business Hours next begin after the relevant time set out below:
 - (a) where the notice is delivered personally, at the time of delivery (or if delivery is not in business hours, at 9 am on the first business day following delivery);
 - (b) where the notice is sent by pre paid first class post or recorded signed-for post, post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post.; and
 - (c) where the notice is sent by email, at the time of the transmission providing the sending party retains written evidence of the transmission.

21. Force Majeure Event

- 21.1 Where a Force Majeure Event gives rise to a failure or delay in either party performing its obligations under the Agreement other than obligations to make payment, those obligations will be suspended for the duration of the Force Majeure Event.
- 21.2 A party who becomes aware of a Force Majeure Event which gives rise to, or which is likely to give rise to, any failure or delay in performing its obligations under the Agreement, will:
 - (a) forthwith notify the other; and
 - (b) will inform the other of the period for which it is estimated that such

failure or delay will continue.

- 21.3 The affected party will take reasonable steps to mitigate the effects of the Force Majeure Event.

22. General

- 22.1 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.
- 22.2 If a Clause of the Agreement is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Agreement will continue in effect. If any unlawful and/or unenforceable Clause would be lawful or enforceable if part of it were deleted, that part will be deemed to be deleted, and the rest of the Clause will continue in effect (unless that would contradict the clear intention of the parties, in which case the entirety of the relevant Clause will be deemed to be deleted).
- 22.3 Nothing in the Agreement will constitute a partnership, agency relationship or contract of employment between the parties.
- 22.4 The Agreement may not be varied except by a written document signed by or on behalf of each of the parties.
- 22.5 The Customer shall not, without the prior written consent of the Provider, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement. The Provider 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.
- 22.6 Neither party will, without the other party's prior written consent, either during the term of the Agreement or within 6 months after the date of effective termination of the Agreement, engage, employ or otherwise solicit for employment any employee, agent or contractor of the other party who has been involved in the performance of the Agreement.
- 22.7 Each party agrees to execute (and arrange for the execution of) any documents and do (and arrange for the doing of) any things reasonably within that party's power, which are necessary to enable the parties to exercise their rights and fulfil their obligations under the Agreement.
- 22.8 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.
- 22.9 This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them, whether written or oral, relating to its subject matter. Each party acknowledges that in entering into this Agreement it does not rely on, and shall have no remedies in respect of, any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.
- 22.10 The Agreement will be governed by and construed in accordance with the laws of England and Wales; and the courts of England will have exclusive jurisdiction to

adjudicate any dispute arising under or in connection with the Agreement.

Schedule 1 Service Level Agreement

1. Introduction

1.1 In this Schedule:

"New Functionality" means new functionality that is introduced to the Platform by an Upgrade; and

"Protected Functionality" means the *core Pro-Evaluate functionality that must not be impaired by any Upgrade.*

"Service Credits" the service credits specified in the table set out in Paragraph 6.1.

1.2 References in this Schedule to Paragraphs are to the paragraphs of this Schedule, unless otherwise stated.

2. Helpdesk

2.1 The Provider will make available, Monday to Friday 09:00 – 17:00, a telephone and email helpdesk facility for the purposes of:

- (a) assisting the Customer with the configuration of the Platform;
- (b) assisting the Customer with the proper use of the Platform; and/or
- (c) determining the causes of errors and fixing errors in the Platform.

2.2 The Customer must make all requests for Support Services through the helpdesk, and all such requests must include at least the following information: Company Name, Individual Name, Email Address, Telephone Number and Problem Description. The Customer must provide prompt notice of any fault or issue to the Provider.

2.3 The Customer acknowledges that, to properly assess and resolve support requests, it may be necessary to permit the Provider direct access at the Customer Site to the Customer's system and the Customer's files, equipment and personnel. The Customer shall provide such access promptly, provided that the Provider complies with all the Customer's security requirements and other policies and procedures relating to contractors entering and working on the Customer Site notified to the Provider.

3. Response and resolution times

3.1 The Provider will:

- (a) use all reasonable endeavours to respond to requests for Support Services made through the helpdesk; and
- (b) use all reasonable endeavours to resolve issues raised by the Customer, promptly / in accordance with the following response time matrix.

Severity	Examples	Response time	Target Resolution time
Critical	The system is unavailable to all staff	2hrs	4hrs
Serious	The problem is affecting daily business operations and many users	2hrs	8hrs
Moderate	The problems is affecting a single user	4hrs	2 days
Minor	Minor bug not affecting business operations	8hrs	5 days

3.2 The Provider will determine, acting reasonably, in to which severity category an issue raised through the Support Services falls and will prioritise all support requests based on such assessment.

3.3 All Support Services will be provided remotely unless expressly agreed otherwise by the Provider.

4. Limits on Support Services

4.1 The Provider shall have no obligation under the Agreement to provide Support Services in respect of any fault or error caused by:

- (a) the improper use of the Platform; or
- (b) the use of the Platform otherwise than in accordance with the Documentation.

4.2 The Provider may reasonably determine that any services are outside of the scope of the Support Services. If the Provider makes any such determination, it shall promptly notify the Customer of that determination.

5. Upgrades

5.1 The Customer acknowledges that from time to time during the Term the Provider may apply Upgrades to the Platform, and that such Upgrades may, subject to Paragraph 5.2, result in changes the appearance and/or functionality of the Platform.

5.2 No Upgrade shall disable, delete or significantly impair the Protected Functionality.

5.3 The Provider will give to the Customer at least 30 days' prior written notice of the application of any significant Upgrade to the Platform. Such notice shall include details of the specific changes to the functionality of the Platform resulting from the application of the Upgrade.

5.4 The Customer shall not be subject to any additional Charges arising out of the application of the Upgrade, save where:

- (a) the Upgrade introduces New Functionality to the Platform;

- (b) that New Functionality does not serve the same purpose as legacy functionality that ceases or has ceased to be available as a result of any Upgrade;
- (c) access to or use of the New Functionality is chargeable to the customers of the Provider using the Platform generally; and
- (d) any decision by the Customer not to pay the Charges for the New Functionality will not prejudice the Customer's access to and use of the rest of the Platform.

6. Service Credits

6.1 If the Provider fails to provide a solution within the relevant Service Level response time, the Customer shall become entitled to the Service Credit specified in the table set out below corresponding to the relevant severity level of Fault on submitting a written claim for such Service Credit, provided that the relevant Fault or other problem relating to the Software.

- (a) did not result from a Customer Cause or a cause outside the Provider's control; and
- (b) was promptly notified to the Provider under Paragraph 2.2.

Severity Level of Fault	Service Credit
1	An amount equal to [PERCENTAGE]% of the-then current annual Support Fee for each additional day or part of a day (not to exceed [NUMBER] days) that the Provider fails to provide a Solution.
2	An amount equal to [PERCENTAGE]% of the-then current annual Support Fee for each additional day or part of a day (not to exceed [NUMBER] days) that the Provider fails to provide a Solution.
3	An amount equal to [PERCENTAGE]% of the-then current annual Support Fee for each additional day or part of a day (not to exceed [NUMBER] days) that the Provider fails to provide a Solution.

6.2 The parties acknowledge that each Service Credit is a genuine pre-estimate of the loss likely to be suffered by the Customer and not a penalty.

6.3 The provision of a Service Credit shall be an exclusive remedy for a particular Service Level failure.

6.4 Service Credits shall be shown as a deduction from the amount due from the Customer to the Provider in the next invoice then due to be issued under the Main Agreement. The Provider shall not in any circumstances be obliged to pay any money or make any refund to the Customer.

7. Back-up and restoration

- 7.1 Subject to Paragraph 7.2, the Provider will:
- (a) make back-ups of the Customer Materials stored on the Platform on a daily basis, and will retain such back-ups for at least 30 days; and
- 7.2 In the event of the loss of, or corruption of, Customer Materials stored on the Platform being notified by the Customer to the Provider under Paragraph 2, the Provider shall if so directed by the Customer use all reasonable endeavours promptly to restore the Customer Materials from the most recent available back-up copy.

8. Scheduled maintenance

- 8.1 The Provider may suspend access to the Platform in order to carry out scheduled maintenance, such maintenance to be carried out outside Monday to Friday 09:00 – 17:00 and such suspension to be for not more than 8 hours.
- 8.2 The Provider must give to the Customer at least 14 days' written notice of schedule maintenance, including full details of the expected Platform downtime.
- 8.3 Platform downtime during scheduled maintenance carried out by the Provider in accordance with this Paragraph 8 shall not be counted as downtime for the purposes of Paragraph 6.

Schedule 2 Acceptable Use Policy

(1) This Policy

This Acceptable Use Policy (the "**Policy**") sets out the rules governing the use of the software platform known as 'Pro-Evaluate ("the **Platform**") and any content that you may submit to the Platform ("**Content**").

By using the Platform, you agree to the rules set out in this Policy / We will ask you to expressly agree to the rules set out in this Policy.

(2) General restrictions

You must not use the Platform in any way that causes, or may cause, damage to the Platform or impairment of the availability or accessibility of the Platform, or any of the areas of, or services on, the Platform.

You must not use the Platform:

- (a) in any way that is unlawful, illegal, fraudulent or harmful;
- (b) in connection with any unlawful, illegal, fraudulent or harmful purpose or activity;
or
- (c) for the purpose of harming or attempting to harm minors in any way.

(3) Licence

You grant to us a worldwide, irrevocable, non-exclusive, royalty-free licence to use, reproduce, publish, and distribute your Content on and in relation to the Platform / in any existing and future media. You also grant to us the right to sub-license these rights, and the right to bring an action for infringement of these rights.

(4) Unlawful and illegal material

You must not use the Platform to store, host, copy, distribute, display, publish, transmit or send Content that is illegal or unlawful, or that will or may infringe a third party's legal rights, or that could give rise to legal action whether against you or us or a third party in each case in any jurisdiction and under any applicable law.

Content and its publication on the Platform must not:

- (a) be libellous or maliciously false;
- (b) be obscene or indecent;
- (c) infringe any copyright, moral rights, database rights, trade mark rights, design rights, rights in passing off, or other intellectual property rights;
- (d) infringe any rights of confidence, rights of privacy, or rights under data protection legislation;
- (e) constitute negligent advice or contain any negligent statement;
- (f) constitute an incitement to commit a crime;
- (g) be in contempt of any court, or in breach of any court order;

- (h) be in breach of racial or religious hatred or discrimination legislation;
- (i) be blasphemous;
- (j) be in breach of official secrets legislation; or
- (k) be in breach of any contractual obligation owed to any person.

You must not submit any Content that is or has ever been the subject of any threatened or actual legal proceedings or other similar complaint.

(5) Data mining

You must not conduct any systematic or automated data collection activities (including without limitation scraping, data mining, data extraction and data harvesting) on or in relation to the Platform without our express written consent.

(6) Graphic material

Content must not depict violence in an explicit, graphic or gratuitous manner.

Content must not be pornographic or sexually explicit, or consist of or include explicit, graphic or gratuitous material of a sexual nature.

(7) Harmful software

You must not use the Platform to promote or distribute any viruses, Trojans, worms, root kits, spyware, adware or any other harmful software, programs, routines, applications or technologies.

You must not use the Platform to promote or distribute any software, programs, routines, applications or technologies that will or may negatively affect the performance of a computer or introduce significant security risks to a computer.

(8) Factual accuracy

Content must not be untrue, false, inaccurate or misleading.

Statements of fact contained in the Content must be true; and statements of opinion contained on the Content must be truly held and where possible based upon facts that are true.

(9) Negligent advice

Content must not consist of or contain any instructions, advice or other information that may be acted upon and could, if acted upon, cause:

- (a) illness, injury or death; or
- (b) any other loss or damage.

(10) Marketing and spam

You must not without our prior written permission use the Platform for any purposes related to marketing, advertising, promotion, or the supply and/or sale of goods and/or services.

Content must not constitute spam.

You must not use the Platform to transmit or send unsolicited commercial communications.

You must not use the Platform to market, distribute or post chain letters, ponzi schemes, pyramid schemes, matrix programs, "get rich quick" schemes or similar schemes, programs or materials.

(11) Professional advice

You must not use the Platform to provide any legal, financial, investment, taxation, accountancy, medical or other professional advice or advisory services.

(12) Netiquette

Content must be appropriate, civil, tasteful and accord with generally accepted standards of etiquette and behaviour on the internet.

Content must not be offensive, deceptive, threatening, abusive, harassing, or menacing, hateful, discriminatory or inflammatory.

Content should not cause annoyance, inconvenience or needless anxiety.

Do not flame or conduct flame wars on the Service ("flaming" is the sending hostile messages intended to insult, in particular where the message is directed at a particular person or group of people).

Do not troll on the Platform ("trolling" is the practice of deliberately upsetting or offending other users).

You must not flood the Platform with Content focusing upon one particular subject or subject area, whether alone or in coordination with other users.

Content must not duplicate existing Content on the Platform.

You must submit Content to the appropriate part of the Platform.

Do not unnecessarily submit textual content in CAPITAL LETTERS.

You should use appropriate and informative titles for all Content.

You must at all times be courteous and polite to other Platform users.

(13) Breaches of this Policy

We reserve the right to edit or remove any Content in our sole discretion for any reason, without notice or explanation.

Without prejudice to this general right and our other legal rights, if you breach this Policy in any way, if we, in our sole discretion determine that you have acted contrary to the spirit of this policy in any way or reasonably suspect that you have breached this Policy in any way, we may:

- (a) delete or edit any of your Content;
- (b) send you one or more formal warnings;

- (c) temporarily suspend your access to a part or all of the Platform;
- (d) permanently prohibit you from using a part or all of the Platform; and/or
- (e) bring legal proceedings against you for reimbursement of all costs on an indemnity basis (including, but not limited to, reasonable administrative or legal costs) resulting from the breach;
- (f) bring further legal action against you; or
- (g) disclose such information to law enforcement authorities as we reasonably feel is necessary.

(14) Banned users

Where we suspend or prohibit your access to the Platform or a part of the Platform, you must not take any action to circumvent such suspension or prohibition (including without limitation using a different account).

(15) Monitoring

Notwithstanding the provisions of this Policy, we do not actively monitor Content.

(16) Report abuse

If you become aware of any material on the Platform that contravenes this Policy, you must notify us by email.

(17) Changes to this Policy

We reserve the right to revise this policy at any time.