

**EVALUCOM CONSULTING LIMITED**  
**SERVICES AGREEMENT**

**DATED:** [Date] ("**Effective Date**")

**BETWEEN:**

**EVALUCOM CONSULTING LIMITED**, a company incorporated in England and Wales, with company number 06195102, whose registered office is located at 20-22, Wenlock Road, London, England, N1 7GU ("**Evalucum**"); and

[**NAME**], whose registered office is located at [address] ("**Client**")

(together described as "the parties").

**BACKGROUND**

Evalucum is a software and consulting SME specialising in digital innovation and collaborative solutions to improve health and social care. Evalucum services are in relation to market analysis, pricing, contract development, procurement, contract management and quality monitoring.

The Client would like to receive such services in accordance with the terms of this Agreement.

**IT IS HEREBY AGREED** between the parties hereto as follows:

**1. DEFINITIONS AND INTERPRETATION**

1.1 For the purpose of this Agreement the following terms shall have the following meanings:

**"Accepted Statement of Work"** means Evalucum has provided a Statement of Work to Client and it has been accepted by Client either (i) signing the relevant Statement of Work; (ii) emailing Evalucum to indicate acceptance; or (iii) paying of some or all of the Charges payable under the applicable Statement of Work; or (iv) permitting Evalucum to commence provision of the Services;

**"Agreement"** means this Services Agreement between the parties and the Accepted Statements of Work;

**"Authorised Users"** means those employees, agents and independent contractors of the Client who are authorised by the Client to use the Software, as further described in clause 2.3;

**“Business Day”** means Monday to Friday but not public holidays in England;

**“Change”** means one or more modifications to the Agreement;

**“Change Request”** means a written request for a Change provided by either party to the other party;

**“Change Control Notice”** means a written record setting out the proposed changes of a Change Request from Evalucom to Client setting out the effects that such Change will have on the Agreement including, without limitation, timescales and costs to deliver the Change;

**“Charges”** means the charges payable in respect of the Software, Services and Deliverables, as set out in the Accepted Statement of Work;

**“Client Content”** means all Intellectual Property Rights in material which is provided by Client to Evalucom for use in the performance of the Services.

**“Data Protection Legislation”** means all applicable data protection and privacy legislation in force from time to time in the UK including the UK GDPR; the Data Protection Act 2018 (DPA 2018) (and regulations made thereunder); the Privacy and Electronic Communications Regulations 2003 (*SI 2003/2426*) as amended and all other legislation and regulatory requirements in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications); and the guidance and codes of practice issued by the Information Commissioner or other relevant regulatory authority and applicable to a party;;

**“Deliverables”** means the reports, advice, documents, products, materials and other deliverables (if any) to be provided pursuant to this Agreement and expressly set out in an Accepted Statement of Work, excluding Software;

**“Initial Subscription Term”** means the initial term of this Agreement as set out in the Accepted Statement of Work;

**“Intellectual Property Rights”** means all intellectual property rights, including patents, utility models, rights to inventions, trade and service marks, trade names, domain names, right in designs, copyrights, moral rights, topography rights, rights in computer software, rights in databases, goodwill and the right to sue for passing off, trade secrets and know-how, in all cases whether or not registered or registrable and including registrations and applications for registration of any of these and rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

**“Services”** means the managed services to be provided by Evalucom to Client, as set out in the Accepted Statement of Work;

**“Software”** means the CarePulse online market management platform;

**“Statement of Work”** means a statement of work to which this Agreement is attached;

**“Subscription Term”** means the Initial Subscription Term together with any subsequent renewal periods;

**“UK GDPR”** has the meaning given to it in section 3(10) (as supplemented by section 205(4)) of the Data Protection Act 2018;

**“VAT”** means value added tax chargeable in the United Kingdom;

**“Virus”** means 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 References to clauses and schedules shall be to clauses and schedules of this Agreement. The schedules to this Agreement form part of this Agreement and shall be interpreted accordingly.
- 1.3 The clause headings in this Agreement are inserted for ease of reference only and shall not affect the construction or interpretation of this Agreement.
- 1.4 In this Agreement the singular shall be deemed to include the plural and the plural shall be deemed to include the singular unless the context requires otherwise.
- 1.5 A reference to a particular law is a reference to it as it is in force for the time being taking account of any amendment, extension, application or re-enactment, and includes any subordinate legislation for the time being in force made under it.

## 2. THE SOFTWARE SUBSCRIPTION

- 2.1 Each Authorised User shall complete the online form at <https://www.carepulse.co.uk/> and request to register to access the Software. Evalucom shall approve the registration unless they have reasonable grounds not to do so.
- 2.2 Evalucom shall provide the Software and the Client agrees to pay the Charges as set out in an Accepted Statement of Work.
- 2.3 Subject to the restrictions set out in this Clause 2 and the other terms and conditions of this Agreement, Evalucom hereby grants to the Client a non-exclusive, non-transferable right and licence, without the right to grant sub-licences, to permit the Authorised Users to use the Software during the Subscription Term solely for the Client's internal business operations.
- 2.4 Evalucom shall create and maintain a list of the Client's Authorised Users and shall provide the updated list to the Client once every 12 months for the Client to validate the list.
- 2.5 In relation to the Authorised Users, the Client undertakes that:
- (a) each Authorised User shall keep a secure password for their use of the Software which they shall keep confidential; and
  - (b) it shall validate the list of current Authorised Users within 5 Business Days of such list being provided by Evalucom in accordance with clause 2.4.
- 2.6 The Client shall not access, store, distribute or transmit any Viruses, and shall ensure that Authorised Users do not introduce any material on to the Software during the course of their use of the Services that is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; facilitates illegal activity; depicts sexually explicit images; promotes unlawful violence; is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or is otherwise illegal or causes damage or injury to any person or property; and Evalucom reserves the right, without liability or prejudice to its other rights to the Client, to disable the Client's access to any material that breaches the provisions of this clause.
- 2.7 The Client shall not:
- (a) 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:

- (i) 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 Deliverables (as applicable) in any form or media or by any means; or
  - (ii) attempt to de-compile, reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or
- (b) attempt to obtain, or assist third parties in obtaining, access to the Software, other than as provided under this Clause 2; or
- (c) introduce or permit the introduction of any Virus into Evalucom's network and information systems.

2.8 The rights provided under this Clause 2 are granted to the Client only and shall not be considered granted to any subsidiary or holding company of the Client.

### **3. THE SERVICES AND DELIVERABLES**

3.1 Evalucom shall provide the Services and the Deliverables in each Accepted Statement of Work to Client, and Client agrees to pay the Charges for such Services and Deliverables.

3.2 The Services shall be performed with reasonable skill and care in a manner consistent with generally accepted standards for identical or similar services.

3.3 Client acknowledges that all the time estimates contained in the Statements of Work are estimates provided for information and are dependent on Client's performance of its obligations in accordance with the Agreement and the Statements of Work and in a timely manner.

3.4 The Client shall not:

- (a) access all or any part of the Services and Deliverables in order to build a product or service which competes with the Services and/or the Deliverables; or
- (b) use the Services and/or Deliverables to provide services to third parties; or
- (c) subject to Clause 16.6, license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services and/or Deliverables available to any third party except the Authorised Users.

- 3.5 The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or Deliverables and, in the event of any such unauthorised access or use, promptly notify Evalucom.
- 3.6 An Accepted Statement of Work may not be amended except in accordance with clause 4 below.
- 3.7 Evalucom and Client may from time to time mutually agree to additional services in additional Accepted Statements of Work, which shall be subject to the terms and conditions set out in this Agreement.
- 3.8 Each Accepted Statement of Work shall be part of this Agreement and shall not form a separate contract to it.

#### **4. CHANGE CONTROL**

- 4.1 Either party may, at any time, submit a Change Request but no proposed changes shall come into effect until a relevant Change Control Notice has been accepted in writing by both parties. The requesting party shall provide the other party with any information reasonably requested in connection with the Change Request.
- 4.2 If Evalucom wishes to submit a Change Request, it shall provide with it, a draft Change Control Notice to Client.
- 4.3 If Client wishes to make a Change Request, it shall notify Evalucom and following receipt of a Change Request, Evalucom shall submit a Change Control Notice to Client.
- 4.4 Following receipt of a Change Control Notice, Client may elect to accept the terms of the Change Control Notice, and shall notify Evalucom by e-mail of its decision to accept or not to accept such terms. In the event that Client accepts the terms of the Change Control Notice, the agreement of the parties to the Statement of Work shall be signified by (i) the parties signing the Change Control Notice; or (ii) a relevant previous Accepted Statement of Work shall be amended; or (iii) a new Statement of Work shall be agreed to reflect the Change.
- 4.5 If the Change Request is submitted by Client, Evalucom shall be entitled to charge for time spent investigating the Change Request and preparing the Change Control Notice at its then current time and materials rates.

## **5. CHARGES AND PAYMENTS**

- 5.1 In consideration for the provision of the Services, Client shall pay the Charges in accordance with the terms of this Agreement.
- 5.2 Evalucom shall issue invoices for applicable Charges as set out in the Accepted Statement of Work.
- 5.3 Client shall pay Evalucom all amounts due in accordance with payment terms set out in the Accepted Statement of Work within 14 days of the invoice date (the "Due Date").
- 5.4 Evalucom may increase the Charges from time to time (usually once a year) upon not less than thirty (30) days' prior notice to the Client such notice to take effect on the first day of the next calendar month. Any increase in the Charges will be in line with any increase in the CPI (Consumer Prices Index) in the period since the previous Charges were agreed.
- 5.5 All payments made or to be made under this Agreement shall be made in full, without any deduction, withholding, set-off or counterclaim on account of any taxes or otherwise.
- 5.6 In the event any payment is not made by the Due Date, Evalucom reserves the right to:
  - 5.6.1 suspend the Services on written notice to Client until payment is made (in such case Evalucom shall have no liability to Client for the consequences direct or otherwise of suspending the Services and Client shall be liable to Evalucom for any unavoidable direct costs of Evalucom incurred or arising as a consequence of suspending Services); and/or
  - 5.6.2 charge Client interest on any payment not made by the Due Date, such interest to be calculated on a daily basis, both before and after any judgment, at the rate of 8 per cent per annum above the base rate from time to time of the Bank of England, for the period from the Due Date until the date on which it is actually paid. It shall be compounded quarterly and payable on demand.
- 5.7 In the event of a bona fide dispute regarding any invoice or other request for payment, Client shall immediately notify Evalucom in writing and the parties shall attempt promptly and in good faith to resolve any dispute regarding amounts owed. Client shall pay all undisputed amounts on the Due Date.
- 5.8 All Charges hereunder are exclusive of VAT and all other taxes or duties. Where applicable, such taxes or duties shall be charged in addition to the Charges at the rates in force at the time of application.

## 6. CLIENT'S OBLIGATIONS

- 6.1 Client shall promptly perform all its obligations as set out herein (including, without limitation, those set out in the Accepted Statement of Work or reasonably notified by Evalucom to Client) and shall provide at no charge to Evalucom Client Content, specifications, documents, data and other information and services necessary to enable Evalucom to perform its obligations under this Agreement including:
- 6.1.1 providing adequate access to Client's premises, where applicable, and to the appropriate Client personnel;
  - 6.1.2 ensure that the Authorised Users use the Services and Deliverables in accordance with the terms of this Agreement and shall be responsible for any Authorised User's breach of this Agreement;
  - 6.1.3 ensure that its network and systems comply with the relevant specifications provided by Evalucom from time to time; and
  - 6.1.4 taking decisions and making information available as requested by Evalucom either within the timescales required by Evalucom or in the absence of a required timescale as soon as reasonably practicable following the request being made.
- 6.2 Client shall ensure that all information contained in Client Content shall be true, accurate and complete, and shall not infringe the rights of any third party. For the avoidance of doubt, Client hereby acknowledges and agrees that:
- 6.2.1 Client shall be responsible for verifying all Client Content prior to its provision to Evalucom; and
  - 6.2.2 Evalucom shall bear no responsibility or liability for checking Client Content prior to or during its use by Evalucom pursuant to this Agreement.
- 6.3 Evalucom shall not be liable for any loss, damage or delay or failure to comply with its obligations hereunder which arises from Client's failure to comply with its obligations hereunder and, where any delay is caused by a failure of Client, the time for performance of Evalucom's obligations under this Agreement shall be extended by the number of days equal to the delay caused by the Client.



## 7. DATA PROTECTION

- 7.1 Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 7 is in addition to, and does not relieve, remove or replace, a party's obligations or rights under the Data Protection Legislation.
- 7.2 Controller, processor, data subject, personal data, personal data breach, processing and appropriate technical and organisational measures shall have the meanings as set out in the Data Protection Legislation.
- 7.3 The parties acknowledge that for the purposes of the Data Protection Legislation, Client is the controller and Evalucom is the processor. Details of such processing by Evalucom are set out in Schedule 3.
- 7.4 Without prejudice to the generality of clause 7.1, Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the personal data to Evalucom for the duration and purposes of this Agreement.
- 7.5 Without prejudice to the generality of clause 7.1, Evalucom shall, in relation to any personal data processed in connection with the performance by Evalucom of its obligations under this Agreement:
- 7.5.1 process Client personal data only on the documented written instructions received from authorised person(s) identified in Schedule 3 ("**Authorised Person**") unless Evalucom is required by law or statute to otherwise process that personal data;
  - 7.5.2 ensure that it has in place appropriate technical and organisational measures, reviewed and approved by Client, 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);
  - 7.5.3 ensure that all personnel who have access to and/or process personal data are obliged to keep the personal data confidential; and

- 7.5.4 not transfer any personal data outside of the European Economic Area unless the prior written consent of Client has been obtained and the following conditions are fulfilled:
- 7.5.4.1 the Client or Evalucom has provided appropriate safeguards in relation to the transfer;
  - 7.5.4.2 the data subject has enforceable rights and effective legal remedies;
  - 7.5.4.3 Evalucom complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any personal data that is transferred; and
  - 7.5.4.4 Evalucom complies with reasonable instructions notified to it in advance by Client with respect to the processing of the personal data;
- 7.5.5 assist Client, at Client's 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;
- 7.5.6 notify Client without undue delay on becoming aware of a personal data breach;
- 7.5.7 at the written direction of Client, delete or return personal data and copies thereof to Client on termination of the Agreement unless required by law or statute to store the personal data; and
- 7.5.8 maintain complete and accurate records and information to demonstrate its compliance with this clause 7.
- 7.6 Either party may, at any time on not less than 30 days' notice, revise this clause 7 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this Agreement).

## **8. CONFIDENTIALITY**

- 8.1 Each party agrees to employ and to procure that its employees, workers, consultants, agents and sub-contractors use all reasonable endeavours to ensure that all data and information relating to the other's business provided to or acquired by it, its employees, workers, consultants, agents or

sub-contractors ("Receiving Party") under this Agreement is treated as secret and confidential and will not be disclosed to any third party without the prior written consent of other party unless:

- 8.1.1 the information was already lawfully known or became lawfully known to the Receiving Party independently of its involvement in this Agreement;
  - 8.1.2 the information is or becomes within the public domain other than due to the wrongful disclosure by the Receiving Party;
  - 8.1.3 disclosure or use is necessary for the proper and effective performance of the Receiving Party's rights under this Agreement;
  - 8.1.4 disclosure is required by a person or body having a legal right, duty or obligation to have access to the information and then only in pursuance of such a legal right, duty or obligation; or
  - 8.1.5 disclosure is to only those employees, workers, consultants, agents or sub-contractors who need to know the information in order to perform obligations under this Agreement.
- 8.2 Notwithstanding the foregoing, the parties shall not unreasonably refuse to agree to the following:
- 8.2.1 an announcement of the fact that Evalucom is providing certain Services to Client;
  - 8.2.2 press releases;
  - 8.2.3 the preparation of a case study;
  - 8.2.4 to act as a reference site.
- 8.3 The provisions of this clause 8 shall survive the termination of this Agreement.

## **9. INTELLECTUAL PROPERTY RIGHTS**

- 9.1 Nothing in this Agreement will serve to transfer from Evalucom to Client any of the Software or Intellectual Property Rights in the Deliverables, and all right, title and interest in and to the Deliverables and the Software will remain exclusively with Evalucom and/or Evalucom's licensors.
- 9.2 Subject to the payment of the Charges by Client, Evalucom hereby grants to Client the non-exclusive, non-assignable, non-sub-licensable right to use the Deliverables in perpetuity for

Client's internal business purposes, and only to receive the benefit of the Services as contemplated hereunder; and

- 9.3 Except for the rights expressly granted in this Agreement, nothing in this Agreement will serve to transfer from Client to Evalucom any of Client Content, and all right, title and interest in and to Client Content will remain exclusively with Client.
- 9.4 The Client grants to Evalucom a non-exclusive, worldwide, non-assignable, non-sub-licensable, royalty-free licence to use Client Content.
- 9.5 Nothing in this Agreement shall prevent Evalucom from using any knowledge, methods, techniques or procedures owned, developed or gained by Evalucom in the course of providing the Services and/or Deliverables for any purpose.

## **10. TERM AND TERMINATION**

- 10.1 This Agreement shall commence on the Effective Date and shall continue thereafter until terminated by either party on the provision of not less than thirty (30) days' written notice to the other (save that no such termination may take effect until all Statements of Work have been completed or terminated), unless terminated earlier in accordance with clause 10.2. Subject to clause 10.2, each Statement of Work may only be terminated in accordance with the notice provisions set out in such Accepted Statement of Work.
- 10.2 Either party may terminate this Agreement or any Accepted Statement of Work with immediate effect by written notice to the other party in the event that the other party:
  - 10.2.1 commits any material breach of its obligations under this Agreement and fails to remedy the same within thirty (30) working days of written notice to do so. For the avoidance of doubt, a failure to meet a deadline shall be considered a breach capable of being remedied.
  - 10.2.2 has a receiver or administrator appointed over the whole or any substantial part of its business or assets, or if any order is made or a resolution is passed for its winding up (other than for the purpose of a bona fide amalgamation or reconstruction of a solvent company).
- 10.3 The termination of this Agreement shall be without prejudice to any other rights or remedies to which Evalucom and Client may be entitled hereunder or at law.

10.4 On termination of this Agreement:

10.4.1 the Client shall immediately pay to Evalucom all of Evalucom's outstanding unpaid invoices (and interest if applicable) and, in respect of Services supplied but for which no invoice has been submitted, Evalucom may submit an invoice, which shall be payable immediately on receipt. Evalucom reserves the right to withhold any Deliverables due to the Client until such invoices have been paid in full;

10.4.2 any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect; and

10.4.3 the rights and liabilities of either party accruing or accrued prior to the termination of this Agreement or any Accepted Statement of Work (or part thereof) shall not be affected.

**11. WARRANTIES**

11.1 Save as expressly set out in this Agreement, to the maximum extent permitted by applicable law Evalucom hereby excludes all warranties of any kind, either express or implied, including but not limited to any (if any) implied warranties of merchantable quality, conditions of fitness for a particular purpose and any warranties arising by statute or otherwise in law, including but not limited to any warranty as to the accuracy and adequacy of any results generated through use of the Services, Software or Deliverables.

11.2 Except as expressly and specifically provided under this Agreement:

11.2.1 the Client assumes sole responsibility for results obtained from the use of the Services and the Deliverables by the Client, and for conclusions drawn from such use. Evalucom shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to Evalucom by the Client in connection with the Services, or any actions taken by Evalucom at the Client's direction;

11.2.2 the Software is provided to the Client on an "as is" basis.

11.3 Client hereby represents that it shall (i) comply with all applicable local and foreign laws and regulations which may govern the use of the Services and Deliverables, and (ii) use the Services and Deliverables only for lawful purposes and in accordance with the terms of this Agreement.

## **12. LIMITATION OF LIABILITY**

12.1 In the event that Evalucom fails to comply with its obligations under this Agreement then it shall be entitled to be given a reasonable opportunity to correct any errors and re-perform its obligations and provide the services hereunder.

12.2 In the event that Evalucom's failure to comply with its obligations is not remedied pursuant to clause 12.1, then, subject to clause 12.4

12.2.1 the total amount of Evalucom's liability to Client for all losses, damages, costs, claims and expenses howsoever and whenever arising from or in connection with each Accepted Statement of Work, whether arising in contract, tort (including negligence) or otherwise, shall not exceed in aggregate the amount paid to Evalucom under such Accepted Statement of Work in the preceding twelve months; and

12.2.2 without prejudice to clause 12.2.1, the total amount of Evalucom's liability to Client for all losses, damages, costs, claims and expenses howsoever and whenever arising from or in connection with this Agreement, whether arising in contract, tort (including negligence) or otherwise, shall not exceed in aggregate the amount paid to Evalucom under this Agreement in the preceding twelve months.

12.3 In no event shall Evalucom (including its respective employees, workers, consultants, agents and sub-contractors) be liable for:

12.3.1 any loss of profits, anticipated savings, loss of data, business interruption, loss of use, loss of contracts, loss of management time, loss of goodwill and reputation (whether direct or indirect);

12.3.2 any special, indirect, incidental, punitive, exemplary, or consequential damages arising out of or in connection with this Agreement;

even if Evalucom has been advised of the possibility of such damages, and whether or not caused by or resulting from its negligence or a breach of its statutory duties or a breach of its obligations howsoever caused even if it is advised of the possibility of such loss.

12.4 For the avoidance of doubt, nothing in this Agreement shall be deemed to exclude, restrict or limit liability of either party (or their respective employees, workers, consultants, agents or sub-contractors) for death or personal injury resulting from their negligence or any liability for fraud or fraudulent misrepresentation.

- 12.5 Both parties accept that the limitations and exclusions set out in this Agreement are reasonable having regard to all the circumstances.

### **13. THE USE OF SUB-CONTRACTORS AND AGENTS**

- 13.1 Evalucom may engage any person, company or firm as its agent or sub-contractor to perform all or any of its obligations or duties under this Agreement, provided always that such engagement shall not relieve Evalucom from any of its obligations hereunder.

### **14. FORCE MAJEURE**

- 14.1 Neither party or any of its employees, servants, workers, consultants, agents or sub-contractors shall be under any liability whatsoever to the other party for any non-performance, defective performance or delay in the provision of the Deliverables, performance of any of the Services or work to be supplied hereunder caused directly or indirectly by an act of God or by any other event or circumstance beyond the reasonable control of that party.

### **15. NON-SOLICITATION**

- 15.1 During the period this Agreement is in effect and for a period of six (6) months thereafter, Client agrees not to solicit or to offer employment to any employees of Evalucom or any workers, consultants, agents or sub-contractors used by Evalucom hereunder without the prior written consent of Evalucom.
- 15.2 In the event that Client breaches clause 15.1, it shall be liable to pay, immediately on demand, and without prejudice to any other remedy that Evalucom may have, the equivalent of twelve (12) months' gross salary of the employee or twelve (12) months' charges for the sub-contractor so solicited and/or employed. This shall be calculated by reference to the rate at which the gross salary or charges were payable by Evalucom to the employee or sub-contractor immediately prior to any such solicitation and/or employment.

### **16. MISCELLANEOUS**

- 16.1 The waiver by either party of its rights in respect of any breach of any provision of this Agreement shall not be taken or held to be a waiver in respect of any subsequent breach thereof.
- 16.2 No alteration, modification or addition to this Agreement shall be valid unless made in writing and signed by the duly authorised representatives from both parties.

- 16.3 All notices, documents and other communications relating to this Agreement must be in writing and shall be deemed delivered on the day of transmission if sent by 5:00 p.m. on a Business Day, or on the next Business Day if sent after 5:00 p.m. or on a non-Business Day when sent to:

Evalucom: Michael McHugh – [michael.mchugh@evalucom.co.uk](mailto:michael.mchugh@evalucom.co.uk)

Client: [name] – [email address]

This clause does not apply to the service of any proceedings or other documents in any legal action.

- 16.4 If any part of this Agreement is found to be unreasonable, invalid or unlawful under any enactment or rule of law the Court shall have the power to strike out or override that part whether it be an entire clause or clauses or some part or parts thereof and enforce this Agreement as if the offending part or parts had not been included.
- 16.5 Nothing in this Agreement shall give, directly or indirectly, any third party any enforceable benefit or any right of action against Evalucom and such third parties shall not be entitled to enforce any term of this Agreement against Evalucom.
- 16.6 Client may not assign transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights and obligations under this Agreement without the prior written consent of Evalucom which shall not be unreasonably delayed or withheld. Evalucom may at any time assign, transfer, charge, subcontract, declare a trust over or deal in any other manner with any or all of its rights under this Agreement.
- 16.7 Evalucom and Client are independent contractors. Neither party is the agent or partner of the other, nor does this Agreement create any joint venture between the parties. All financial obligations associated with Client's business are the sole responsibility of Client.
- 16.8 This Agreement and any subsequent Accepted Statement of Work entered into by the parties during the term of this Agreement, constitutes the entire Agreement between the parties. Other than as expressly stated otherwise in this Agreement neither party shall be under any liability for any representations made prior to or during the operation of this Agreement.
- 16.9 This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed and construed in accordance with the Laws of England and Wales and shall be subject to the exclusive jurisdiction of the Courts of England and Wales.



For and on behalf of

**EVALUCOM CONSULTING LIMITED**

SIGNED: .....

NAME: .....

TITLE: .....

DATE .....

For and on behalf of

**[NAME]**

SIGNED: .....

NAME: .....

TITLE: .....

DATE: .....

## **SCHEDULE 1**

### **STATEMENT OF WORK**

Start Date: [insert]

SoW Reference: [Insert]

This Statement of Work forms part of and is subject to the Professional Services Agreement dated [Date] between

**EVALUCOM CONSULTING LIMITED** (“**Evalucom**”); and

[NAME] (“**Client**”)

and is in addition to all other Accepted Statements of Work between Evalucom and Client.

#### **1 SOFTWARE, SERVICES AND DELIVERABLES**

1.1 Evalucom shall provide the Software, Services and/or deliver the Deliverables set out below:

**Initial Subscription Term:** [1 year]

**Renewal Period / Termination:** [annual automatic renewal for 12 months unless terminated by either party on [90] days’ written notice to expire at the end of the then current Initial Subscription Term or renewal period]

##### **Software Subscription**

CarePulse Software as a Service system will be used in the delivery of the Services (as set out in Schedule 2 below).

##### **Managed Services**

[Establishment of a Domiciliary Care/Nursing Home AQP framework in year 1 and on-going implementation and management of the Domiciliary Care/Nursing Home AQP framework in years 2 and 3. Full details of the Services are contained in Schedule 2.]

##### **Deliverables**

The deliverables are the output of the services provided to Client (as set out in Schedule 2 below).

## 2 MANAGERS

Client Project Manager: [Name]

Contact Details: [telephone number, email address]

Evalucom Project Manager: [Name]

Contact Details: [telephone number, email address]

## 3 CHARGES

### 3.1 Charging Rates

The Charges shall comprise the following:

£[X] + VAT [per year];

### 3.2 Payment

Quarter	Amount	Invoice Due Date
Q1	[amount]	[date]
Q2	[amount]	[date]
Q3	[amount]	[date]
Q4	[amount]	[date]

**CLIENT OBLIGATIONS**[Client shall provide Evalucom with prompt access to accurate domiciliary care pricing and volume data. Client will also review and input to procurement documentation as required. Client shall also make available clinical and commissioning staff to participate in the provider evaluation process. Full details of Client Obligations are contained in Schedule 2.]

For and on behalf of

**EVALUCOM CONSULTING LIMITED**

SIGNED: .....

For and on behalf of

**[NAME]**

SIGNED: .....

NAME: .....

NAME: .....

TITLE: .....

TITLE: .....

DATE: .....

DATE: .....

## **SCHEDULE 2**

### **THE SERVICES**

## **SCHEDULE 3**

### **DATA PROCESSING DETAILS**

#### **Scope of processing:**

The scope of processing by Evalucom is to provide the Services and Software to Authorised Users.

#### **Nature and purpose of processing:**

[The nature of processing by Evalucom is collecting, sorting, saving, transferring restricting and deleting data for the purpose of facilitating the fulfilment of Evalucom's obligations and provision of Services under this Agreement.]

#### **Duration of processing:**

[The duration of the processing by Evalucom is for the term of this Agreement and up to six years after the expiry or termination of this Agreement.]

#### **The types of personal data:**

[Contact details including name, job title, business address, email and phone number]

#### **Categories of data subject:**

[Client's employees, workers, consultants, agents and sub-contractors]

#### **Authorised Persons**

[name(s) and email address(es)]