

End User Licence Agreement (EULA)

This document and the documents referred to in it are your Terms of Use with Evalu-8 Software Ltd. Please read this carefully before using Evalu-8 Software and you may want to retain a copy for your records.

We will give you access to the System for the License Term on condition that you agree on behalf of yourself and the entity that you represent to act in accordance with these terms. On Accepting these terms you confirm that you are duly authorised on behalf of the Client to accept the terms and conditions set out below. You also warrant that the information submitted in signing up is correct and accurate to the best of your knowledge.

A: PROPERTY OF EVALU-8 SOFTWARE LTD

Following acceptance you may access and use the evalu-8 software through our server. The copyright, database rights and any other intellectual property rights in the programs and data which constitute this software product ('the materials'), are and remain the property of evalu-8 software limited.

B: LICENCE ACCEPTANCE PROCEDURE

On acceptance you indicate agreement to this end user licence agreement and the limited warranty and limitation of liability set out in this end user licence agreement on behalf of any corporate entity which employs you or which you represent ('client'). In this end user licence agreement, 'you' includes both the reader and any client. You should therefore read this end user licence agreement carefully before accepting.

DEFINITIONS

The following terms as used in this Agreement have the following meanings:

"Accept/Accepting/Acceptance" means:

1: your using of the website and/or the System by which you confirm that you accept these terms which shall constitute a binding contract between Evalu-8 Software Ltd and the Client.

If you do not agree to these terms, you must not use our website and/or the system.

"**Agreement**" means these terms of use which may be amended by Evalu-8 Software Ltd from time to time in its sole discretion;

"**Evalu-8 Software**" means the online HR and Employee SaaS managed by Evalu-8 Software Ltd and provided through the Website;

"**Evalu-8 Technology**" means all the proprietary technology used in delivering the Service (including the software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to the Client by Evalu-8 Software Ltd in providing the Service;

"**Business Day**" means a day other than a Saturday, Sunday or public holiday in England when banks in London are open for business;

"**Client**" means the corporate entity or organisation ordering the Service(s);

"Client Data" means any data, information or material provided or submitted by the Client to the Service or generated by the Service in the course of using the Service including but not limited to employee data held in the Service;

"Content" means the documents, software, products and services contained or made available to the Client in the course of using the Service;

"Data Protection Legislation" means (i) unless and until the GDPR is no longer directly applicable in the UK, the General Data Protection Regulation ((EU) 2016/679) and any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in the UK and then (ii) any successor legislation to the GDPR or the Data Protection Act 1998.

"Defect" means an error in the operation of the Service that causes the Service to fail to operate substantially as documented;

"Effective Date" means the date the Accepting Individual Accepts on behalf of the Client to commence use of the Service;

"Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world;

"License Administrator(s)" means those Users who are authorised to administer the Client use of the Service;

"License Term" means the period during which the Client is licensed to use the Service pursuant to this Agreement;

"Service(s)" means the online Human Resource services developed, operated, and maintained by Evalu-8 Software Ltd (and its licensors, where applicable), or ancillary online or offline products and services provided to the Client by Evalu-8 Software Ltd, to which the Client is being granted access under this Agreement, including the Evalu-8 Software Technology and the Content;

"User(s)" means the Client's employees, representatives, consultants, contractors or agents etc... who have been added to the service and / or are authorised to use the Service and / or have been supplied user identifications (with or without a password), either by the Client (or by Evalu-8 Software Ltd at the Clients request); and this applies whether they log in to the system or not.);

"Website" means <https://portal.evalu-8.com>.

DURATION

You are required to pay by direct debit on the 15th of the month of invoice. Services shall continue to be provided for so long as the Fees are paid in accordance with this Agreement unless and until this Agreement is terminated or expires. An admin fee will be charged for any bounced direct debit.

DISCLOSURE

With regard to any personal data input by or collected from the Client that may be stored or processed in the Evalu-8 Software system, such data shall be stored and processed by Evalu-8 Software Ltd in accordance with Data Protection Legislation. Note that because the Service is a hosted, online application, Evalu-8 Software Ltd occasionally may need to notify all Users of the Service of important announcements regarding the operation of the Service.

PRIVACY & DATA PROCESSING

Both parties shall comply with all applicable requirements of the Data Protection Legislation. This clause is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Evalu-8 Software Ltd is the data processor (where Data Controller and Data Processor have the meanings as defined in the Data Protection Legislation).

Without prejudice to the generality of the forgoing in this clause, the Client will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to Evalu-8 Software Ltd for the duration and purposes of this agreement.

Without prejudice to the generality of the forgoing of this clause, Evalu-8 Software Ltd shall, in relation to any Personal Data processed in connection with the performance by Evalu-8 Software Ltd of its obligations under this agreement:

1. process that Personal Data only on the written instructions of the Client unless Evalu-8 Software Ltd is required by the laws of any member of the European Union or by the laws of the European Union applicable to Evalu-8 Software Ltd to process Personal Data (Applicable Laws). Where Evalu-8 Software Ltd is relying on laws of a member of the European Union or European Union law as the basis for processing Personal Data, Evalu-8 Software Ltd shall promptly notify the Client of this before performing the processing required by the Applicable Laws unless those Applicable Laws prohibit Evalu-8 Software Ltd from so notifying the Client;
2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the 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);
3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential; and

4. assist the Client, at the 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;
5. notify the Client without undue delay on becoming aware of a Personal Data breach;
6. at the written direction of the Client, delete or return Personal Data and copies thereof to the Client on termination of the agreement in accordance with Clause "Data Return and Destruction" unless required by Applicable Law to store the Personal Data; and maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Client or the Client's designated auditor.

Evalu-8 Software Ltd will not transfer any Personal Data outside of the European Economic Area or ask you for permission to do this.

The Client consents to Evalu-8 Software Ltd appointing the following classes of third-party processors of Personal Data under this agreement:

- Service providers acting as processors based in the UK who provide IT, development and system administration services.
- Professional advisers acting as processors or joint controllers including lawyers, bankers, auditors and insurers based in the UK who provide consultancy, banking, legal, insurance and accounting services.
- HM Revenue & Customs, regulators and other authorities acting as processors or joint controllers based in the United Kingdom who require reporting of processing activities in certain circumstances.

Evalu-8 Software Ltd confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause. As between the Client and Evalu-8 Software Ltd, Evalu-8 Software Ltd shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause.

Evalu-8 Software Ltd may, at any time on not less than 30 days' notice, revise this clause 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).

Without prejudice to the generality of the foregoing, if the client becomes a paying user of the service, the client agrees that evalu-8 software limited can disclose the fact that the client is a paying user of the service.

LICENSE GRANT & RESTRICTIONS

Evalu-8 Software Ltd hereby grants the Client a non-exclusive, non-transferable, right to use the Service, solely for the Client's own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to the Client are reserved by Evalu-8 Software Ltd and its licensors.

The Client may not access the Service if they are a direct competitor of Evalu-8 Software Ltd, except with Evalu-8 Software Ltd's prior written consent. In addition, the Client may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

The client shall not:

1. license, lease, sublicense, sell, resell, transfer, display, disclose, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way;
2. modify, duplicate copy or make derivative works based upon the Service or the Content;
3. create Internet "links" to the Service or "frame", "mirror", republish, transmit or distribute any Content on any other server or wireless or Internet- based device;
4. reverse compile, decompile, or in any way reverse engineer or otherwise reduce to human perceivable form all or any part of the Service or Content;
5. attempt to obtain, or assist third parties in obtaining, access to the Services and/or Content (other than as provided under this Agreement); or
6. access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

The Client may use the Service only for internal business purposes and shall not:

1. store infringing, obscene, sexually explicit, threatening, harassing or racially or ethnically insensitive, libellous, or otherwise unlawful or tortious material, including material harmful to children or in violation of third party privacy rights;
2. store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
3. interfere with or disrupt the integrity or performance of the Service or the data contained therein; or
4. attempt to gain unauthorised access to the Service or its related systems or networks.

THE CLIENT'S RESPONSIBILITIES

The Client is responsible for all activity occurring under their User accounts and shall:

1. abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with their use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data;
2. carry out all other Client responsibilities set out in this Agreement in a timely and efficient manner;
3. review and approve the technical and organisational measures taken by Evalu-8 Software Ltd to protect against (a) unauthorised or unlawful processing, (b) accidental loss or destruction of or (c) damage to Personal Data be solely responsible for procuring

and maintaining its network connections and telecommunications links from its systems to Evalu- 8 Software Ltd, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Client's network connections or telecommunications links or caused by the internet

4. notify Evalu-8 Software Ltd immediately of any unauthorised use of any password or sub-account or any other known or suspected breach of security;
5. report to Evalu-8 Software Ltd immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by the Client or their Users; and
6. not impersonate another Evalu-8 Software User or provide false identity information to gain access to or use the Service.

ACCOUNT INFORMATION AND DATA

Evalu-8 Software Ltd does not own any of the Client Data. The Client, not Evalu-8 Software Ltd, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Client Data,

The Client undertakes that it has all necessary and appropriate rights, consents and notices in place to enable lawful transfer of any Personal Data that it supplies or otherwise makes available to Evalu-8 under or in relation to this Agreement (whether contained within Account Data, Client Data or otherwise), and that such rights shall remain in effect for the duration this Agreement and will enable Evalu-8 to perform its obligations under this Agreement in accordance with applicable Data Protection Legislation.

The Client shall ensure that all relevant third parties have been informed of, and where required by Applicable Law, have given their consent to the processing contemplated pursuant to this Agreement.

Evalu-8 shall follow routine archiving procedures for Client Data, including scheduled back-ups. In the event of any loss or damage to Client Data, the Client's sole and exclusive remedy shall be for Evalu-8 to use reasonable commercial endeavours to restore the lost or damaged Client Data from the latest back-up of such Client Data maintained by Evalu-8. Evalu-8 shall not be responsible for any loss, destruction, alteration or disclosure of Client Data caused by any third party.

If the Client becomes a paying User of the Service, the Client hereby accepts and agrees that Evalu-8 may include the Client's name and/or logo on the Website and Evalu-8 can disclose the fact that the Client is a paying User of the Service. The Client may opt-out of such inclusion by sending a written request to Evalu-8. In order to enable Evalu-8 to utilise its rights under this clause, the Client grants Evalu-8 a non-exclusive, non-transferable, terminable at-will licence to use, copy, store, transmit and display the Client's Intellectual Property Rights to the extent necessary or reasonable to enable Evalu-8 to make public announcements on the Website.

The Client shall indemnify and hold Evalu-8, its licensors and each such party's parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with:

- I. any breach of the Data Protection Legislation by the Client;
- II. any claim from an individual whose Personal Data is processed by Evalu-8 when providing the Services (except where such claim results from Evalu-8's breach of this Agreement); or
- III. any inaccuracy in the Client Data as input by the Client.

INTELLECTUAL PROPERTY OWNERSHIP

Evalu-8 Software Ltd alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Evalu-8 Software Technology and any content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by the Client or any other party relating to the Service. This Agreement is not a sale and does not convey to the Client any rights of ownership in or related to the Service, the Evalu-8 Software Technology or the Intellectual Property Rights owned by Evalu-8 Software Ltd. The Evalu-8 Software name, the Evalu-8 Software logo, and the product names associated with the Service are trademarks of Evalu-8 Software Ltd or third parties, and no right or license is granted to use them.

NON-PAYMENT AND SUSPENSION

In addition to any other rights granted to Evalu-8 herein, Evalu-8 reserves the right to suspend or terminate this Agreement and the Client's access to the Service if their account falls into arrears. If any sum payable under this Agreement is not paid within 7 days after the due date or any payment is rejected revoked or refused then (without prejudice to Evalu-8's other rights and remedies) Evalu-8 reserves the right to suspend the provision of any Services being rendered and to delete all Client preferences and settings in relation to the Evalu-8 system as set up for the Client.

Evalu-8 reserves the right to impose a reconnection fee in the event the Client is suspended and thereafter requests access to the Service.

TERMINATION

The client may terminate this service by providing three months' notice but will remain liable for outstanding fees defined under the contract until the contract end date, unless there is a material degradation of the service as per the clause covered under "customer termination for material degradation or service disruption. Refunds will not be granted if the Client terminates the service. Please note, if you remove employees whilst preparing to or during your notice period then we will charge you three months invoices at your initial invoice amount.

You are required to not cancel your direct debit until your final invoice is paid. The Client acknowledges that termination of this Agreement by it will result in the deletion of the Client Data. Accordingly, should the client wish to retain a copy of the Client Data following termination, it should contact support@evalu-8.com to request access.

Evalu-8 may terminate this Agreement for any reason by giving three calendar months' notice. If Evalu-8 decides to withdraw the Service (whether on a temporary or permanent basis) or

decides to no longer permit access to the Service by the Client (by use of passwords or changes of passwords or by any other means). Where Evalu-8 exercises its termination right on a permanent basis, Evalu-8 will refund to the Client, on a pro-rated basis, any Fees which have been pre-paid by the Client, up to the total number of whole months which have been paid for, but for which Services have not been provided.

Evalu-8 may terminate this Agreement if the Client commits any material breach of any of the terms of this Agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of being notified of the breach. Without limit to the generality of the foregoing any breach of the Client's payment obligations or unauthorised use of the Evalu-8 Technology or Service will be deemed a material and irremediable breach of this Agreement.

Either party shall have the right by notice in writing to the other party to terminate all or any part of this Agreement on or at any time after the happening of any of the following events:

- I. the passing by the other party of a resolution for its winding-up (except in connection with a bona fide business re-organisation) or the making by a court of competent jurisdiction of an order for the winding-up of the other party or the dissolution of the other party;
- II. the making of an administration order in relation to the other party or the appointment of a receiver or an administrative receiver over, or the taking possession or sale by an encumbrance of, any of the other party's assets; or
- III. the other party making an arrangement or composition with its creditors generally or making an application to a court of competent jurisdiction for protection from its creditors generally.

CUSTOMER TERMINATION FOR MATERIAL DEGRADATION OR SERVICE DISRUPTION

The Customer may terminate this Agreement upon written notice if, after the commencement of their use of the Services, there is a proven material degradation in the performance, reliability, or availability of the Services compared to what was previously provided on prior use or documentation, and such degradation is not remedied within sixty (60) days of the Customer's written notice. In such event, the Customer may terminate this Agreement without incurring further fees beyond the date of termination.

DATA RETURN AND DESTRUCTION

Subject to Clause "Internet Delays" and Clause "Force Majeure", Evalu-8 Software Ltd will give the Client access to all or part of the Client's data in its possession or control in the format and medium in which the Client uploaded the data to the service.

On termination of this Agreement for any reason or the expiry of its term, Evalu-8 Software Ltd will securely delete or destroy or, if directed by the Customer using the administration pages of the Service prior to such termination, return and not retain, all or any personal data related to this Agreement in its possession or control in the format and medium in which the Client uploaded the data to the service.

If any law, regulation, or government or regulatory body requires Evalu-8 Software Ltd to retain any documents or materials that Evalu-8 Software Ltd would otherwise be required to return or

destroy, it will notify the Client in writing of that retention requirement, giving details of the documents or materials that it must retain, the legal basis for retention, and establishing a specific timeline for destruction once the retention requirement ends.

REPRESENTATIONS & WARRANTIES

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Evalu-8 Software Ltd represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially as documented under normal use and circumstances. The sole remedy for breach of this warranty shall be correction of any Defects by Evalu-8 Software Ltd within a reasonable time from notification by the Client of the Defect that constitutes such a breach, providing that the Client provides all the information that may be necessary to assist Evalu-8 Software Ltd in resolving the Defect, including sufficient information to enable Evalu-8 Software Ltd to recreate the Defect.

The Client represents and warrants that they have not falsely identified themselves nor provided any false information to gain access to the Service and that their billing information is correct.

CONFIDENTIAL INFORMATION

Evalu-8 Software Ltd will keep all Client Data confidential, providing that Client Data may be disclosed to Evalu-8 Software Ltd employees, representatives, consultants, contractors or agents (who in turn will be legally bound to keep the Client Data confidential).

The obligation to keep the Client Data confidential will not apply to any information that:

1. Is already known to the public; or
2. Is required to be disclosed by law, by any governmental or other regulatory authority, or by a court or other authority of competent jurisdiction, providing that Evalu-8 Software Ltd will give the Client notice of the requirement to disclose of that disclosure as soon as practicable.

This clause shall survive termination of this agreement, however arising.

MUTUAL INDEMNIFICATION

1. Client Indemnity

The Client shall indemnify and hold harmless Evalu-8 Software Ltd, its licensors, and their respective parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents from and against any and all claims, costs, damages, losses, liabilities, and expenses (including reasonable legal fees) arising from:

- a) any claim that the Client Data infringes the rights of, or has caused harm to, a third party;

- b) any claim that, if true, would constitute a breach of the Client's representations or warranties; or
- c) any claim resulting from a breach of this Agreement by the Client or its Users.

This indemnity is subject to Evalu-8 Software Ltd:

- a) promptly providing written notice of the claim to the Client;
- b) granting the Client sole control over the defence and settlement of the claim (provided that no settlement shall impose liability on Evalu-8 Software Ltd or affect its business or services without its prior written consent);
- c) providing all reasonably available information and assistance; and
- d) not having compromised or settled the claim without the Client's consent.

2. Evalu-8 Software Ltd Indemnity

Evalu-8 Software Ltd shall indemnify and hold harmless the Client and its parent organisations, subsidiaries, affiliates, officers, directors, employees, attorneys, and agents from and against any and all claims, costs, damages, losses, liabilities, and expenses (including reasonable legal and professional fees) arising from:

- a) any proven claim that the Service directly infringes a third party's copyright or trademark.
- b) any claim that, if true, would constitute a material breach by Evalu-8 Software Ltd of its representations or warranties; or
- c) any claim arising from Evalu-8 Software Ltd's wilful and unauthorised disclosure of Client Data, unless required by law.

This indemnity is subject to the Client:

- a) promptly providing written notice of the claim to Evalu-8 Software Ltd;
- b) granting Evalu-8 Software Ltd sole control over the defence and settlement of the claim;
- c) providing all reasonably available information and assistance; and
- d) not having compromised or settled the claim without Evalu-8 Software Ltd's consent.

3. Exclusions

Evalu-8 Software Ltd shall have no obligation to indemnify the Client for claims arising from any infringement resulting from the combination of the Service with any Client-provided products, services, hardware, or business processes. In such cases, the Client shall indemnify Evalu-8 Software Ltd as described above.

DISCLAIMER OF WARRANTIES

Evalu-8 Software Ltd and its licensors do not guarantee that:

1. the accuracy, completeness or reliability of any of the content or data derived from the Services or that the Services will operate error free, virus free, without interruption or securely;

2. the Services will operate without defects, although we will use our best endeavors to correct any material defects that come to our attention;
3. that the Services will operate with any hardware, software, system or data not identified in the ordering process.

The Services are provided "as is" and, except as expressly set out in this Agreement, all conditions, representations and warranties, whether express, implied, statutory or otherwise, including, without limitation, any implied warranty of satisfactory quality, fitness for a particular purpose, or non-infringement of third party rights, are hereby disclaimed to the maximum extent permitted by applicable law by Evalu-8 and its licensors

INTERNET DELAYS

Evalu-8 Software Ltd's services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Evalu-8 software limited is not responsible for any delays, delivery failures, or other damage resulting from such problems.

FORCE MAJEURE

In this Agreement, "force majeure" shall mean any cause preventing Evalu-8 Software Ltd from performing any or all of Evalu-8 Software Ltd's obligations which arise from or are attributable to acts, events, omissions or accidents beyond Evalu-8 Software Ltd's reasonable control including without limitation strikes, lock-outs or other industrial disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, interruption or failure of utility service, including but not limited to electric power, gas or water or default of suppliers or sub-contractors.

Evalu-8 Software Ltd shall not be in breach of this Agreement if it is subject to a force majeure event, provided that it uses reasonable endeavours to notify you in writing of the nature and extent of the force majeure event causing Evalu-8 Software Ltd's failure or delay in performance.

If the force majeure event prevails for a continuous period of more than 2 months, the Client may terminate this Agreement by giving 14 days' written notice to Evalu-8 Software Ltd. On the expiry of this notice period, this Agreement will terminate. Such termination shall be without prejudice to Evalu-8 Software Ltd's rights in respect of any breach of this agreement occurring prior to such termination.

LIMITATION OF LIABILITY

Nothing in this agreement will exclude or limit evalu-8 software ltd liability for:

1. Death or personal injury caused by evalu-8 software ltd negligence; or
2. Fraud or fraudulent misrepresentation.

Subject to the indemnity clause, evalu-8 software ltd shall not be liable for any damages or losses as a result of a force majeure event.

Evalu-8 software ltd shall not be liable for:

1. Any loss of profits or other economic advantage
2. Any loss of data;
3. Any loss of goodwill;
4. Any loss of anticipated savings;
5. Any consequential losses; and/or
6. Any exemplary or punitive losses

Arising in respect of any representation, statement, act or omission in connection with this agreement, whether the claim arises under contract, tort, misrepresentation or breach of statutory duty.

Subject to paragraph 1 of this clause, in no event shall Evalu-8 Software Ltd aggregate liability exceed the amount that the client would have paid to evalu-8 software ltd in the twelve (12) month period immediately preceding the event giving rise to such claim as if the client had during such 12 month period been subject to Evalu-8 Software Ltd's pricing plan during such 12 month period

NOTICE

Evalu-8 Software Ltd may give notice by means of electronic mail to the Client's e-mail address on record in Evalu-8 Software Ltd's sub-account information, or by written communication sent by first class mail or pre- paid post to the address on record in Evalu-8 Software Ltd's sub-account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email).

The Client may only give:

1. notice to cancel the agreement in accordance with Clause "Termination", and/or
2. instructions in relation to the destruction or retention of data in accordance with Clause "Data Return and Destruction" in the administration pages of the Service.

Any other notice may be given to Evalu-8 Software Ltd (such notice shall be deemed given when received by Evalu-8 Software Ltd) by any of the following; letter delivered by nationally recognised overnight delivery service or first class postage prepaid mail to Evalu-8 Software Ltd.

MODIFICATION TO TERMS

Evalu-8 Software Ltd reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time. To access our latest EULA please visit <https://evalu-8.com/EULA>. Continued use of the Service after any such changes shall constitute the Clients consent to such changes.

ASSIGNMENT; CHANGE IN CONTROL

This Agreement may not be assigned by the Client without the prior written approval of Evalu-8 Software Ltd but may be assigned without the Client's consent by Evalu-8 Software Ltd to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of the Client that results or would result in a direct competitor of Evalu-8 Software Ltd directly or indirectly owning or controlling 50% or more of the Client shall entitle Evalu-8 Software Ltd to terminate this Agreement for cause immediately upon written notice.

OTHER TERMS

This Agreement shall be governed by and construed in accordance with the laws of England and Wales and the parties agree that any dispute relating to its terms or subject matter shall be subject to the exclusive jurisdiction of the English courts.

If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect.

No joint venture, partnership, employment, or agency relationship exists between the Client and Evalu-8 Software Ltd as a result of this agreement or use of the Service.

The failure of Evalu-8 Software Ltd to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Evalu-8 Software Ltd in signed writing authorised by a director of Evalu-8 Software Ltd.

This Agreement together with the Processing Policy and any copyright notices on the Website comprises the entire agreement between the Client and Evalu-8 Software Ltd in relation to the Services and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

THIRD PARTIES

For the purposes of the Contracts (Rights of Third Parties) Act 1999 this Agreement is not intended to, and does not, give any person who is not a party to it any right to enforce any of its provisions.