

Evalian Limited

Consultancy Services & Penetration Testing

Terms of Business

28 January 2026

Terms of Business for Consultancy Services

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Agreement" means the agreement entered into by Evalian and the Client incorporating the Statement of Work and these Terms and Conditions (or variation thereof agreed upon by both Parties) which shall govern provision of the Services;

"Business Day" means Monday to Friday excluding public holidays in England and Wales;

"Client" means the Party procuring the Services from Evalian as identified in the Statement of Work;

"Commencement Date" means the date on which provision of the Services will commence, as defined in the Statement of Work or such other date as is agreed in writing (including via email) between the parties;

"Confidential Information" means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Agreement (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

"Data Protection Legislation" means (i) unless and until EU Regulation 2016/679 General Data Protection Regulation ("GDPR") is no longer directly applicable in the UK, the GDPR and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK and subsequently (ii) any legislation which succeeds the GDPR;

"Fees" means any and all sums due under the Agreement from the Client to Evalian, as specified in the Statement of Work;

"Evalian" means Evalian Limited, a company incorporated in England and Wales (No. 11314058) whose registered address is at West Lodge, Leylands Business Park, Colden Common, Hampshire, SO21 1TH;

"Services" means the services to be provided by Evalian to the Client in accordance with Clause 2 of these Terms and Conditions, as fully defined in the Statement of Work; and

"Term" means the term of the Agreement as defined in the Statement of Work in the case of ongoing services or, in the case of consulting services, until the date of termination of the Agreement for whatever reason.

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions or to a Clause of the Agreement, as appropriate; and

1.2.5 a "Party" or the "Parties" refer to the parties to the Agreement.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include the other gender.

1.6 References to persons shall include corporations.

2. PROVISION OF THE SERVICES

2.1 With effect from the Commencement Date, Evalian shall, throughout the Term of the Agreement, provide the Services to the Client.

2.2 Evalian shall provide the Services with reasonable skill and care, in a timely and professional manner and in accordance with good industry practice.

2.3 Evalian shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

3. CLIENT'S OBLIGATIONS

3.1 The Client shall use all reasonable endeavours to provide all pertinent information to Evalian that is necessary for Evalian's provision of the Services and to meet its obligations, if any, set out in the Statement of Work.

3.2 In the event that Evalian requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.

3.3 If the nature of the Services requires that Evalian has access to the Client's office or IT systems, access to which is lawfully controlled by the Client, the Client shall ensure that Evalian has access to the same at the times to be agreed between Evalian and the Client as required.

- 3.4 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 3 of the Agreement shall not be the responsibility or fault of Evalian.

4. FEES, PAYMENT AND RECORDS

- 4.1 Evalian shall invoice the Client for the Fees, and the Client shall pay the Fees together with any VAT at the appropriate rate and any other expenses to Evalian, as set out in the Statement of Work.
- 4.2 All payments required to be made pursuant to the Agreement by the Client shall be made within 30 days of receipt by client of the relevant invoice ("due date") by bank transfer. Evalian's banking details will be provided in all invoices.
- 4.3 Where any payment pursuant to the Agreement is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 4.4 If the Client fails to pay any sums due by the due date then, without prejudice to any other right or remedy available to it, Evalian shall be entitled to withhold the supply of Services to be provided to the Client until such payment is made.

5. LIABILITY, INDEMNITY AND INSURANCE

- 5.1 Evalian shall ensure that it has in place at all times suitable and valid insurance that shall include professional indemnity and public liability insurance.
- 5.2 In the event that Evalian fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 5.3 Evalian's total liability for any loss or damage caused as a result of its negligence or breach of the Agreement shall be limited to the total sum payable by the Client as set out in the Statement of Work.
- 5.4 Nothing in these Terms and Conditions nor in the Agreement shall limit or exclude Evalian's liability for death or personal injury.
- 5.5 Subject to sub-Clause 5.3 of the Agreement Evalian shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of Evalian's breach of the Agreement.
- 5.6 Neither Party shall be liable to the other or be deemed to be in breach of the Agreement by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.

6. CONFIDENTIALITY

- 6.1 Each Party undertakes that, except as provided by sub-Clause 6.2 of these Terms and Conditions or as authorised in writing by the other Party, it shall, at all times during the continuance of the Agreement and for five years after its termination:
- 6.1.1 keep confidential all Confidential Information;
 - 6.1.2 not disclose any Confidential Information to any other party;
 - 6.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Agreement;
 - 6.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and
 - 6.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 6.1.1 to 6.1.4 of the Agreement.
- 6.2 Either Party may:
- 6.2.1 disclose any Confidential Information to:
 - 6.2.1.1 any sub-contractor or supplier of that Party;
 - 6.2.1.2 any governmental or other authority or regulatory body; or
 - 6.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;

to such extent only as is necessary for the purposes contemplated by the Agreement (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 6.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 6 of the Agreement, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
 - 6.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Agreement, or at any time after that date becomes, public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.
- 6.3 The provisions of Clause 6 of the Agreement shall continue in force in accordance with their terms, notwithstanding the termination of the Agreement for any reason.
- #### 7. NON-SOLICITATION
- 7.1 For the purposes of Clause 7, the following expressions shall have the following meanings:
- 7.1.1 "Relevant Period" means the Term;
 - 7.1.2 "Restricted Period" means the Term and a period of six months thereafter; and

- 7.1.3 "Restricted Person" means any person employed or engaged by either Party at any time during the Relevant Period who has or had material contact or dealing with the other Party.
- 7.2 In order to protect the legitimate business interests of each Party, during the Restricted Period neither Party shall, either directly or indirectly, by or through itself, its affiliate, its agent or otherwise, or in conjunction with its affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:
- 7.2.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of the other Party with a view to employing or engaging the Restricted Person, or
- 7.2.2 employ or engage, or offer to employ or engage a Restricted Person of the other Party
- without the prior written consent of the other Party.
- 7.3 Notwithstanding Clause 7.2 either Party may employ or engage any Restricted Person of the other Party who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the relevant Party or via an advertisement placed publicly by the relevant Party (either in the press, social media, online or in trade and industry publications).
- 8. FORCE MAJEURE**
- 8.1 No Party to the Agreement shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include, but are not limited to: power failure, internet service provider failure, industrial action, civil unrest, fire, flood, storms, earthquakes, acts of terrorism, acts of war, governmental action or any other event that is beyond the control of the Party in question.
- 9. TERM AND TERMINATION**
- 9.1 The Agreement shall come into force on the agreed Commencement Date and shall continue for the Term from that date, subject to the provisions of Clause 9 of these Terms and Conditions.
- 9.2 Either Party may terminate the Agreement by giving to the other not less than three month's written notice, to expire on or at any time after the minimum term of the Agreement (which shall be defined in the Statement of Work), if any.
- 9.3 Either Party may immediately terminate the Agreement by giving written notice to the other Party if:
- 9.3.1 any sum owing to that Party by the other Party under any of the provisions of the Agreement is not paid within thirty Business Days of the due date for payment;
- 9.3.2 the other Party commits any other breach of any of the provisions of the Agreement and, if the breach is capable of remedy, fails to remedy it within thirty Business Days after being given written notice giving full particulars of the breach and requiring it to be remedied;
- 9.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 9.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);
- 9.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Agreement);
- 9.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party; or
- 9.3.7 the other Party ceases, or threatens to cease, to carry on business.
- 9.4 For the purposes of sub-Clause 9.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 9.5 The rights to terminate the Agreement shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.
- 10. EFFECTS OF TERMINATION**
- Upon the termination of the Agreement for any reason:
- 10.1 any sum owing by either Party to the other under any of the provisions of the Agreement shall become immediately due and payable;
- 10.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Agreement shall remain in full force and effect;
- 10.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Agreement which existed at or before the date of termination;
- 10.4 subject as provided in Clause 11 of the Agreement and except in respect of any accrued rights neither Party shall be under any further obligation to the other; and
- 10.5 each Party shall (except to the extent referred to in Clause 8 of the Agreement) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

11. DATA PROTECTION

- 11.1 Evalian will collect, process and use any personal data collected in relation to the Services in accordance with the Data Protection Legislation.
- 11.2 Where Evalian is acting as an independent data controller in respect of any personal data collected in relation to the Services (such as for the Client contact information set out in the Statement of Work) it shall do so strictly in accordance with its privacy notice, as provided at <https://www.evalian.co.uk/privacy-notice/>.
- 11.3 Where Evalian is acting as data processor to the Client for personal data (as defined in the Data Protection Legislation) provided for the purposes of providing the Services, or accessed during provision of the Services ("Protected Data"), it shall:
- 11.3.1 only process such Protected Data in accordance with the Client's reasonable instructions;
 - 11.3.2 implement and maintain appropriate technical and organisational measures, taking account of the state of technical development and the nature of the processing, to protect the Protected Data against unauthorised or unlawful loss, destruction or alteration;
 - 11.3.3 only appoint sub-processors under a written contract containing materially the same obligations as under this clause 11.3 and remain fully liable to the client for the acts and omissions of the sub-processor under the Contract as if it were its own;
 - 11.3.4 not permit any processing of any Protected Data by any agent, subcontractor or third party (except it or its sub-processors' own in employees in the course of their employment that are subject to enforceable obligations of confidence with regard to personal);
 - 11.3.5 not process or transfer directly or indirectly any Protected Data in or to any countries outside the UK or EEA without the prior written approval of the Client;
 - 11.3.6 assist the Client (at the Client's cost) in ensuring its obligations pursuant to Articles 32 to 36 of the UK GDPR;
 - 11.3.7 assist the Client (at the Client's cost), in so far as this is possible for the fulfilment of the Client's obligations to respond to requests for exercising individual's under the UK GDPR in respect of Protected Data; and
 - 11.3.8 make available in accordance with the Data Protection Legislation, reasonable information that is in its possession and control to demonstrate its compliance with this clause 11.3.

12. MISCELLANEOUS

- 12.1 No failure or delay by either Party in exercising any of its rights under the Agreement shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 12.2 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Agreement into full force and effect.
- 12.3 Subject to any provisions to the contrary each Party shall pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of the Agreement.
- 12.4 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under the Agreement or any other agreement at any time.
- 12.5 The Agreement shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 12.6 Nothing in the Agreement shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Agreement.
- 12.7 No part of the Agreement shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Agreement.
- 12.8 Subject to Clause 12.7 of the Agreement, the Agreement shall continue and be binding on the transferee, successors and assigns of either Party as required.
- 12.9 All notices under the Agreement shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 12.10 Notices shall be deemed to have been duly given:
- 12.10.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 12.10.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 12.10.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 12.10.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.
- In each case notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.
- 12.11 The Agreement contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 12.12 Each Party shall acknowledge that, in entering into the Agreement, it does not rely on any representation, warranty or other provision

except as expressly provided in the Agreement, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.

- 12.13 The Agreement may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.
- 12.14 In the event that one or more of the provisions of the Agreement and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that / those provision(s) shall be deemed severed from the remainder of the Agreement and/or these Terms and Conditions. The remainder of the Agreement and/or these Terms and Conditions shall be valid and enforceable.
- 12.15 The Parties shall attempt to resolve any dispute arising out of or relating to the Agreement through negotiations between their appointed representatives who have the authority to settle such disputes.
- 12.16 The Agreement and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 12.17 Subject to the provisions of Clause 12.15, any dispute, controversy, proceedings or claim between the Parties relating to the Agreement or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.

Terms of Business for Penetration Testing

1. DEFINITIONS AND INTERPRETATION

1.1 In these Terms and Conditions, unless the context otherwise requires, the following expressions have the following meanings:

"Contract" has the meaning given in Clause 2;

"Business Day" means Monday to Friday excluding public holidays in England and Wales;

"Client" means the party procuring the Services from Evalian as identified in the Statement of Work;

"Commencement Date" means the date on which the Statement of Work is signed by the Client;

"Confidential Information" means, in relation to either Party, information which is disclosed to that Party by the other Party pursuant to or in connection with the Contract (whether orally or in writing or any other medium, and whether or not the information is expressly stated to be confidential or marked as such);

"Data Protection Legislation" means (i) the UK GDPR, (ii) the Data Protection Act 2018, and (iii) EU GDPR (to the extent applicable) and any national implementing laws, regulations, and secondary legislation (as amended from time to time), in the UK;

"Fees" means any and all sums due under the Contract from the Client to Evalian, as specified in the Statement of Work;

"Evalian" means Evalian Limited, a company incorporated in England and Wales (No. 11314058) whose registered address is at West Lodge, Nobs Crook, Colden Common, Winchester, England, SO21 1TH;

"Services" means the security testing services to be provided by Evalian to the Client in accordance with Clause 2 of these Terms and Conditions, as set out in the Statement of Work; and

"Term" means the term of the Contract from the date that the Statement of Work is signed by the Client until the date of termination of the Contract for whatever reason.

"Testing Period" means the dates on which the Parties have agreed that Evalian shall provide the Services as set out in the Statement of Work or as otherwise agreed in writing between the Parties (including by email).

1.2 Unless the context otherwise requires, each reference in these Terms and Conditions to:

1.2.1 "writing", and any cognate expression, includes a reference to any communication effected by electronic or facsimile transmission or similar means;

1.2.2 a statute or a provision of a statute is a reference to that statute or provision as amended or re-enacted at the relevant time;

1.2.3 "these Terms and Conditions" is a reference to these Terms and Conditions as amended or supplemented at the relevant time;

1.2.4 a Clause or paragraph is a reference to a Clause of these Terms and Conditions; and

1.2.5 a "Party" or the "Parties" refer to the parties to the Contract.

1.3 The headings used in these Terms and Conditions are for convenience only and shall have no effect upon the interpretation of these Terms and Conditions.

1.4 Words imparting the singular number shall include the plural and vice versa.

1.5 References to any gender shall include all genders.

1.6 References to persons shall include corporations.

2. THE CONTRACT

The Client agrees that by signing the Statement of Work it is explicitly agreeing to the Permission to Test Agreement and with these Terms and Conditions and that the Statement of Work, the Permission to Test Agreement and these Terms and Conditions collectively form the "Contract" entered into between Evalian and the Client in relation to the Services.

3. PROVISION OF THE SERVICES

3.1 Evalian shall provide the Services to the Client during the Testing Period.

3.2 The Services will consist of security tests carried out against the systems set out in the Statement of Work and will be performed using a combination of automated and manual testing techniques, using open source and commercially available testing tools.

3.3 Evalian shall provide the Services with reasonable skill and care, in a timely and professional manner and in accordance with good industry practice.

3.4 Evalian shall be responsible for ensuring that it complies with all statutes, regulations, byelaws, standards, codes of conduct and any other rules relevant to the provision of the Services.

4. CLIENT'S OBLIGATIONS

4.1 The Client shall in advance of the Testing Period:

- 4.1.1 ensure that all information and materials provided to Evalian for provision of the Services, including the information set out in the Statement of Work, are complete and accurate;
- 4.1.2 provide all information and materials to Evalian, and make configuration changes to systems, that is or are reasonably necessary for Evalian to provide the Services and meet its obligations as set out in the Statement of Work;
- 4.1.3 provide Evalian with access to such of its systems, premises or other facilities as are reasonably necessary for provision of the Services; and
- 4.1.4 ensure Evalian has the right to access any information or data on any systems which may be accessed by Evalian in connection with provision of the Services.
- 4.2 Where security testing is to be performed on systems hosted, managed, shared or owned by a third party, it is the Client's sole responsibility to ensure that it has informed the third party and has obtained their approval for the Services to be carried out during the testing period.
- 4.3 In the event that Evalian requires the decision, approval, consent or any other communication from the Client in order to continue with the provision of the Services or any part thereof at any time, the Client shall provide the same in a reasonable and timely manner.
- 4.4 Any delay in the provision of the Services resulting from the Client's failure or delay in complying with any of the provisions of Clause 4 shall not be the responsibility or fault of Evalian and may, at Evalian's discretion, be treated as a cancellation or request to reschedule by the client as covered at clause 5.5.
- 5. FEES, PAYMENT AND CANCELLATION**
- 5.1 Evalian shall invoice the Client for the Fees, and the Client shall pay the Fees together with any VAT at the appropriate rate and any other expenses to Evalian, as set out in the Statement of Work.
- 5.2 All payments required to be made pursuant to the Contract by the Client shall be made within 30 days of receipt by the client of the relevant invoice ("due date") by bank transfer. Evalian's banking details will be provided in all invoices.
- 5.3 Where any payment pursuant to the Contract is required to be made on a day that is not a Business Day, it may be made on the next following Business Day.
- 5.4 If the Client fails to pay any sums due by the due date then, without prejudice to any other right or remedy available to it, Evalian shall be entitled to withhold the supply of Services to be provided to the Client until such payment is made.
- 5.5 In the event the Client reschedules or cancels the Services ten (10) working days or less prior to the Testing Period, Evalian may at its discretion charge the Client a cancellation fee and recover any out-of-pocket expenses incurred as a result of the cancellation or rescheduling of the Services as set out at section 9 of the Statement of Work.
- 6. LIABILITY, INDEMNITY AND INSURANCE**
- 6.1 Evalian shall ensure that it has in place at all times suitable and valid insurance that shall include professional indemnity and public liability insurance.
- 6.2 The Client acknowledges and accepts that:
 - 6.2.1 the provision of Services may cause disruption to the Client's systems (including any connected third-party systems) and the Client shall ensure that all such systems are fully and effectively backed up and resilient to the Services and Evalian shall not be liable for any loss or damage caused to the Client's (or any third party's) data or systems as a result of the Services or the failure to back up systems or data or to ensure system resilience; and
 - 6.2.2 the Services provide point in time security testing of the Client's systems as set out in the Statement of Work and that new vulnerabilities and exploits are likely to arise or be identified over time and Evalian does not offer any implied or explicit guarantee that the Services will mean the systems tested are secure from every method of attack or exploitation.
- 6.3 In the event that Evalian fails to perform the Services with reasonable care and skill it shall carry out any and all necessary remedial action at no additional cost to the Client.
- 6.4 Evalian's total liability for any loss or damage caused as a result of its negligence or breach of the Contract shall be limited to the total sum payable by the Client as set out in the Statement of Work.
- 6.5 Nothing in these Terms and Conditions nor in the Contract shall limit or exclude Evalian's liability for death or personal injury.
- 6.6 Subject to sub-Clause 6.4, Evalian shall indemnify the Client against any costs, liability, damages, loss, claims or proceedings arising out of Evalian's breach of the Contract.
- 6.7 Neither Party shall be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of that Party's obligations if the delay or failure is due to any cause beyond that Party's reasonable control.
- 7. CONFIDENTIALITY**
- 7.1 Each Party undertakes that, except as provided by sub-Clause 7.2 or as authorised in writing by the other Party, it shall, at all times during the continuance of the Contract and for five years after its termination:
 - 7.1.1 keep confidential all Confidential Information;
 - 7.1.2 not disclose any Confidential Information to any other party;
 - 7.1.3 not use any Confidential Information for any purpose other than as contemplated by and subject to the terms of the Contract;
 - 7.1.4 not make any copies of, record in any way or part with possession of any Confidential Information; and

- 7.1.5 ensure that none of its directors, officers, employees, agents, sub-contractors or advisers does any act which, if done by that Party, would be a breach of the provisions of sub-Clauses 7.1.1 to 7.1.4.
- 7.2 Either Party may:
- 7.2.1 disclose any Confidential Information to:
- 7.2.1.1 any sub-contractor or supplier of that Party;
- 7.2.1.2 any governmental or other authority or regulatory body; or
- 7.2.1.3 any employee or officer of that Party or of any of the aforementioned persons, parties or bodies;
- to such extent only as is necessary for the purposes contemplated by the Contract (including, but not limited to, the provision of the Services), or as required by law. In each case that Party shall first inform the person, party or body in question that the Confidential Information is confidential and (except where the disclosure is to any such body under sub-Clause 7.2.1.2 or any employee or officer of any such body) obtaining and submitting to the other Party a written confidentiality undertaking from the party in question. Such undertaking should be as nearly as practicable in the terms of Clause 7, to keep the Confidential Information confidential and to use it only for the purposes for which the disclosure is made; and
- 7.2.2 use any Confidential Information for any purpose, or disclose it to any other person, to the extent only that it is at the date of the Contract, or at any time after that date becomes public knowledge through no fault of that Party. In making such use or disclosure, that Party must not disclose any part of the Confidential Information that is not public knowledge.
- 7.3 The provisions of Clause 7 shall continue in force in accordance with their terms, notwithstanding the termination of the Contract for any reason.
- 8. NON-SOLICITATION**
- 8.1 For the purposes of Clause 8, the following expressions shall have the following meanings:
- 8.1.1 "Relevant Period" means the Term;
- 8.1.2 "Restricted Period" means the Term and a period of six months thereafter; and
- 8.1.3 "Restricted Person" means any person employed or engaged by either Party at any time during the Relevant Period who has or had material contact or dealing with the other Party.
- 8.2 In order to protect the legitimate business interests of each Party, during the Restricted Period neither Party shall, either directly or indirectly, by or through itself, its affiliate, its agent or otherwise, or in conjunction with its affiliate, its agent or otherwise, whether for its own benefit or for the benefit of any other person:
- 8.2.1 solicit, entice or induce, or endeavour to solicit, entice or induce, any Restricted Person of the other Party with a view to employing or engaging the Restricted Person, or
- 8.2.2 employ or engage, or offer to employ or engage a Restricted Person of the other Party
- without the prior written consent of the other Party.
- 8.3 Notwithstanding Clause 8.2, either Party may employ or engage any Restricted Person of the other Party who has responded directly to a bona fide recruitment drive either through a recruitment agency engaged by the relevant party or via an advertisement placed publicly by the relevant Party (either in the press, social media, online or in trade and industry publications).
- 9. FORCE MAJEURE**
- 9.1 No Party to the Contract shall be liable for any failure or delay in performing their obligations where such failure or delay results from any cause that is beyond the reasonable control of that Party. Such causes include but are not limited to: power failure; internet service provider failure; industrial action; civil unrest; fire; flood; storms; earthquakes; acts of terrorism; acts of war; governmental action; or any other event that is beyond the control of the Party in question.
- 10. TERM AND TERMINATION**
- 10.1 The Contract shall come into force on the agreed Commencement Date and shall continue for the Term from that date, subject to the provisions of Clause 10.
- 10.2 Either Party may terminate the Contract by giving to the other not less than three month's written notice, to expire on or at any time after the minimum term of the Contract (which shall be defined in the Statement of Work), if any.
- 10.3 Either Party may immediately terminate the Contract by giving written notice to the other Party if:
- 10.3.1 any sum owing to that Party by the other Party under any of the provisions of the Contract is not paid within thirty Business Days of the due date for payment;
- 10.3.2 the other Party commits any other breach of any of the provisions of the Contract and, if the breach is capable of remedy, fails to remedy it within thirty Business Days after being given written notice, giving full particulars of the breach and requiring it to be remedied;
- 10.3.3 an encumbrancer takes possession, or where the other Party is a company, a receiver is appointed, of any of the property or assets of that other Party;
- 10.3.4 the other Party makes any voluntary arrangement with its creditors or, being a company, becomes subject to an administration order (within the meaning of the Insolvency Act 1986);

- 10.3.5 the other Party, being an individual or firm, has a bankruptcy order made against it or, being a company, goes into liquidation (except for the purposes of bona fide amalgamation or re-construction and in such a manner that the company resulting therefrom effectively agrees to be bound by or assume the obligations imposed on that other Party under the Contract);
 - 10.3.6 anything analogous to any of the foregoing under the law of any jurisdiction occurs in relation to the other Party; or
 - 10.3.7 the other Party ceases, or threatens to cease, to carry on business.
- 10.4 For the purposes of sub-Clause 10.3.2, a breach shall be considered capable of remedy if the Party in breach can comply with the provision in question in all respects.
- 10.5 The rights to terminate the Contract shall not prejudice any other right or remedy of either Party in respect of the breach concerned (if any) or any other breach.

11. EFFECTS OF TERMINATION

Upon the termination of the Contract for any reason:

- 11.1 any sum owing by either Party to the other under any of the provisions of the Contract shall become immediately due and payable;
- 11.2 all Clauses which, either expressly or by their nature, relate to the period after the expiry or termination of the Contract shall remain in full force and effect;
- 11.3 termination shall not affect or prejudice any right to damages or other remedy which the terminating Party may have in respect of the event giving rise to the termination or any other right to damages or other remedy which any Party may have in respect of any breach of the Contract which existed at or before the date of termination;
- 11.4 subject as provided in Clause 12 and except in respect of any accrued rights, neither Party shall be under any further obligation to the other; and
- 11.5 each Party shall (except to the extent referred to in Clause 7) immediately cease to use, either directly or indirectly, any Confidential Information, and shall immediately return to the other Party any documents in its possession or control which contain or record any Confidential Information.

12. DATA PROTECTION

- 12.1 Evalian will collect, process and use any personal data collected in relation to the Services in accordance with the Data Protection Legislation.
- 12.2 Where Evalian is acting as an independent data controller in respect of any personal data collected in relation to the Services (such as for the Client contact information set out in the Statement of Work) it shall do so strictly in accordance with its privacy notice, as provided at <https://www.evalian.co.uk/privacy-notice/>.
- 12.3 Where Evalian is acting as data processor to the Client for personal data (as defined in the Data Protection Legislation) provided for the purposes of providing the Services, or accessed during provision of the Services ("Protected Data"), it shall:
 - 12.3.1 only process such Protected Data in accordance with the Client's reasonable instructions;
 - 12.3.2 implement and maintain appropriate technical and organisational measures, taking account of the state of technical development and the nature of the processing, to protect the Protected Data against unauthorised or unlawful loss, destruction or alteration;
 - 12.3.3 only appoint sub-processors under a written contract containing materially the same obligations as under this clause 12.3 and remain fully liable to the Client for the acts and omissions of the sub-processor under the contract as if it were its own;
 - 12.3.4 not permit any processing of any Protected Data by any agent, subcontractor or third party (except its or its sub-processors' own employees in the course of their employment that are subject to enforceable obligations of confidence with regard to Protected Data);
 - 12.3.5 not process or transfer directly or indirectly any Protected Data in or to any countries outside the UK or EEA without the prior written approval of the Client;
 - 12.3.6 assist the Client (at the Client's cost) in ensuring its obligations pursuant to Articles 32 to 36 of the UK GDPR;
 - 12.3.7 assist the Client (at the Client's cost), in so far as this is possible for the fulfilment of the Client's obligations to respond to requests for exercising individual's rights under the UK GDPR in respect of Protected Data; and
 - 12.3.8 make available, to the extent required by the Data Protection Legislation, reasonable information that is in its possession and control to demonstrate its compliance with this clause 12.3.

13. MISCELLANEOUS

- 13.1 No failure or delay by either Party in exercising any of its rights under the Contract shall be deemed to be a waiver of that right, and no waiver by either Party of a breach of any provision of the Contract shall be deemed to be a waiver of any subsequent breach of the same or any other provision.
- 13.2 Each Party shall execute and do all such further deeds, documents and things as may be necessary to carry the provisions of the Contract into full force and effect.
- 13.3 Subject to any provisions to the contrary, each Party shall pay its own costs of, and incidental to, the negotiation, preparation, execution and carrying into effect of the Contract.
- 13.4 Neither Party shall be entitled to set-off any sums in any manner from payments due or sums received in respect of any claim under

the Contract or any other agreement at any time.

- 13.5 The Contract shall be personal to the Parties. Neither Party may assign, mortgage, charge (otherwise than by floating charge) or sub-licence or otherwise delegate any of its rights thereunder, or sub-contract or otherwise delegate any of its obligations thereunder without the written consent of the other Party, such consent not to be unreasonably withheld.
- 13.6 Nothing in the Contract shall constitute or be deemed to constitute a partnership, joint venture, agency or other fiduciary relationship between the Parties other than the contractual relationship expressly provided for in the Contract.
- 13.7 No part of the Contract shall confer rights on any third parties and accordingly the Contracts (Rights of Third Parties) Act 1999 shall not apply to the Contract.
- 13.8 Subject to Clause 13.7, the Contract shall continue and be binding on the transferee, successors and assigns of either Party as required.
- 13.9 All notices under the Contract shall be in writing and be deemed duly given if signed by, or on behalf of, a duly authorised officer of the Party giving the notice.
- 13.10 Notices shall be deemed to have been duly given:
 - 13.10.1 when delivered, if delivered by courier or other messenger (including registered mail) during normal business hours of the recipient; or
 - 13.10.2 when sent, if transmitted by facsimile or e-mail and a successful transmission report or return receipt is generated; or
 - 13.10.3 on the fifth business day following mailing, if mailed by national ordinary mail, postage prepaid; or
 - 13.10.4 on the tenth business day following mailing, if mailed by airmail, postage prepaid.

In each case, notices shall be addressed to the most recent address, e-mail address, or facsimile number notified to the other Party.
- 13.11 The Contract contains the entire agreement between the Parties with respect to its subject matter and may not be modified except by an instrument in writing signed by the duly authorised representatives of the Parties.
- 13.12 Each Party shall acknowledge that, in entering into the Contract, it does not rely on any representation, warranty or other provision except as expressly provided in the Contract, and all conditions, warranties or other terms implied by statute or common law are excluded to the fullest extent permitted by law.
- 13.13 The Contract may be entered into in any number of counterparts and by the Parties to it on separate counterparts each of which when so executed and delivered shall be an original, but all the counterparts together shall constitute one and the same instrument.
- 13.14 In the event that one or more of the provisions of the Contract and/or of these Terms and Conditions is found to be unlawful, invalid or otherwise unenforceable, that/those provision(s) shall be deemed severed from the remainder of the Contract and/or these Terms and Conditions. The remainder of the Contract and/or these Terms and Conditions shall be valid and enforceable.
- 13.15 The Parties shall attempt to resolve any dispute arising out of or relating to the Contract through negotiations between their appointed representatives who have the authority to settle such disputes.
- 13.16 The Contract and these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall be governed by, and construed in accordance with, the laws of England and Wales.
- 13.17 Subject to the provisions of Clause 13.15, any dispute, controversy, proceedings or claim between the Parties relating to the Contract or these Terms and Conditions (including any non-contractual matters and obligations arising therefrom or associated therewith) shall fall within the jurisdiction of the courts of England and Wales.