



PARTIES

EVA, ("Supplier")

EVA.AI LIMITED (
Company number 08700214)
Martlet House, E1 Yeoman Gate,
Yeoman Way, Worthing,
West Sussex, BN13 3QZ

Client

The authorising party is accepting the General Conditions as laid out below.

(Last update: 01/04/2024)

SOFTWARE – GENERAL CONDITIONS

1. Definition

1.1 In these Conditions, capitalised terms take the meaning defined below:

Acceptance Testing: the tests (if any) to be carried out on completion of each agreed milestone of the provision of the Software as set out in the Project Plan;

Add-on Services: those optional services selected for use by the Client, as specified in the Order Form;

Additional Support Services: support and maintenance services which go beyond the Support Services and as specified on the Order Form;

Administrator: those Agents approved by EVA to exercise application administration rights as defined by EVA;

Agencies: such business unit, department, company, subsidiary, partnership, sole trader or other associate directly related to Client authorised as the case may be by EVA, and who shall have individualised login accounts and passwords for the use of the Software on the Hosting System;

Agents: such employees or contractors or individuals of, or authorised by, the Client or any Agencies who have an individualised login identification and password and have been approved and Licenced by EVA to have access to, use and enter data using the Software on the Hosting System;

AI Technologies: all machine learning models, neural networks, algorithms, metadata and machine-readable knowledge sets developed for, operating in or created by use of the Software (including any Client Metadata);

Background IP: means any Intellectual Property Rights which were or are created prior to or independently of this Agreement, including but not limited to the Client Data, Client Software and the Software;

Business Day: a day between Monday to Friday on a day that is not a public holiday in the location where either party is based;



Candidates: any individuals the Client or any Agencies collect details of, engages with and communicates with using the Software;

Client Data: all data, files, content and information processed during the use of the Software (including without limitation data regarding any Candidates migrated into the Software) and furnished to EVA for the development, testing, integration into or use with or communication through the Software (including but not limited to text copy, information, images, graphic files, audio-visual content, user accounts and other media materials), but excluding any Client Metadata;

Client Metadata: any metadata derived from and created by any Client Data (which does not constitute Personal Data) in the course of its use within the Software;

Client Software: the software programs proprietary to the Client which have been acquired or brought into existence by or on behalf of the Client prior to this Agreement or independently of EVA's performance of this Agreement.

Consulting Services: the consultancy services agreed between the parties, as set out in the Order Form and Project Plan and as may be amended in writing from time to time by both parties;

Data Protection Laws: means all laws relating to data protection and privacy which are from time to time applicable to the parties (or any part of their business), including: (i) the General Data Protection Regulation ("GDPR") and all related national laws, regulations and secondary legislation, including the Data Protection Act 2018; and (ii) the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2003/2426) and all other applicable national laws, regulations and secondary legislation implementing European Directive 2002/58/EC, in each case as amended, replaced or updated from time to time and together with any subordinate or related legislation made under any of the foregoing;

Development Services: means the provision of Software development and customisation provided to the Client in accordance with clause 11 and as set out in the Order Form;

Extended Licence Period: each additional period of one year for which the Licence is extended pursuant to clause 3.3;

Fair Use: Fair use to be calculated during Trial Period.

Features: The set of functionalities/modules licensed to Client, its Agencies as specified in the Order Form.

Fees: the fees payable for the provision of the Licence and Services as set out in the Order Form, including but not limited to the Licence Fee, Hosting Fee, Support Fee, Third Party Fees, Trial Licence Fees and any Add-on Services specified in the Order Form;

Hosting Fees: the fees payable for the Hosting Services, as specified in the Order Form;

Hosting Limit: the limit calculated and agreed as Fair Use and agreed upon from time to time;

Hosting Services: the provision of secure and virtually dedicated space on a pre-allocated physical server machine located in a specialised data centre operated by EVA or a third-party hosting partner of EVA for use by the Client to run the Software;

Hosting System: the infrastructure the Software is hosted on;

Inappropriate Content: has the meaning given in clause 5.3(d);



Intellectual Property Rights: copyright, patents, database rights, rights in trademarks, business or domain names, inventions, designs, know-how, confidential information mask-work rights, tools, methods, metadata, trade secrets, moral rights, author's rights, rights in packaging, goodwill,

corporate, trade and product branding (whether registered or unregistered), applications for registration, and the right to apply for registration, extension and renewal for any of these rights and all other intellectual and industrial property rights and equivalent or similar forms of protection existing anywhere in the world;

Initial Licence Fee: the fee payable in respect of the Initial Licence Period as set out in the Order Form;

Initial Licence Period: the initial licence term set out in the Order Form;

In-Software Services: the chargeable in-Software Services selected for use by the Client, including without limitation for importing CVs, making calls and sending SMS messages to Candidates, as may be specified on the Order Form;

In-Software Service Charges: charges for any In-Software Services specified on the Order Form;

Licence: the licence for the Software granted by EVA under clause 3;

Licence Fee: the Initial Licence Fee and On-going Licence Fee;

Licence Period: the Initial Licence Period and any Extended Licence Period;

Maintenance Releases: any new release of the Software or supplementary code or software updates relating thereto which corrects faults, adds functionality, or otherwise amends or upgrades the Software, but which does not constitute a New Version;

Modified Client Software: any Client Software modified or to be modified by Client which is not in connection with the Software or the provision of Development Services under this Agreement;

Modified Supplier Software: any Supplier Software modified or to be modified by Supplier in connection with the Software or to perform the Services or the provision of Development Services under this Agreement, the specific elements of which may be listed in the Order Form and/or Project Plan and identified as such;

Monthly Uptime Percentage: the percentage of minutes, deducted from 100, during the month in which the Services were Unavailable.

New Versions: any new release of the Software or supplementary code or software updates relating thereto which corrects faults, adds functionality, or otherwise amends or upgrades the Software, but which does not constitute a New Version;

Non-Supplier Defects: means defects caused by an act or omission of the Client or by one of the Client's subcontractors or agents (including in relation to any equipment, software or other technology or such parties) for whom EVA has no responsibility;

On-going Licence Fee: the annual licence fee payable for each year of the Extended Licence Period following the end of the Initial Licence Period, as set out in the Order Form;

Personal Data: means personal data as defined in the Data Protection Act 2018 processed in respect of which the Client is the data controller as defined in that act;

Project Plan: the shared project management plan (if any) attached to the provided to the Client (and as may be amended from time to time);



Rate Card: EVA's rates for the provision of services as set out or attached to the Order Form (as may be amended from time to time in accordance with the provisions of clause 12.8);

Renewal Date: the starting date for any Extended Licence Period each year as set out in the Order Form;

Services: the provision of access to the Software and related services, including without limitation Support Services, Hosting Services and Add-on Services;

Service Commitment: has the meaning given in clause 10.1;

Software: the Software specified on the Order Form as "Licensed Software" which is being licensed by EVA to the Client pursuant to this Agreement in executable code form (a) identified by the title and release number in the Order Form (b) any relevant New Versions subsequently distributed by EVA and (c) any agreed modifications thereto;

Start Date: the commencement date for use of the Software specified in the Agreement (which in default shall be 7 days of the effective date of the Agreement);

Supplier Software: means the Software and any other software programs proprietary to or supplied by EVA in connection with the provision of the Software;

Support Fees: the fees payable for the Support Services, as specified on the Order Form;

Support Services: the Client support and maintenance services to be provided by EVA to the Client under clause 10 of the Agreement;

Territory: the territorial scope of the Licence and any Trial Licence, as specified in the Order Form;

Third Party Fees: the fees payable for any Third Party Products, as specified in the Order Form;

Third Party Products: those third party products and services (if any) which are set out in the Order Form and are mandatory to the grant of the Licence;

Trial Agents: such Agents licensed to use the Software on the basis of the Trial Licence;

Trial Licence: has the meaning given in clause 7.1;

Trial Licence Fees: the fees payable for any Trial Licence, as specified on the Order Form;

Trial Period: the period set out in the Order Form during which the Client may use the Software under the Agreement, commencing on the Trial Start Date.

Trial Start Date: the commencement date for the Trial Period (if any) as specified in the Order Form.

Unavailable/Unavailability: where the Software is not accessible through the Hosting System for a reason that is not excluded from clause 10.2 in the Conditions.

AGREEMENT

1.2 These General Conditions ("**Conditions**") and any attached Order Form (together, the "**Agreement**"), form a binding contract between EVA.AI LIMITED (Company number 08700214) ("**EVA**") and each Client and their related Agencies. EVA's supply and all use of Software and any related Services provided to the Client are conditional upon the Client's acceptance and compliance with the terms of the Agreement.



1.3 Unless expressly agreed otherwise under the Order Form, the terms of this Agreement shall supersede all other previous agreements made between the parties or the Client's standard terms and conditions (if any) attached to, enclosed with, or referred to in the Agreement or any other documentation or correspondence in place between the parties.

1.4 In the event of any conflict between the Order Form and these Conditions, the terms of the Order Form will prevail only to the extent of any conflict and with regard to the component(s) to which the Order Form applies.

1.5 EVA may require that each Agency enter into a separate agreement with EVA and prescribe additional terms and conditions which shall apply to the use of the Software by each individual Agent.

1.6 Notwithstanding any Start Date specified in the Order Form, the Agreement shall be deemed effective upon the earlier of the Client paying the applicable Licence Fee, accessing the Software, or accepting any written proposal for Services from EVA.

2. License and Conditions

2.1 Conditional upon payment of all Fees and compliance with these Conditions and the Order Form, EVA grants the Client a non-exclusive, **non-transferable, revocable** licence within the Territory for the Licence Period to:

- (a) use the Software for its usual business purposes;
- (b) permits Agencies & Agents, up to the permitted maximum number, to access, use and configure the Software subject to these Conditions and the Order Form; and
- (c) permits Candidates to access, use the Software subject to these Conditions and the Order Form.
- (d) enjoy the benefit of any Third Party Products, subject to clause 7;

2.2 All other rights are reserved to EVA, and no rights to modify, develop or customise the Software or any component thereof are granted to any party under this Agreement, subject to the provisions of clauses 14 & 15.

2.3 Upon expiry of the Initial Licence Period and any Extended Licence Period, the Licence will automatically be renewed for an Extended Licence Period on the applicable Renewal Date unless the Client gives EVA the Notice Period in writing.

2.4 The terms and Fees agreed on the Order Form will be fixed for the duration of the Licence (including when such Licence comes into force following a Trial Period) unless amended by the parties on one month's written notice (including to extend the number of Agents licensed to use the Software).

2.5 Except as otherwise expressly provided under the Agreement, the Client shall not:

- (a) use or allow access to the Software other than for Agents and Agencies in accordance with operational guidelines and procedures notified by EVA;
- (b) exceed the agreed Hosting Limits without appropriate amendment to the Hosting Service fees as may be agreed between the parties;
- (c) rent, lease, sell, transfer, assign or sub-licence the Software or its Licence rights under these Conditions to any other person or entity, and the Client acknowledges that any such attempted dealing will be void;

- (d) allow the Software to become the subject of any charge, lien or encumbrance;
- (e) make corrections to or otherwise modify or adapt the Software, create derivative works based upon the Software, or permit third parties to do so;
- (f) copy, disassemble, decompile, reverse-engineer, or create derivative works based on the whole or any part of the Software or attempt to do any such thing;
- (g) use or permit the Software to be used to perform services for third parties without the express written authorisation of EVA or otherwise in a manner not permitted by the Agreement;
- (h) use or permit or procure any other person to use any rights granted to it pursuant to these Conditions to develop, market, publish, sell or otherwise deal in any software or other intellectual property so that any source code forming part of the Software is made available or is required to be made available to the general public under any open source or general public Licence conditions;
- (i) make any additions, modifications, adjustments or alterations to the Software or Hosting System;
- (j) attempt to rectify or permit any persons other than EVA or its Agent to rectify any fault or inaccuracy in the Software or Hosting System;
- (k) disclose, provide, or otherwise make available any confidential information or trade secrets contained within the Software in any form to any third party without the prior written consent of EVA;
- (l) remove or interfere with any trademarks, copyright, trade mark or related notices affixed or installed by EVA or any licensor of EVA on any service or copy of the Software or EVA Intellectual Property Rights; or
- (m) deal in any other manner with any or all of its rights and obligations under the Agreement.

2.6 The Client shall take all such other reasonable steps to protect the confidential information and Intellectual Property Rights of EVA in the Software in its possession or control from access use or copying not authorised by this Agreement.

2.7 To the extent that any reduction of the Software to human readable form (whether by reverse engineering, decompilation or disassembly) cannot be prohibited because they are essential (by virtue of section 296A of the *Copyright, Designs and Patents Act 1988*) for the purposes of integrating the operation of the Software with the operation of other software or systems used by the Client, EVA shall (i) carry out such action at a reasonable commercial fee, or (ii) elect to provide the information and instructions necessary to achieve such integration within a reasonable period (and the Client shall meet EVA's reasonable costs in providing that information) before undertaking any such reduction.

2.8 The License is personal to the Client and may not be transferred or assigned for the benefit of any other entity (except as otherwise stated in this Agreement).

3. Parties Responsibilities

Client Responsibilities

3.1 The Client hereby warrants and represents that:

- (a) use of the Software by the Client and Agents shall be for legitimate business purposes in compliance with all applicable laws and regulations;

- (b) the Client has obtained all necessary approvals, consents and permissions from any relevant authority or third party necessary or desirable for the use of the Software (in particular, as required by Data Protection Laws in respect of any Candidates and any Client Data containing Personal Data);
- (c) the Client Data does not infringe the rights or Intellectual Property Rights of any third party; and
- (d) it has and will at all times comply with the Data Protection Laws in all material respects.

3.2 Client shall, subject to and in accordance with these Conditions:

- (a) procure and/or supply, and if necessary, install, support and maintain all software, licences, hardware, network infrastructure, services and environmental and operational conditions required from any Software API or other connection of the Software in the Client's IT systems for the Software to use and operate within the system and required for the Software to be used and operate upon authorised mobile devices, in accordance with this Agreement and any applicable Project Plan;
- (b) maintain at all times such number of personnel, each with a level of knowledge necessary to carry out the Client's obligations under this Agreement;
- (c) ensure that only adequately trained and authorised persons are permitted to access the Hosting System and that Agents operate the Software in accordance with this Agreement and operating procedures, guidelines, codes of conduct and processes reasonably specified by EVA;
- (d) ensure that each Agent does not use any other login or identity or any unauthorised or inadequately licenced computer, device or facility to operate, access or use the Software and that only approved Administrators exercise administrator rights and privileges with respect to the Software;
- (e) ensure that each Agent keeps a secure password for his use of the Software, that such password shall be changed on a reasonably frequently (and at least every six months), and that each Agent shall keep his password confidential;
- (f) ensure that its network and systems comply with the relevant specifications provided by EVA from time to time; and
- (g) be, to the extent permitted by law and except as otherwise expressly provided in this Agreement, solely responsible for procuring, maintaining and securing its network connections and telecommunications links from its systems to EVA's data centres, 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.
- (h) test and evaluate the Software as closely as practicable under normal expected operating conditions and shall correlate and report test data as reasonably requested by EVA.

3.3 The Client shall maintain a written, up-to-date list of all authorised Agents and provide such list to EVA within 5 Business Days of EVA's written request and permit EVA to audit the use of the Software in order to establish the number of Agents and compliance with this Agreement, provided that such audit shall be conducted not more than once per quarter, or as reasonably necessary to confirm any actual or suspected breach of these Conditions, with reasonable prior notice and in such a manner as not to interfere with the Client's normal conduct of business substantially.

EVA responsibilities

3.4 EVA shall grant the Licence or the Trial Licence (as the case may be) and provide the Services to the Client in accordance with the terms of this Agreement.

3.5 EVA shall use reasonable endeavours to provide the Client and all Agents with access to the Software and to meet the performance dates specified in the Project Plan, but any such dates shall be estimates only, and time shall not be of the essence.

3.6 As far as EVA is aware, the Client's access and use of the Software and use of any Client Software in combination with the Software (excluding any dealings involving Client Data) will not infringe the Intellectual Property Rights of any third party).

4. Client Data

4.1 The Client owns all Intellectual Property Rights in the Client Data except to the extent constituting Client Metadata or an enhancement or improvement to the Software and related Intellectual Property Rights.

4.2 The Client accepts sole responsibility for producing, editing, managing and uploading any Client Data for the Software. EVA shall not be responsible for any loss of Client Data from the Software not caused by a Non-Supplier Defect. If the Client wishes EVA to assist with the production or uploading of any Client Data (including sourcing and acquiring photographic and other media files), this shall be separately described and cost in an Order Form as part of the Consultancy Services.

4.3 The Client warrants and represents that any Client Data:

(a) is owned by Client or that Client has permission from the rightful owner to use such Client Data in connection with the Software in the manner and for the purposes required or contemplated by the Agreement;

(b) will be accurate and complete in all material respects for the purposes required or contemplated by the Agreement;

(c) does not infringe the rights or Intellectual Property Rights, right of privacy or publicity or any other rights of any other person and that it is not obscene, indecent, pornographic, seditious, offensive, defamatory, threatening, liable to incite racial hatred or acts of terrorism, menacing, blasphemous or in any other way unlawful and will not in any way inhibit restrict or impair the free and/or unrestricted performance by EVA of any rights or obligations it has under this Agreement ("**Inappropriate Content**"); and

(d) insofar as it constitutes Personal Data, the Client's processing of it has and will at all times comply with the Data Protection Laws.

5. Delivery & Acceptance

5.1 If EVA's performance of its obligations under the Agreement is prevented or delayed by any act or omission of the Client or any Agent, the Client shall be liable to pay to EVA on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to EVA confirming such costs, charges and losses to the Client in writing.

5.2 Upon completion of any agreed milestone in the Project Plan, EVA shall notify the Client and make available the relevant deliverables to the Client. The Client shall then carry out the applicable Acceptance Tests (if any).

5.3 If the Client disagrees that the Acceptance Tests have been satisfied, it must give written notice of such, including the reasons therefore, to the Supplier within 5 Business days (or such other period as

set out in the Project Plan) of the date upon which the notification referred to in clause 6.1 was issued by EVA.

5.4 If any failure to pass the Acceptance Tests results from a Non-Supplier Defect, the milestone shall be deemed to have passed the Acceptance Tests notwithstanding such Non-Supplier Defect. EVA shall provide all assistance reasonably requested by the Client in remedying any Non-Supplier Defect by supplying additional services or products. The Client shall pay the Supplier in full for all such additional services and products at EVA's Support Service rates set out in the Rate Card.

5.5 Acceptance of each delivery or the Software (as appropriate) shall take place or be deemed to take place upon the first day upon which any of the following events occurs:

(a) the Client confirms to EVA that all relevant Acceptance Tests (for the relevant milestone or the Software, as appropriate) have been passed; or

(b) the Client commences operational use of any part of the Software in a live environment;

(c) the Client fails to notify EVA that it does not agree that the Acceptance Tests have been satisfied within the time limit set out in clause 6.3; or

(d) the Client unreasonably delays the start of the relevant Acceptance Tests or any retests for a period of ten working days from the date on which EVA delivered the particular milestone.

5.6 The number of rounds of Acceptance Tests (and associated fixes) to be carried out is limited to the number and dates specified in the Project Plan attached to the Order Form. If the Client fails to identify or notify EVA of issues within these agreed timescales, then any associated effort required to address these issues will be separately billable at the appropriate rate.

6. Trial Period

6.1 EVA may, at its sole discretion, grant the Client use of the Software on an initial trial basis for a designated trial period (a "Trial Licence") either (i) free of charge, or (ii) subject to payment of any applicable Trial Fees.

Access to a Trial Licence is conditional upon:

(a) the Client submitting a valid trial request form via the [EVA.ai](https://eva.ai) website and meeting the stated eligibility criteria (currently: organisations with 1,000 or more employees);

(b) completion of a discovery meeting between the Client and an EVA sales representative to assess fit

6.2 For the avoidance of doubt, the provisions of this clause 6 shall only apply to a Trial Licence and shall supersede any conflicting provisions of this Agreement, in both cases for the duration of the Trial Period (as set out on the Order Form) and in respect of the Trial Licence only. In the absence of such conflict, the remaining terms of this Agreement shall apply to the Trial Licence.

6.3 Without prejudice to any remaining terms in this Agreement, for the duration of the Trial Period, the following provisions will apply to a Trial Licence (and supersede any conflicting provisions in the Agreement during this time):

(a) Subject to the Client paying the Trial Licence Fees (if any) in full and subject to the Client complying with its obligations under this Agreement, EVA grants to the Client a non-exclusive, non-transferable and conditional licence to use the Software under the Agreement for the Trial Period on the following terms (the "Trial Licence"):



- i** From the Start Date for the duration of the Trial Period, to use the Software for the normal business purposes of the Client;
 - ii** For the maximum number of Agents per Client or Agency specified in the Order Form;
 - iii** To permit a pre-agreed number of Agents to use and configure the Software, as specified in the Order Form or as otherwise authorised by EVA in writing; and
 - iv** To permit a pre-agreed number of Agencies to use and configure the Software, as specified in the Order Form or as otherwise authorised by EVA in writing.
 - v** To permit a pre-agreed number of Candidates to use the Software as specified in the Order Form or as otherwise authorised by EVA in writing.
- (b)** No Add-on Services (except for the use of In-Software Services) will be included as part of the Trial Licence unless agreed by EVA in writing;
- (c)** Clause 2.1 of this Agreement will not apply;
- (d)** The Client acknowledges and agrees that the Software is provided as-is, and no warranties given by EVA under this Agreement, to the extent permitted by law, will be enforceable;
- (e)** An Order Form containing details of the proposed numbers of Agents, Agencies, Candidates and Fees must still be completed by the parties before access to any Software, notwithstanding the existence of a Trial Licence, but its terms will not be binding on the parties until the commencement of the Start Date.
- (f)** The terms and Fees agreed on the Order Form before the commencement of the Trial Period will take effect without amendment upon commencement of the Initial Licence Period, save that:
- i** should the parties wish to change the terms of the Order Form following the commencement of the Trial Licence, they may do so by giving written notice to the other party 7 days before the expiry of the Trial Period, and both parties will use reasonable efforts to agree on the amendments before the expiry of the Trial Period; and
 - ii** if the parties cannot agree on the proposed amendments to the Order Form before this time, the parties may mutually agree to postpone the proposed commencement date of the Initial Licence Period until otherwise agreed.
- (g)** Where no Trial Fees have been specified in the Order Form, clause 12 of the Conditions will not apply.
- (h)** Seven (7) days prior to the expiry of the Trial Period, EVA will schedule a feedback and onboarding meeting with the Client. Any continuation of the Software beyond the Trial Period shall be subject to execution of an amended Order Form specifying the applicable Fees and commercial terms to enter into a full Licence on the terms of this Agreement (and the pre-agreed terms of the Order Form) in full, unless EVA terminates this Agreement in accordance with the provisions of this Agreement at its discretion.

6.4 On termination of this Agreement, the terms of the Agreement (including all pre-agreed terms set out in the Order Form) will cease to be in force save for clause 17.6.

7. Third Party Licences

7.1 Where the Software requires the use of Third Party Products, the Client agrees that the grant of the Licence is conditional upon the Client paying all applicable Third Party Fees (as set out in the



Order Form) and acceptance of the relevant licensor's standard terms set out in the Order Form (whether through sub-licence from EVA or directly with such third party licensor).

7.2 The Client will be wholly responsible for paying all applicable Third Party Fees to EVA and complying with the licence terms of any Third Party Products.

7.3 Breach of this clause 8.1 will constitute a material breach of the Agreement for the purposes of clause 18.3.

8. Consulting Services

8.1 Where the Client has elected to receive Consultancy Services from EVA as part of the Add-On Services:

(a) The Client and EVA will agree to a schedule of required services to be included in or attached to the Project Plan, the terms of which will be subject to the terms of this Agreement unless otherwise specified;

(b) Each of EVA and the Client shall comply with its respective designated responsibilities under the Project Plan or the agreed schedule;

(c) The Consultancy Services will be performed in accordance with reasonable skill and care;

(d) EVA may be retained non-exclusively on either a time and materials, 'when-needed' basis, subject to availability, to provide the Consultancy Services to the Client for such hours during each week and at such times and at such locations as detailed in each agreed schedule and in accordance with the terms of this Agreement, or on a fixed price basis.

8.2 Save where the Client and EVA agree (such agreement not to be unreasonably withheld or delayed) that EVA is to perform certain Consultancy Services by a specific date or in accordance with a fixed timescale and that time is of the essence in respect of such services, EVA will use its reasonable endeavours to adhere to any dates or timescales agreed upon by the Client and EVA for the performance of these Consultancy Services but time shall not be of the essence.

8.3 EVA shall procure that all advice and recommendations provided by its employees or sub-contractors in the performance of the Consultancy Services shall be made in good faith and upon the basis of information provided by the Client and otherwise in accordance with reasonable expectations of good industry practice. Where a piece of advice or recommendation does not form part of, or relate to, the Consultancy Services, that advice or recommendation shall in no circumstances constitute a warranty by EVA as to the accuracy of such advice or recommendation, and EVA shall not, in any event, be liable for any loss or damage that may be suffered whether directly or indirectly as a result of the Client acting upon such advice or recommendation.

9. Support and Hosting Services

9.1 Subject to payment of the Support Fee, EVA will use its reasonable endeavours during the Licence Period to:

(a) supply the Client with all Maintenance Releases in machine-readable form together with related amendments to the documentation relating to the Software;

(b) provide the prescribed number of hours in the Order Form of troubleshooting (which would not be provided as part of the Service Commitment), support or training services in connection with the Software as the Client may elect, subject to EVA receiving 5 Business Days' written notice of the



requested service and such service being provided during the hours of 9 am – 5 pm UK Time on a Business Day. Such services may include:

- i answering queries from an Agent concerning the Software;
- ii giving diagnosis and guidance on correction of faults to an Agent following the report of fault to EVA;
- iii giving initial diagnosis of potentially serious faults in the Software reported by an Agent on a prior report; and
- iv providing a temporary fix for the Software if EVA, at its discretion, considers this appropriate.

(c) maintain a monthly Uptime Percentage of 98.5% for the Software during any monthly billing cycle (the “**Service Commitment**”), subject to the provisions of clause 9.2 below.

9.2 The Service Commitment does not apply to:

(a) Any Services which are unreachable or unavailable due to issues affecting a third-party hosting or other service partner critical to EVA’s provision of the Services which are beyond the control of EVA. Such critical service partners will include, without limitation, providers of networks, firewalls, internet connectivity, internet browsing software, operating systems and core communication systems such as email and messaging;

(b) Any Unavailability arising from:

- i Any suspension of the Services to the Client as permitted under this Agreement;
- ii A Non-Supplier Defect;
- iii Any modifications made to the Software without the prior written consent of EVA;
- iv Factors beyond EVA’s reasonable control, including a Force Majeure event;
- v Failure of the Services which are not attributable to Unavailability; or
- vi Any scheduled Unavailability of the EVA Service for planned Maintenance, as announced by EVA prior to the Services becoming Unavailable.

9.3 The Client may elect to receive further support services as Additional Support Services on the basis and charges set out in the Order Form.

9.4 Whilst EVA will use its reasonable care and skill in the provision of Support Services, the Client is exclusively responsible for ensuring that:

- (a) all advice and guidance are acted upon and implemented effectively; and
- (b) all Maintenance Releases are promptly and correctly installed in accordance with EVA’s instructions.

9.5 EVA reserves the right:

- (a) to adjust the Support Fee to accommodate changes in support capacity, upon giving not less than three months’ written notice to the Client. Such adjustments shall be reasonable and reflective of the increased support requirements. The Parties agree to discuss in good faith any proposed adjustments to ensure they align with the evolving needs and scope of Support Services. Any increase shall be subject to review and agreement by both parties, with due consideration given to market conditions and industry standards;



(b) to withhold Support Services (including the provision of Maintenance Releases) in any circumstances where (for whatever reason) any invoice for Fees is not paid in accordance with the payment terms stated in clause 12.

(c) suspend the Hosting Service without liability if:

- i** it reasonably believes that the Hosting Service is being used in breach of this Agreement;
- ii** the Client does not cooperate with EVA's reasonable investigation of any suspected breach of this Agreement;
- iii** there is an attack on the Hosting Service, or it is accessed or manipulated by a third party without consent;
- iv** required to suspend the Hosting Service by law or a regulatory or government body; or
- v** there is another event for which EVA reasonably believes that suspending the Hosting Service is necessary to protect EVA's network or its other customers.

9.6 The Client undertakes:

- (a)** to report faults in the Software to EVA by means as advised by EVA from time to time which may include but not be limited to telephone calls, online logging and self-help via EVA's website or on a form of Software Product Query Note ("S.Q.N.") made available to the Client by EVA; and
- (b)** to provide EVA with such assistance as EVA may reasonably require in order to replicate or otherwise investigate any fault reported (including, without limitation, the free provision of documentation and free computing facilities at its premises).

9.7 EVA shall be under no obligation to provide services in relation to the Software to the Support Services, which do not qualify or are excluded from the Support Services and do not comprise Additional Support Services.

9.8 If a reported problem is found upon investigation to be due to incorrect operation or unauthorized changes of the Software, such investigation shall be at the Client's cost.

10. Development Services

10.1 The Client may request from EVA additional development or customization services in relation to the Software as part of the Add-On Services. If the Client elects this option on the Order Form, then EVA shall, within a reasonable time, provide a written estimate to the Client of:

- (a)** the likely time required to implement the change;
- (b)** any variations to the Fees arising from the customisations;
- (c)** the likely effect of the customisations; and
- (d)** any other impact of the customisations on the terms of this Agreement.

10.2 All Intellectual Property Rights in any Modified Supplier Software created pursuant to the Development Services shall, at the Start Date or (if later) on the creation of the rights, vest in EVA. The Client hereby assigns (or will procure the assignment) to EVA on creation with full title guarantee all Intellectual Property Rights in the Modified Supplier Software (and each part of it) (including but not limited to, in the look and feel and the functional design & configuration, but excluding the Client Data), arising in connection with this Agreement.

10.3 Unless otherwise agreed, all Intellectual Property Rights in any Modified Client Software shall vest in the Client.

11. Fees, Invoicing & Payment

11.1 The Fees payable for using the Software and Services are specified in the Agreement (or otherwise under an invoice agreed with the Client). They are payable in advance or otherwise in accordance with the agreed payment terms (which in default shall be seven days from invoice) without any set-off or deduction.

11.2 Unless expressly agreed otherwise, EVA may notify variations to the Fees on three (3) months' notice and renewal, including as necessary to account for changes to the number of Agents, Agencies, Candidates or Features of the Software.

11.3 If the Licence or Agreement is terminated, EVA may determine in its absolute discretion whether to refund any Fees already paid (which shall exclude any costs that are not reimbursed by third parties).

11.4 Without prejudice to any other right or remedy that EVA may have, if the Client or Agency fails to pay EVA on the due date EVA shall:

(a) charge interest on such sum from the due date for payment at the annual rate of 4% above the base lending rate from time to time of Barclays Bank, accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and

(b) charge additional administration costs (both before and after judgment) on the amount unpaid at the rate for the time being that would be applicable if the debt were a qualifying debt under the *Late Payment of Commercial Debts (Interest) Act 1998*; and/or

(c) suspend the Licence and all Services until payment has been made in full.

11.5 Unless expressly stated otherwise, all amounts payable under the Agreement are exclusive of VAT (if any). If any payment pursuant to the Agreement constitutes the whole or any part of the consideration for a taxable or deemed taxable supply, EVA shall increase that payment by an amount equal to the VAT which is chargeable in respect of the taxable or deemed taxable supply, provided that the recipient delivered a valid VAT invoice in respect of such VAT.

11.6 All payments payable to EVA under the Agreement shall become due immediately on termination of the Agreement, notwithstanding other provisions. This condition is without prejudice to any right to claim for interest under the law or any such right under the Agreement.

11.7 EVA shall be entitled to set off or withhold any amount owed to the Client under the Agreement against any amount payable by the Client to EVA (including under the indemnities set out in clause 14, whether in whole or in part). Time is of the essence for payment of Fees.

11.8 EVA may amend the Rate Card for the provision of its Services from time to time provided that not less than 30 days prior notice of any such change is given to the Client in writing.

11.9 If EVA approves the Client's request to extend the Licence to additional Agents, the Client shall, within 30 days of the date of EVA's invoice, pay EVA the relevant fees for such additional Agents. If additional Agents, Agencies or Candidates are added to the scope of the Licence part way through the Initial Licence Period or any Extended Licence Period (as applicable), such fees shall be pro-rated from the date of activation by EVA for the remainder of the Initial Licence Period or then current Extended Licence Period (as applicable).

11.10 Rate Card:

1. Customer Success & Support @ £75/hour (£600/day) + VAT
2. Designer, Developer & Business Analyst @ £125/hour (£1,000/day) + VAT
3. Product Manager / Senior Developer @ £150/hour (£1,200/day) + VAT
4. CXO / Architect @ £200/hour (£1,600/day) + VAT

12. Liability

12.1 Subject to the specific terms of the Agreement or any subsequent Service Level Agreement (if any), EVA: (i) does not guarantee any specific results from the use of the Software, (ii) does not warrant that the use of the Software will be uninterrupted or error-free, and (iii) has no obligation to provide any support or correct any bugs, errors or discrepancies in the Software beyond the scope of the Support Services.

12.2 Subject to clause 13.7, EVA's aggregate liability in respect of claims based on events in any year arising out of or in connection with this Agreement or any collateral contract, whether in contract or tort (including negligence) or otherwise, shall in no circumstances exceed the total sum of Fees paid by the Client to EVA under this Agreement in that year.

12.3 To the extent permitted by law, EVA's liability for breach of the Agreement or otherwise in connection with the Software, as well as any implied warranty or condition that cannot be excluded, is restricted at the option of EVA to the re-supply of Services, payment of the cost of re-supply of Services, or refund of the applicable Fees.

12.4 In no circumstances will EVA be liable for any consequential or indirect damages, loss of profits, or any other similar or analogous loss (including loss of data and loss of opportunity) resulting from the use of the Services or Software, whether based on warranty, contract, tort, negligence, in equity or any other type of law.

12.5 In no event shall EVA, its employees, agents and sub-contractors have any obligations or be liable to the Client to the extent that the alleged infringement is based on:

(a) any use of the Software in breach of this Agreement or reasonable instructions given to the Client by EVA;

(b) any modification of the Software by anyone other than EVA; or

(c) any use of the Software after notice of any claim or any alleged or actual infringement from EVA or any appropriate authority.

12.6 EVA agrees that, in entering into this Agreement, either it did not rely on any representations (whether written or oral) of any kind or any person other than those expressly set out in this Agreement or (if it did rely on any representations, whether written or oral, not expressly set out in this Agreement) that it shall have no remedy in respect of such representations and (in either case) EVA shall have no liability in any circumstances otherwise than in accordance with the express terms of this Agreement.

12.7 Nothing in these Conditions shall limit or exclude the liability of either party for death or personal injury resulting from its negligence, fraud or fraudulent misrepresentation.

13. Indemnities

13.1 The Client shall indemnify and keep indemnified EVA against all damages, losses and expenses arising as a result of any action or claim that:

- (a) arises from the Client's breach of its obligations under this Agreement or any applicable terms and conditions imposed upon the Client by the providers of Third Party Products ;
- (b) any third-party claims which may arise from the use or misuse of the Software by the Agents;
- (c) the Client Data infringes the Intellectual Property Rights of a third party;
- (d) arises from the Client's any breach of the Partner's acceptable use policy or for any unauthorised access to the Software and/or the Hosting System
- (e) any tax, penalty, fine or interest incurred or payable in connection with the Software or in consequence of a breach of this Agreement;
- (f) results from any of the Client Data being, or being alleged to constitute, Inappropriate Content; or
- (g) results from the failure of the Client, its Agencies, Agents or Candidates to comply with any of its obligations under clause 17.

13.2 EVA shall indemnify the Client against all damages, losses and expenses arising as a direct result of:

(a) any action or claim that the Software (or any part thereof) infringes any Intellectual Property Rights of a third party in the UK, other than infringements referred to in clause 14.1. In the event of any such alleged infringement, EVA shall be entitled at its own expense and option either to:

- i procure the right for the Client to continue using the Software;
- ii make such alterations modifications or adjustments to the Software as required to make become non-infringing without incurring a material diminution in performance or function;
- iii replace the Software with non-infringing substitute material provided such substitute material does not result in a material diminution in performance or function; or
- iv if (i), (ii) or (iii) are not reasonably possible to immediately terminate the Agreement or that part of it to which the infringement relates by notice in writing to the Client and refund any of the Fees paid by the Client as at the date of termination (less a reasonable sum in respect of the Client's use of the Software to the date of termination) on return of the Software and all copies thereof (if applicable)

13.3 Clause 13.2 states the entire liability of EVA with respect to any infringements of an intellectual property right of a third party and without prejudice to this generality EVA shall have no liability whatsoever for infringement based on either:

- (a) use of a Software which is other than a current and unaltered release; and
- (b) use of the Software in combination with any software not supplied by EVA.

13.4 The indemnities in clauses 13.1 and 13.2 are subject to the following conditions:

- (a) the indemnified party promptly notifies the indemnifier in writing of the claim;
- (b) the indemnified party makes no admissions or settlements without the indemnifier's prior written consent;
- (c) the indemnified party gives the indemnifier all information and assistance that the indemnifier may reasonably require; and

(d) the indemnified party allows the indemnifier complete control over the litigation and settlement of any action or claim.

13.5 The indemnities in clauses 13.1 and 13.2 may not be invoked and shall not apply to the extent that the action or claim arises out of the indemnifier's compliance with any designs, specifications or instructions of the indemnified party.

14. Intellectual Property

14.1 The parties agree that, except as expressly provided to the contrary, this agreement does not transfer ownership of, or create any licences (implied or otherwise), in or to any Intellectual Property Rights in the Background IP.

14.2 Subject to clause 11, Client acknowledges that all Intellectual Property Rights relating to the Software (including but not limited to, in the look and feel and the functional design and the configuration, the Client Metadata, and AI Technologies operating in the Software but excluding the Client Data), and any related services or materials provided to or accessed by the Client under this Agreement are and shall remain the property of EVA (or its third-party licensors). All existing and future goodwill and other Intellectual Property Rights created in the Software or out of EVA's provision of the Services under this Agreement vest and will vest in EVA or its third-party licensors (as applicable). The Client is only permitted to use such Intellectual Property Rights under and subject to the Licence.

14.3 All Intellectual Property Rights in the Client Data used and created by EVA exclusively for the purposes of providing the Services in connection with this Agreement are and shall become the property of the Client, and EVA has no rights in or to the Client Data other than as provided by this Agreement. The Client hereby grants EVA non-exclusive, royalty-free, worldwide, irrevocable and perpetual licence to use the Client Data solely for the purpose of delivering the Software, Services and performing its obligations under this Agreement.

14.4 Client must promptly notify EVA upon becoming aware of any actual, threatened or suspected infringement of EVA's Intellectual Property Rights in or unauthorized use of the Software (or any part of it).

14.5 The Client has no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Software Product in whole or in part. A breach of this clause 14.5 shall be a material breach for the purposes of clause 17.3(a).

14.6 The parties shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the other party may consider necessary or desirable to perfect the right, title and interest of that party in and to any Intellectual Property Rights arising in the course of this Agreement.

14.7 Except as otherwise expressly agreed, EVA has the moral and registered rights in its own trademarks and the other party agrees not to copy, alter, use or otherwise deal in the marks without prior written consent. Client specifically undertakes never to use, register, apply for or acquire any sign, logo or trademark that is the same as or could be considered confusingly similar to EVA and its marks.

15. Confidentiality

15.1 Except as necessary under or in connection with for performance of this Agreement, each party shall not disclose and must maintain in confidence any written or verbal information (**Confidential Information**) that: (i) details the terms of this Agreement; (ii) details the business of the other party; (iii) is identified by either party as confidential and/or proprietary, other than information that the relevant party can establish: (A) was in the public domain at the time it was disclosed; (B) was already in possession of a party when given, without having been acquired (directly or indirectly) from the other party; or (C) was received from another person who had the unrestricted legal right to disclose that information free from any confidentiality obligation.

15.2 Each party must not: (i) use any of the Confidential Information except to the extent necessary to exercise its rights and perform its obligations under this Agreement; (ii) jeopardise, counteract and prohibit the development and success of the other party by disclosing any of the Confidential Information to unauthorised third parties or competitors; or (iii) disclose any of the Confidential Information, provided that each party may disclose Confidential Information to the extent that disclosure is required: (A) by law or by order of any court or tribunal of competent jurisdiction; (B) by any Government Agency, stock exchange or other regulatory body; or (C) to its personnel and advisors, where the party informs the recipient of the obligations in relation to the Confidential Information under this Agreement; or (D) for EVA to payment processing companies or credit providers for due diligence or operational reasons.

15.3 If a party is required to make a disclosure under this clause, that party must: (i) to the extent possible, notify the other party if it anticipates that it may be required to disclose any of the Confidential Information; and (ii) only disclose Confidential Information to the extent necessary to comply.

15.4 The obligations under this clause continue in full force and effect after this Agreement ends.

16. Data Processing & Protection

16.1 If EVA processes any Personal Data on the Client's behalf when performing its obligations under this Agreement, the parties record their intention that the Client shall be the data controller and EVA shall be a data processor and in any such case:

(a) the parties acknowledge and agree that they will comply with their respective obligations under the Data Protection Laws;

(b) EVA shall process the personal data only in accordance with the terms of this agreement and any lawful instructions reasonably given by the Client from time to time; and

(c) each party shall take appropriate technical and organisational measures against unauthorised or unlawful processing of the personal data or its accidental loss, destruction or damage.

16.2 EVA shall:

(a) process the personal data only on documented instructions from the Client, including with regard to transfers of personal data to a third country or an international organisation, unless required to do so by Union or Member State law to which EVA is subject; in such a case, EVA shall inform the Client of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

(b) ensure that persons authorised to process the personal data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality;

(c) take all measures required pursuant to Article 32 of the GDPR (Security of processing) including by taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, EVA shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk;

(d) respect the conditions referred to in paragraphs 2 and 4 of Article 28 of the GDPR for engaging another processor, including that (i) EVA shall not engage another processor without prior specific or general written authorisation of the Client. In the case of general written authorisation, EVA shall inform the Client of any intended changes concerning the addition or replacement of other processors, thereby giving the Client the opportunity to object to such changes and (ii) where EVA engages another processor for carrying out specific processing activities on behalf of the Client, the same data protection obligations as set out in this Agreement or other legal act between the Client and EVA shall be imposed on that other processor by way of a contract or other legal act under Union or Member State law, in particular providing sufficient guarantees to implement appropriate technical and organisational measures in such a manner that the processing will meet the requirements of the GDPR and where that other processor fails to fulfil its data protection obligations, EVA shall remain fully liable to the Client for the performance of that other processor's obligations;

(e) taking into account the nature of the processing, assists the Client by appropriate technical and organisational measures, insofar as this is possible, for the fulfilment of the Client's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the GDPR;

(f) assists the Client in ensuring compliance with the obligations pursuant to Articles 32 (Security of processing), 33 (Notification of a personal data breach to the supervisory authority), 34 (Communication of a personal data breach to the data subject), 35 (Data protection impact assessment) and 36 (Prior consultation) of the GDPR taking into account the nature of processing and the information available to EVA;

(g) at the choice of the Client, delete or return all the personal data to the Client after the end of the provision of services relating to processing, and delete existing copies unless Union or Member State law requires storage of the personal data;

(h) makes available to the Client all information necessary to demonstrate compliance with the obligations laid down in this clause 16.2 and allow for and contribute to audits, including inspections, conducted by the Client or another auditor mandated by the Client;

(i) maintain a record of all categories of processing activities carried out on behalf of the Client, containing: (a) the name and contact details of the processor or processors and of the Client on behalf of which EVA is acting, and, where applicable, of the Client's or EVA's representative, and the data protection officer; (b) the categories of processing carried out on behalf of the Client; (c) where applicable, transfers of personal data to a third country or an international organisation, including the identification of that third country or international organisation and, in the case of transfers referred to in the second subparagraph of Article 49(1) of the GDPR, the documentation of suitable safeguards; (d) where possible, a general description of the technical and organisational security measures referred to in Article 32(1) (Security of processing).

17. Term and Termination

17.1 This Agreement shall commence on the Start Date and shall (subject to earlier termination or termination only in part pursuant to this clause 17) continue for the Initial Licence Period and, thereafter, this Agreement shall be automatically renewed for successive periods of 12 months (each

an “On-going Licence Period”) or, if different, of the period specified in the Order Form opposite “Ongoing License Period”), unless:

(a) Either party notifies the other party of termination, in writing, at least 3 calendar months (or, if different, by giving the period of notice specified in the Order Form opposite “Notice Period”) before the expiry of the Initial Licence Period or On-going Licence Period; or

(b) Otherwise terminated in accordance with the provisions of this Agreement.

17.2 Termination of the Licence, in accordance with this Agreement, will result in the automatic termination of the Support Services. The parties may elect to continue the Add-On Services by mutual agreement under the terms of this Agreement for the remaining period of the Initial Licence Period or Extended Licence Period, as the case may be.

17.3 Either party may terminate this Agreement in whole immediately at any time by written notice to the other party if:

(a) that other party commits any material breach of its obligations under this Agreement which (if remediable) is not remedied within 30 days after the service of written notice specifying the breach and requiring it to be remedied; or

(b) that other party:

i ceases to trade (either in whole or as to any part or division involved in the performance of this agreement); or

ii becomes insolvent or unable to pay its debts within the meaning of the insolvency legislation applicable to that party; or

iii a person (including the holder of a charge or other security interest) is appointed to manage or take control of the whole or part of the business or assets of that party, or notice of an intention to appoint such a person is given, or documents relating to such an appointment are filed with any court; or

iv the ability of that party’s creditors to take any action to enforce their debts is suspended, restricted or prevented, or some or all of that party’s creditors accept, by agreement or pursuant to a court order, an amount of less than the sums owing to them in satisfaction of those sums; or

v any process is instituted which could lead to that party being dissolved and its assets being distributed to its creditors, shareholders or other contributors (other than for the purposes of solvent amalgamation or reconstruction).

17.4 On termination of this Agreement for any reason:

(a) all provisions of this Agreement shall cease to have effect subject to clause 17.5 and 17.6;

(b) all rights granted to the Client under this Agreement (including the Licence) shall cease;

(c) the Hosting Service shall be suspended immediately and terminated as soon as practicable thereafter;

(d) the Client shall cease all activities authorised by this Agreement;

(e) the Client shall immediately pay EVA any outstanding Fees due under this Agreement including any Support Fees and Hosting Fees accrued up to the date of termination but not yet invoiced;



(f) the Client shall immediately destroy or return to EVA (at EVA's option) all copies of the Software (excluding the Client Data) then in its possession, custody or control and, in the case of destruction, certify to EVA that it has done so; and

(g) EVA may disable all logins and passwords for the Agents and Candidates without any liability to the Clients and Agencies; and

(h) EVA shall return (or procure the return) of any Client Data in its possession or under its control that is the property of the Client. Where such Client Data is in electronic format, it shall be returned in a format that is a recognised industry standard.

17.5 Termination of this agreement shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages in respect of any breach of the agreement which existed at or before the date of termination.

17.6 Any provision of this Agreement which expressly or by implication is intended to come into or continue in force on or after termination of this agreement, including but not limited to clauses 1 (Definitions), 12 (Liability), 13 (Indemnities), 14 (Intellectual Property), 15 (Confidentiality), this clause 17 and clause 18.16 (Governing law).

17.7 Unless otherwise agreed in writing, any Agencies using the Software that was already granted by the Client subject may continue post-termination of the Agreement subject to these entering into a separate Agreement and Order Form with EVA (or an affiliated entity nominated by EVA) for the Software accordingly.

18. General

18.1 Amendment. These Conditions can only be amended, supplemented, replaced or novated by another agreement executed by the parties.

18.2 Assignment. EVA may assign or subcontract its obligations under this Agreement at its discretion. The Client may only assign or otherwise create an interest in their rights under this Agreement to Agencies with the written consent of EVA.

18.3 Third Parties EVA may engage third parties to perform services relating to the Software and the Client consents to any arrangements entered into by EVA with such third parties.

18.4 Force Majeure. EVA shall not be liable for any failure or delay to the performance of obligations under the Agreement if such failure or delay results from any cause that is beyond the reasonable control of EVA, including power 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 EVA (a "**Force Majeure Event**"). In the event that either party cannot perform their obligations hereunder as a result of force majeure for a continuous period of 2 months, the other party may, at its discretion, terminate the Agreement by written notice at the end of that period.

18.5 Non-Compete & Non-Solicitation: For the duration of the Licence and for 36 months after termination, the Client must not:

(i) be directly or indirectly involved in the development or distribution of any product which has functionality the same as or similar to the Software. Any consent given by EVA for this purpose shall be subject to contract; nor

(ii) solicit for employment either directly or indirectly, any person who is employed or contracted by EVA. Any consent given by EVA for this purpose shall be subject to payment to EVA by the Client of a sum equivalent to 200% of the higher of the then current annual remuneration of the relevant employee or sub-contractor at the date of consent being granted.

18.6 Entire Agreement. Each party acknowledges that it has not relied on any representation, warranty or statement made by any other party other than as set out in the Agreement.

18.7 Relationship. The parties' relationship to this Agreement does not form any joint venture, partnership, employment, trust or agency. EVA is an independent contractor to the Client, and the Software is provided for the sole benefit of the Client unless expressly agreed otherwise.

18.8 Third-party rights. A person who is not a party to this Agreement has no right under the Contracts (Rights of Third Parties) Act 1999 to enforce this Agreement, provided that this clause does not affect a right or remedy of a person which otherwise exists or is available.

18.9 Waiver. No clause of this Agreement will be deemed waived, and no breach excused unless such waiver or consent is provided in writing. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy.

18.10 Further Action. Each party must do anything reasonably required (including executing agreements and documents) to give full effect to this Agreement, including in connection with any claim or proceedings brought against a part as a result of any breach of this Agreement.

18.11 Liability for Expenses. Each party must pay for its own expenses incurred in negotiating, executing, stamping and registering this Agreement.

18.12 Severability. Any provision in these Conditions, which are invalid or unenforceable, will be ineffective to the extent of the invalidity or unenforceability without affecting the remaining provisions.

18.13 Survival. Any provision of these Conditions that expressly or by its nature intended to come into or continue in force on or after termination or expiry of this agreement shall remain in full force and effect.

18.14 Notices:

(a) A notice given under this Agreement shall be:

i in writing in the English language (or be accompanied by a properly prepared translation into English);

ii sent for the attention of the person and to the address or e-mail address specified under "Address" and "Contact" on the Order Form or as otherwise may be agreed between the parties from time to time;

iii shall be:

1. delivered personally; or
2. sent by e-mail; or
3. sent by pre-paid first-class post, recorded delivery or registered post; or
4. (if the notice is to be served or posted outside the country from which it is sent) sent by registered airmail.

(b) A notice is deemed to have been received:

1. if delivered personally, at the time of delivery; or



2. in the case of an e-mail, at the time of transmission, provided (in the case of court documents), a confirmatory copy is sent by first-class pre-paid post or by personal delivery before the end of the next Business Day; or
3. in the case of pre-paid first class post, recorded delivery or registered post, 48 hours from the date of posting; or
4. in the case of registered airmail, five days from the date of posting; or
5. if deemed receipt under this clause, 19.14 is not within business hours (meaning 9.00 am to 5.30 pm on a Business Day), when business next starts in the place of receipt.

18.15 Interpretation. The following rules apply unless the context requires otherwise:

- (a) Headings are only for convenience and do not affect interpretation.
- (b) The singular includes the plural, and the opposite also applies.
- (c) If a word or phrase is defined, any other grammatical form of that word or phrase has a corresponding meaning.
- (d) A reference to a clause refers to clauses in these Conditions.
- (e) A reference to legislation is to the latest version of the legislation as amended, reenacted or replaced and includes any subordinate legislation issued under it.
- (f) Mentioning anything after includes, including, or similar expressions does not limit anything else that might be included.
- (g) A reference to a party to this Agreement or another agreement or document includes that party and anyone else that might be included.
- (h) A reference to a person, corporation, trust, partnership, unincorporated body or other entity includes any of them.
- (i) A reference to information is to information of any kind in any form or medium, whether formal or informal, written or unwritten, for example, computer software or programs, data, drawings, ideas, knowledge, procedures, source codes or object codes, technology or trade secrets.

18.16 Governing Law. These Conditions, the Agreement, any non-contractual and other matters relating to the Software and Services is governed by the laws of England & Wales. Each of the parties hereby submits to the non-exclusive jurisdiction of courts in England.