

Kainos | G-Cloud 15 EMR-as-a-Service Terms and Conditions

Unless otherwise specifically agreed in an Order Form, any and all third-party products, services or software will be supplied by the Supplier (**Kainos**) in the capacity of reseller only passing through to the Buyer directly the standard supply terms of the respective third party vendor(s).

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Kainos Evolve EULA

Status
Security
Version No.

Definitive
Confidential
6.0

KAINOS | EVOLVE EULA

IMPORTANT - READ CAREFULLY:

BY SIGNING OR ACCEPTING AN ORDER REFERENCING THIS AGREEMENT OR BY DOWNLOADING, INSTALLING, RUNNING, ACCESSING OR USING THE SOFTWARE REFERENCED IN THE ORDER, YOU ARE AGREEING TO ALL OF THE FOLLOWING TERMS AND CONDITIONS. WHERE LICENSOR OR A THIRD PARTY PERFORMS THE PRODUCT INSTALLATION AND/OR USES THE PRODUCT ON YOUR BEHALF YOU ARE CONFIRMING BY YOUR SUBSEQUENT USE OF THE PRODUCT THAT SUCH THIRD PARTY WAS AUTHORISED TO DO SO AND WILL BIND YOU TO THE EULA AS IF YOU HAD PERSONALLY ACCEPTED THE EULA PLEASE READ THESE TERMS CAREFULLY BEFORE TAKING SUCH ACTIONS. IF YOU DO NOT AGREE WITH OR DO NOT HAVE AUTHORITY TO AGREE TO ANY OF THE TERMS OF THIS AGREEMENT, PLEASE DO NOT ACCEPT THESE TERMS OR OTHERWISE ATTEMPT TO DOWNLOAD THE SOFTWARE IN ANY WAY.

1. **Parties.** These terms represent the agreement (**Agreement**) that governs the purchase of Evolve software product licenses or services or both from Kainos Evolve Limited (**Kainos** or **Licensor**) by the Customer entity identified in the Order (**Customer** or **You**).
2. **Orders.** **Order** means the accepted order (i.e. purchase quotation, product schedule, purchase order, contract or other ordering document issued or agreed and accepted by Kainos) including any supporting material which the Parties expressly identify as incorporated either by attachment or reference (**Supporting Material**). Supporting Material may include (as examples) software product lists, software specifications, standard or negotiated service descriptions, release notes, and Change Requests, published warranties and service level agreements, and may be available to Customer in hard copy or by accessing a designated Kainos website. Special conditions detailed in an Order will take priority over the terms of this Agreement only where they are specifically detailed to do so. References in this Agreement to **Software Product(s)** refer to software products licensed by Kainos as identified in an Order.
3. **Prices & Taxes.** Prices are exclusive of taxes, duties, and fees (including installation, shipping, and handling) unless otherwise stated in the Order. If a withholding tax is required by law, please contact Kainos to discuss appropriate procedures.
4. **Invoices & Payment.** Customer agrees to pay all invoiced amounts within thirty (30) days of the Kainos invoice date. Kainos may suspend or cancel performance of open Orders or services if You fail to make payments when due.
5. **License Grant.** Kainos grants You a non-exclusive license to use the version or release of the Kainos software delivered to Customer (including updates and new releases issued through Evolve Support Services) unless the otherwise listed in the Order. Permitted use of

the software and Supporting Material is for Your internal business purposes only (and not for further commercialisation) and is subject to any specific software licensing information that is in the Software Product or its Supporting Material. The Software Product may contain software licensed to Licensor by a third party (**Third Party Licensors**), including open source software (**Open Source Code**), for distribution within the Software Product to include without limitation the following:

- Atalasoft
<http://www.atalasoft.com/products/dotimage/licensing/eula>
- Interfaceware software (Iguana)
<http://interfaceware.com/termsandconditions>
- Apache
<http://www.opensource.org/licenses/apache2.0.php>; and
- Microsoft Public Licence
<http://entlib.codeplex.com/license> and [Jquery](http://docs.jquery.com/licensing)
<http://docs.jquery.com/licensing>

and such other Third Party Software or Open Source Code as may be identified in Supporting Material (collectively the **Embedded Software**). Your use of the Embedded Software shall be governed by the licence agreements applicable to the Embedded Software which may be between Licensor and its Third Party Licensors or between You and the Third Party Licensors directly (a **Pass-Through Licence**), links to which are set out above. For the avoidance of doubt, Licensor does not accept any liability for any issues arising with the Embedded Software.

6. **License Term & Termination.** The license granted under this Agreement is for the period set out in the Order, provided however that if Customer fails to comply with the terms of this Agreement, Kainos may terminate the license upon written notice. Immediately upon termination (or expiration) Customer will either destroy all copies of the Software Product or return them to Kainos.
7. **License Transfer.** You may not sublicense, assign, transfer, rent or lease the Software Product or the license granted under this Agreement.
8. **License Restrictions & Permissions.** You may make a copy or adaptation of the licensed Software Product in machine readable object code only for non-productive backup and archival purposes only or when it is an essential step in the authorized use of the software. You may use this archival copy without paying an additional license only when the primary system is inoperable. You may not copy Licensed Software onto or otherwise use or make it available on any public external distributed network. You will not modify, reverse engineer, disassemble, decrypt, decompile or make derivative works of any Software Product licensed to You under this Agreement unless

permitted by statute, in which case You will provide Kainos with reasonably detailed information about those activities. You hereby agree to indemnify Licensor on a full indemnity basis for any consequences arising out of your incorporation of any Software Product or any components (including without limitation any .dll files) contained within a Software Product in any application developed by you, or for your use of the Software Product (in whole or in part), otherwise than in accordance with this Agreement. You may integrate the Software Product with other third party applications using a Kainos licensed Software Product application programming interface. The interface information necessary to achieve interoperability of the Software Product will be provided by Kainos on request upon payment of the Kainos' reasonable costs and expenses for procuring and supplying such information.

9. **License Compliance & Audit.** Kainos may audit Customer compliance with the software license terms. Kainos may monitor compliance with this Agreement remotely using license management software within the licensed Software Products. You agree to the use of such license management software and the return of data captured by such license management software to Kainos for analysis with regard to compliance with this Agreement and the relevant Order. At Kainos' written request, you will furnish Kainos with a certification signed by your authorized representative verifying that the licensed Software Products are being used in accordance with the terms and conditions of this Agreement and the applicable Order. Upon at least ten (10) days' prior written notice and subject to applicable reasonable security requirements, if any, Kainos may audit your use of the Software Products to ensure that you are in compliance with the terms of this Agreement and the applicable Order. Any such audit will be conducted during regular business hours at your facilities, will not unreasonably interfere with your business activities and will be in compliance with your reasonable security procedures. You will provide Kainos with reasonable access to the relevant records and facilities for the Software Product. If an audit reveals that you are operating outside the scope of your license grant during the period audited, then Kainos will invoice you, and you will promptly pay Kainos any underpaid fees based on Kainos' price list in effect at the time the audit is completed. If any underpayment arising exceeds five percent (5%) of the original license charge for the Software Product or usage is more than 5% above any limits detailed in the Order then you will also pay Kainos' reasonable costs of conducting the audit. This section shall survive expiration or termination of this Agreement for a period of three (3) years.
10. **Component Licences.** In the future components or new modules or separately licensed functionality may be released as a Software

Product (each, a **Component**). The Customer is licensed only for such licensed functionality as is identified in an Order and will not be automatically entitled to receive future Components. Kainos reserves the right to charge for (i) the grant of a licence to use such Components, (ii) Evolve Support Services related to the Component, and (iii) Kainos professional services required for the installation of the Component. Components will be governed by the terms of this Agreement (and any reference to Software Product(s) is deemed to include Components) but may include a separate end user licence agreement (a **Component Agreement**) with supplementary terms governing the use of that particular Component. In the event of any inconsistencies between this Agreement and any Component Agreement, the terms of this Agreement shall control unless expressly stated to the contrary in the Component Agreement.

11. **Delivery.** Kainos will use all commercially reasonable efforts to deliver software products in a timely manner. Kainos may elect to ship or deliver software and related software product/license information by electronic transmission or via download.
12. **Evolve Support Services.** Customer must purchase and is entitled to receive on payment for such purchase, maintenance and support services (collectively, **Evolve Support Services**) for the Software Product for the first twelve (12) consecutive months beginning at the date of the shipment of the Software Product (**Support Services Start Date**) in accordance with the Kainos standard terms of support detailed on the Evolve customer portal or provided to Customer in writing. Extended or further periods for provision of Evolve Support Services may be defined in the Order.
13. **Software Product Warranty.** Kainos warrants that the Software Products will conform materially to their published specifications and be free of malware at the time of delivery. Kainos warranties for Software Products will begin on the date of delivery and will last for ninety (90) days (**Warranty Period**). Kainos does not warrant that the operation of Software Products will be uninterrupted or error-free or that Software Products will operate in hardware and software combinations other than as authorised by Kainos in supporting material. Any software product updates, maintenance or hotfixes issued through Evolve Support Services, including without limitation, any (if any) releases (Major or Minor) and, unless stated otherwise in a Component Agreement, any Components provided to you after the expiration of the Warranty Period are not covered by any warranty or condition, express, implied or statutory.
14. **Warranty Exclusions.** Kainos services (including Evolve Support Services), support and warranty commitments do not cover claims resulting from:

- 14.1 improper use, site preparation, or site or environmental conditions or other non-compliance with applicable Supporting Material;
 - 14.2 Modifications or improper system maintenance or calibration not performed by Kainos or authorised by Kainos;
 - 14.3 failure or functional limitations of any non-Kainos software or product impacting systems receiving Kainos support or service;
 - 14.4 malware (e.g. virus, worm, etc.) not introduced by Kainos; or
 - 14.5 abuse, negligence, accident, fire or water damage, electrical disturbances, transportation by Customer, or other causes beyond Kainos control.
- 15. Software Product Warranty Claims.** When Kainos receive a valid warranty claim for a Kainos Software Product, Kainos will either repair the relevant defect or replace the Software Product. This may include providing You with a modified version of the Product that eliminates the identified error or instructing You in methods of operating the software product that eliminates the practical adverse effect of the error. Any such repair or replacement will not extend the original warranty period. If Kainos determines, in its sole discretion, that despite its reasonable efforts it is unable to correct the error or replace the software product, Kainos will refund to You all license fees for the affected software product, actually paid and depreciated on a straight line basis over a five year period, payable upon the prompt written confirmation by Customer that the relevant Software Product has been destroyed or permanently disabled. Kainos will pay for shipment of repaired or replaced software products to You.
- 16. Remedies.** This Agreement states all remedies for warranty claims. To the extent permitted by law, Kainos disclaims all other warranties.
- 17. Intellectual Property Rights.** No transfer of ownership of any intellectual property will occur under this Agreement. You may not remove any proprietary notice or other legend (whether denoting Kainos or a Third Party Licensor) from the Software Products and shall reproduce such proprietary notice or legend within and/or upon any copies and partial copies made.
- 18. Intellectual Property Rights Infringement.** Kainos will defend and/or settle any claims against You that allege that a Kainos Software Product or service as supplied under this Agreement infringes the intellectual property rights of a third party. Kainos will rely on Customer's prompt notification of the claim and cooperation with the defence. Kainos may modify the Software Product or service so as to be non-infringing and materially equivalent or may procure a license. If these options are not available, Kainos will refund to You the amount paid for the affected Software Product in the first year or the depreciated value thereafter or, for Evolve Support Services, the balance of any pre-paid amount. Kainos is not responsible for claims resulting from any unauthorised use of the Software Products or services.
- 19. Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorised use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information remains confidential. These obligations do not cover information that: i) is now, or later becomes, through no act or failure to act on the part of the receiving Party, generally known or available to the public; ii) is independently developed by the receiving Party; iii) is the subject of a written permission to disclose provided by the disclosing Party; or iv) where disclosure is required by law or a governmental agency.
- 20. Personal Information.** Each Party shall comply with their respective obligations under applicable data protection legislation.
- 21. Export.** Software products and services provided under these terms are for Customer's internal use and not for further commercialisation. If Customer exports, imports or otherwise transfers Software Products and/or Supporting Material under these terms, Customer will be responsible for complying with applicable laws and regulations and for obtaining any required export or import authorizations. Kainos may suspend its performance under this Agreement to the extent required by laws applicable to either Party.
- 22. Customer Responsibilities.** You understand and agree that Kainos and its licensors are not engaged in the practice of medicine and that the Software Products are an information tool only, are not certified as a Medical Device for the purposes of the Medical Device Directive 93/42/EEC and is not a substitute for competent medical advisors. All medical practice management and patient care decisions made in which the Software Products may be utilised, and the consequences thereof, will be exclusively the responsibility of the Customer, as well as physicians and other practitioners with privileges at the Customer's licensed facilities. Customer agrees to indemnify and hold Kainos and its licensors, and their respective officers and employees harmless from any and all claims that any improper medical treatment resulted from Customer's use or reliance upon the Software Product. Licensee is solely

responsible for the accuracy and adequacy of the information and data furnished for processing and/or arising out of the processing and/or use of the Software Product. The successful operation of the Product is dependent on Customer's use of proper procedures and systems and input of correct data. Customer agrees that it has sole responsibility for protecting and backing up the data used in connection with or furnished for processing by the Software Product and for ensuring that its use of the Software Product does not place it in contravention of the laws and regulations applicable to it.

- 23. Limitation of Liability.** Notwithstanding any damages that You might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), the entire liability of Kainos and any of its suppliers and licensors under any provision of this Agreement and Customer's exclusive remedy for all of the foregoing (except for any remedy of repair or replacement elected by Licensor with respect to Warranty claims) shall be limited to the amount actually paid by You for the licensed Software Product (exclusive of any Embedded Software). The existence of one or more claims will not enlarge the limitation of liability. For the avoidance of doubt, Kainos does not accept any liability for any issues arising with the Embedded Software. Neither Customer nor Kainos will be liable for lost revenues or profits, downtime costs, loss or damage to data or indirect, special or consequential costs or damages. This provision does not limit either Party's liability for any liability which may not be excluded or limited by applicable law.
- 24. Termination.** Either Party may terminate this Agreement on written notice if the other fails to meet any material obligation and fails to remedy the breach within a reasonable period after being notified in writing of the details. For the avoidance of doubt failure to pay any fees due in respect of the Product or Support Services will constitute a material breach. If either Party becomes insolvent, unable to pay debts when due, files for or is subject to bankruptcy or receivership or asset assignment, the other Party may terminate this Agreement and cancel any unfulfilled obligations with immediate effect. Any terms in the Agreement which by their nature extend beyond termination or expiration of the Agreement will remain in effect until fulfilled and will apply to both Parties' respective successors and permitted assigns. Termination of this EULA will not relieve Licensee of any payment obligations accrued as of the effective date of termination.
- 25. Dispute Resolution.** Any dispute arising out of or in connection with this Agreement will in the first instance be referred to the Kainos Account Manager for discussion and resolution, with escalation to the Kainos Evolve Product Manager. If the dispute remains unresolved

following escalation to the Kainos Evolve Product Manager, the matter will be referred to the Evolve Head of Business.

- 26. General.** This Agreement represents the entire understanding of the Parties with respect to its subject matter and supersedes any previous communication or agreements that may exist. Modifications to the Agreement will be made only through a written amendment signed by both Parties. Neither Party will be liable for performance delays nor for non-performance due to causes beyond its reasonable control, except for payment obligations. This Agreement is not made for the benefit of, nor shall any of its provisions be enforceable by, any person other than the Parties to this Agreement. If any part of this Agreement is found void and unenforceable, it will not affect the validity of the balance of the Agreement, which shall remain valid and enforceable according to its terms. The failure of a Party to insist on the performance of an obligation hereunder shall not be deemed to be a waiver of such obligation or of any other obligation. Customer shall reasonably assist the Licensor in the creation and where applicable distribution of marketing and publicity-related materials in respect of the subject matter of this Agreement. Customer agrees that Kainos may use Customer's name and logo to identify Customer as a Kainos customer. Customer's use of Kainos trademarks and logos will be in accordance with Kainos policies in effect from time to time. This Agreement will be governed and interpreted in accordance with the laws of England and the Parties hereby submit to the exclusive jurisdiction of the English courts.

SCHEDULE 1 | EVOLVE FOR IPAD MODULE | SUPPLEMENTAL LICENCE TERMS

Evolve® for iPad is an additional Component for the purposes of clause 3 the (EULA).

Definitions	For the purpose of this Component Agreement the following definition shall apply: Device shall mean any device on which the Component is installed, used or stored.
Compatibility	Evolve® for iPad is an application that requires the following for use (none of which are included with Evolve® for iPad): iPad: (i) Devices: iPad 2; iPad [2012] (ii) iOS: 9+ (iii) Network: iOS-compatible Wi-Fi General: (i) License for Evolve 3.7 with Advanced Caching enabled (ii) SSL certificate for Evolve 3.7 Services
Grant of Licence	Notwithstanding clauses 1.a. (iv) and 2 of the EULA (and strictly subject to the supplemental licence terms herein) where the Licensee is a corporate licensee, the Licensee shall be entitled to distribute (in object form only), use and install the Component on Devices which are controlled by the Licensee. By signing the component agreement and/or installing or using the component you are consenting to be bound by and become a party to the component agreement and the EULA. Where licensor or a third party performs the component installation and/or uses the component on your behalf you are confirming by your subsequent use of the component that such third party was authorised to do so and will bind you to the component agreement as if you had personally accepted the component agreement. If you are accepting the component agreement on behalf of an end user or corporate licensee you represent that you are authorised to do so. If you do not agree to the terms and conditions of this component agreement (and the EULA), do not install or use the component.
Third Party Software	The Component may contain software licensed to Licensor by a third party (Third Party Licensors), including open source software (Open Source Code), for distribution within the Component (collectively the Embedded Software). Licensee's use of the Embedded Software shall be governed by the licence agreements applicable to the Embedded Software which may be between Licensor and its Third Party Licensors or between the Licensee and the Third Party Licensors directly (a Pass-Through Licence), links to which are set out below or copies of will be provided by the Licensor to the Licensee. The provisions of clause 10 of the EULA shall apply to the Licensee's use of the Embedded Software contained in the Component. • MGSplitviewController: http://mattgemmell.com/2010/07/31/mgsplitviewController-for-ipad • MKNetworkingKit: http://blog.mugunthkumar.com/products/ios-framework-introducing-mknetworkkit/#Licensing • OCMock: https://github.com/erikdoe/ocmock/blob/master/Source/License.txt • CommonCrypto: https://github.com/AlanQuatermain/aqtoolkit/blob/master/CommonCrypto/NSData+CommonCrypto.h • MD5Addition: https://github.com/gekitz/UIDevice-with-UniqueIdentifier-for-iOS-5/blob/master/license https://github.com/gekitz/UIDevice-with-UniqueIdentifier-for-iOS-5/blob/master/license • VFR PdfViewer: https://github.com/vfr/Reader/blob/master/LICENSE • CocoaLumberjack: https://github.com/robbiehanson/CocoaLumberjack/blob/master/LICENSE • AFNetworking: https://github.com/AFNetworking/AFNetworking/blob/master/LICENSE • CODialog: https://github.com/eaigner/CODialog/blob/master/LICENSE • Underscore.m: https://github.com/robb/Underscore.m/blob/development/LICENSE • SSZipArchive: https://github.com/ZipArchive/ZipArchive/blob/master/LICENSE For the avoidance of doubt, it is acknowledged and agreed that should it be identified that any additional third party software is required for future phases of

	the development, implementation or configuration of the Component then the Licensor will procure such software (and if required the support thereof) on behalf of the Licensee and will charge the Licensee at cost.
Product Updates	Notwithstanding the provisions of clause 18 (A) (II) of the EULA, the Licensor shall provide, at no additional cost, one (1) copy documentation and one (1) copy of, or authorization to copy, of the Component only to the Licensee.
Remote Support	The Licensee acknowledges that the Licensor will not obtain remote access to a Device for the purpose of trouble shooting or corrective action work. The Licensee will provide remote access to the Licensee's system to enable trouble shooting or corrective action work relating to the Component. Where the Licensor requests access to a Device for diagnostic purposes the Licensee will provide such access and passwords as required.
Bug Reports	The Licensor may generate bug reports from the Component that will be passed directly to the Licensor without the requirement to obtain consent from the Licensee of any user.
Licensee's obligations	In addition to the obligations set out in clause 18 of the EULA, the Licensee shall be responsible for: (i) Installation of the Component and upgrades; (ii) Security of Devices to include locking and password management; (iii) Upgrades of Devices to ensure compatibility with the Component; (iv) Loss of Devices or Component pin numbers; (v) Effecting and maintaining adequate security measures and precautions to safeguard the Component and/or the Device from access, use or copying by any unauthorised person; (vi) retaining the Component and all copies thereof under the Licensee's effective control; (vii) Training end-users to use the Component and/or Device; Notifying the Licensor immediately that a Device on which the Component is installed has been lost or stolen; (viii) Ensuring all users comply with the terms of this Component Agreement and the EULA; and (ix) Notifying the Licensor immediately that a Device on which the Component is installed has been lost or stolen.
Loss or Corruption of data	Licensee understands and agrees that in no event shall the Licensor be responsible for: (i) loss or corruption of data caused by connectivity or network issue; or (ii) a Device fault.

SCHEDULE 2 | EVOLVE GROWTH CHARTS MODULE | SUPPLEMENTAL LICENCE TERMS

The Growth Charts Module includes third party products and are licenced to the Customer in accordance with the following additional terms:

1. All Growth Chart licences must be marked with the following copyright notices:
 - For 0-4 A4 Growth Charts: © 2009 Department of Health
 - For A4 NICM and School Age Growth Charts: © 2012/13 Royal College of Paediatrics and Child Health
 - For A4 2-18yrs School Age Growth Charts: © Royal College of Paediatrics and Child Health
 - For A4 2-20yrs CPCM Growth Charts: © Royal College of Paediatrics and Child Health
 - For A4 2-20yrs BMI Growth Charts: © Royal College of Paediatrics and Child Health
 - For A4 Down Syndrome growth charts © Harlow Printing Limited
 - For A4 Turners Syndrome growth charts © CGF/Harlow Printing Limited
2. The Customer may apply the RCPCH logo to the Growth Charts. All goodwill resulting from use of the logo shall inure to the benefit of RCPCH.
3. Kainos will retain all intellectual property rights of whatever nature in the Growth Charts Module including any modification or configuration thereof. The Customer shall fully indemnify Kainos against all liabilities, costs and expenses it incurs as a result of the Customer infringement of any intellectual property rights in the Growth Charts Module.
4. The Customer shall immediately notify Kainos in writing giving full particulars if any of the following matters come to its attention:
 - (a) any actual, suspected or threatened infringement of all copyright and database rights and rights of similar nature subsisting in the Growth Charts, in any part of the world, to which Kainos is, or may become, entitled (the **Copyright**);
 - (b) any claim made or threatened that the Growth Charts Module infringes the rights of any third party; or
 - (c) any other form of attack, charge or claim to which the Copyright may be subject.

In respect of any of the matters listed in 4 (a) – (c) above:

- Kainos shall, at its absolute discretion, decide what action to take, if any;
- Kainos shall have exclusive control over, and conduct of, all claims and proceedings;
- the Customer shall not make any admissions other than to Kainos and shall provide Kainos with all assistance that he may reasonably require in the conduct of any claims or proceedings; and
- Kainos shall bear the cost of any proceedings and shall be entitled to retain all sums recovered in any action for his own account.

The provisions of section 101A of the Copyright, Designs and Patents Act 1988 (or equivalent legislation in any jurisdiction) are expressly excluded.

5. The Customer shall:
 - (a) ensure that the Growth Charts Module is safe for the use for which it was intended;
 - (b) perform its obligations in connection with the use of the Growth Charts Module with all due skill, care and diligence including good industry practice;
 - (c) only make use of the Copyright for the purposes authorised in this agreement; and
 - (d) comply with all applicable regulations and practices in force or use in the United Kingdom to safeguard Kainos' rights in the Copyright.
6. The Customer shall not do or omit to do anything to diminish the rights of Kainos in the Copyright or the Growth Charts Module, nor assist any other person to do so, either directly or indirectly.
7. Customer is not permitted to print hard copies of any Growth Chart in the Module, save for PDFs of completed charts for record keeping purposes only.
8. The Customer understands and agrees that Kainos are not engaged in the practice of medicine and that the Growth Charts Module is an information tool only, is not certified as a Medical Device for the purposes of the Medical Device Directive 93/42/EEC and is not a substitute for competent medical advisors. All medical practice management and patient care decisions made in which the Growth Charts Module may be utilised, and the consequences thereof, will be exclusively the responsibility of the Customer, as well as physicians and other practitioners with privileges at the Customer licensed facilities. The Customer agrees to indemnify and hold Kainos and its licensors, and their respective officers and employees harmless from any and all claims that any improper medical treatment resulted from Customer use or reliance upon the Growth Charts Module. The Customer is solely responsible for the accuracy and

adequacy of the information and data furnished for processing and/or arising out of the processing and/or use of the Growth Charts Module. The successful operation of same is dependent on Customer use of proper procedures and systems and input of correct data. The Customer agrees that it has sole responsibility for protecting and backing up the data used in connection with or furnished for processing by the Growth Charts Module and for ensuring that its use of the Growth Charts Module does not place it in contravention of the laws and regulations applicable to it.

9. The Customer hereby agrees to indemnify Kainos on a full indemnity basis for any consequences arising out of its incorporation of the Growth Charts Module contained within in any application developed by it, or for its use of the Growth Charts Module (in whole or in part), otherwise than in accordance with this Schedule. The Customer may integrate the Growth Charts Module with other third party applications using a separate Kainos licensed software product application programming interface. The interface information necessary to achieve interoperability of the Growth Charts Module with other third party applications will be provided by Kainos on request and upon payment of Kainos' reasonable costs and expenses for procuring and supplying such information.

Kainos Evolve Support Services Terms and Conditions

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KAINOS | EVOLVE SUPPORT SERVICES TERMS AND CONDITIONS

1. GENERAL

- 1.1 Evolve Support Services will start on the date of shipment of the licensed Software Product, unless otherwise stated in the Order (**Commencement Date**).
- 1.2 All support matters must be logged into and initiated through the Kainos Incident Management (**KIM**) electronic helpdesk system by Customer.
- 1.3 Kainos will not be liable for any failures or delays arising as a result of Customer's failure to properly log incidents, nor shall any support provided outside of the KIM system operate as a waiver of these terms.
- 1.4 For all Customers who purchase Evolve Support Services, Kainos provides support in English in the form of Incident corrections, Software Product Updates, online Incident management and Telephone Hotline Support (**Evolve Support Services**) to the Customer.
- 1.5 Unless specified otherwise in the Order, the term of Evolve Support Services shall be for one (1) year commencing on the Commencement Date (the **Support Term**).
- 1.6 Evolve Support Services will automatically be renewed for additional one (1) year periods on the expiry of the initial Support Term unless Customer notifies the Kainos in writing of its desire not to renew Evolve Support Services at least thirty (30) days prior to the end of the then current Support Term.
- 1.7 If Customer fails to pay any Support fees when due, Kainos reserves the right to withhold provision of Evolve Support Services until receipt of such payment. By way of example and not of limitation, continued availability of Evolve Support Services following any automatic renewal shall be deemed conclusive evidence of renewal by Customer.
- 1.8 Unless specified otherwise in the Order, Evolve Support Services are provided only for (a) the current release of the Software Product, and (b) the most recent previous Major Release of the Software Product for twelve (12) months following availability of the next Major release. **Major Release** means a change of version of the Software Product being a change to the digit before the digit point e.g. '3' in 3.0.
- 1.9 All Customer personnel or staff who submit incidents via KIM must pre-register with Evolve Support Services and have completed the Evolve Operational Procedures training course.

2. DESCRIPTION OF EVOLVE SUPPORT SERVICES PROVIDED

1st and 2nd Line Support means: (a) Logging of calls; (b) initial investigation (c) deployment of patches to end Users; (d) Escalation of support items to 4th Line Support where deemed necessary; (e) Interfacing between end User and 4th Line Support; (f) providing information, gathering diagnostics and implementing patches; (g) seek solutions based on known problems and Evolve operations and

procedures (h) solution monitoring, including Investigation and resolution of HL7 Interfaces and Document ingestion;

3rd and 4th Line Support means (a) Resolution of support items that have been escalated from 1st, 2nd and 3rd Line Support; (b) Incident correction; (c) issuing of emergency patches; (d) provision of support for third party software. 4th Line Support is typically done remotely, however on-site support can be arranged if necessary and mutually agreed by the Kainos and the Customer such agreement not to be unreasonably withheld. For the avoidance of doubt if on site attendance is agreed, the Kainos reserves the right to charge reasonable expenses at cost.

2.1 1st and 2nd support for the Software Product is to be handled by the Customer's service desk and support staff. Fourth line Evolve Software Product support is handled by the Kainos' Evolve Support Services remotely from Kainos.

2.2 In addition to dealing with support calls, Kainos shall use reasonable endeavours to give the Customer the Notice with regards to mandatory software upgrades / de-support.

3. INCIDENT CORRECTIONS

3.1 Kainos shall exercise commercially reasonable efforts to correct any Incident reported by Customer in the current unmodified release of the Software Product in accordance with the classification reasonably assigned to such Incident by Kainos.

3.2 If a reported Incident has caused the Software Product to be inoperable or Customer's notice to Kainos states that the reported Incident is substantial and material with respect to Customer's use of the Software Product, Kainos shall use its reasonable commercial efforts to correct expeditiously such Incident or to provide a software patch or bypass around such Incident. Customer acknowledges that all reported Incident may not be corrected.

3.3 Kainos shall have no obligation to support: (i) altered, damaged or modified Software Product or any portion of the Software Product incorporated into other software; (ii) problems caused by Customer's negligence, abuse, misapplication or use of the Software Product other than as specified in the Software Product Specification or other causes beyond the control of Kainos; or (iii) Software Product installed on a system that is not supported by Kainos. Kainos shall have no liability for changes in Customer's hardware necessary to use the Software Product due to a workaround or maintenance release.

3.4 If an Incident has been fixed in a current release, Customer's exclusive remedy for such Incident shall be to install the most current release to remedy the Incident and Kainos shall have no other obligation or liability to Customer in such instance.

3.5 To the extent that an Incident is caused by an

error in the Embedded Software, Kainos will use reasonable efforts to resolve such Incident through recourse to the third party, but the rectification of such Incidents shall not be subject to the Service Levels.

4. SOFTWARE PRODUCT UPDATES

- 4.1 Kainos provides, at no additional cost, one (1) copy of documentation and one (1) copy of, or authorization to copy, new maintenance releases of the Software Product (which may also include supplements or additional functionality), which are not designated by Kainos as new Software Products for which it charges a separate fee (**Updates**).
- 4.2 Kainos may at its sole discretion, modify the Software Product and deliver Software Product Updates to its customers which may add new and/or eliminate existing features, functions, operating environment and/or hardware platforms to the Software Product.
- 4.3 The professional services work and costs associated with the installation of Updates are not included within the scope of or the price for the Evolve Support Services. Customer acknowledges that installation of new releases (if any) and/or Updates provided, may require a suitably qualified and trained resource, and that if Customer does not have appropriately qualified personnel, Customer will engage Kainos under the Additional Services section. Should the Customer not engage the services of Kainos for the installation of new releases or Updates, Kainos accepts no responsibility for the non-performance of the Software Product or faults arising from the installation of new releases or Updates other than by Kainos or an authorised Kainos representative. Any time spent by Kainos investigating faults resulting from the Customer's installation of any new release or Update is not included within the scope of Evolve Support Services and will be chargeable by Kainos having regard to Kainos current consulting rates (to be advised upon request) under the Additional Services section. Customer agrees to promptly provide the Kainos with all the information that may be necessary to assist the Kainos in resolving any such defect or fault.

5. ONLINE INCIDENT MANAGEMENT SYSTEM

Kainos shall provide the Customer an account and log in details to the Kainos Incident Management 'KIM') system. The Customer may raise Incidents in KIM according to the Incident Classification as set out in Section 15 whereby appropriately skilled support personnel will respond within the Service Levels and progress appropriately.

The Customer is responsible for the following triage to take place before any incidents are reported to Kainos:

- The End-User's network is available;
- The End-User's hardware is functioning correctly;
- Firewalls are correctly configured;
- No other system changes have taken

place without Kainos having been notified in advance;

- Any corruption of the original data has been checked;
- Users have been correctly configured with the necessary rights.

Incidents are normally closed once Kainos has provided a solution and the Customer has confirmed that the problem has been resolved. Incidents will also be closed where:

- Kainos has confirmed that the problem will be fixed in the next release of the Software. In these cases the status of the incident will be changed to 'Pending Release'. Once the release has been issued the incident will be closed.
- Kainos has tried to contact the customer three times regarding an incident and have failed to obtain a response. In these cases Kainos will inform the customer that the incident is being closed, but that it can be subsequently re-opened by the Customer if required.

6. INCIDENT CLASSIFICATION AND SERVICE LEVELS

In the performance of Evolve Support Services, Kainos applies the Service Levels set out in Section 15, to Incidents reported by Customers during the Standard Hours (as defined below).

7. EVOLVE SUPPORT SERVICES HELPLINE

All Incidents, irrespective of their classification should be raised via KIM. For Priority 1 Incidents ONLY:

- Where a Priority 1 Incident arises between the hours of 0900-1700 (GMT) Monday-Friday, excluding English Public Holidays (the **Standard Hours**). These should be logged in the normal way via the KIM system.
- Where a Priority 1 Incident arises during the hours of 1700-0900 (GMT) and all day Saturday and Sunday including English Public Holidays (the **Helpline Hours**). Telephone assistance shall be available via the **Evolve Support Helpline** to all Customers.

The Evolve Support Helpline number is: **028 95704014**.

8. ADDITIONAL SERVICES

Kainos may from time to time provide additional services relating to the Software Product, including implementation, training, or customisation services (**Additional Services**). Where the Customer wishes Kainos to provide Additional Services, the parties shall negotiate and agree upon a statement of work for such Additional Services which shall set out the scope of the Additional Services, a timetable for delivery and the cost, which shall be calculated having regard to Kainos current consulting rates to be advised upon request. Once the statement of work is agreed and signed by both parties, the Additional Services shall be governed by the terms of this License Agreement.

9. CUSTOMER'S OBLIGATIONS

9.1 Customer shall provide cooperation and assistance to Kainos in Kainos' efforts to provide the Evolve Support Services. Such cooperation and assistance include but are not limited to:

- (i) being responsible for initially diagnosing any operational or functional problems with the Software Product, and for reporting these to Kainos in a timely manner;
- (ii) the timely transmittal and release to Kainos of appropriate and accurate documentation and information;
- (iii) the prompt review and analysis of the work performed by the Kainos;
- (iv) making facilities and personnel available to assist Kainos when and if reasonably requested;
- (v) providing access to the Customer's premises and/or facilities as are reasonably necessary for the performance of the Evolve Support Services;
- (vi) being responsible for ensuring that any equipment and/or hardware belonging to or furnished by Customer is properly installed and is sufficient and suitable for its purpose and that any adjustments, which may be required, are carried out expeditiously;
- (vii) ensuring that all relevant licenses and permissions are obtained where the provision of the Evolve Support Services necessitates Kainos' use of Customer's software, or third party software;
- (viii) at all times being responsible for maintaining backups of its data, or otherwise protecting its data against loss, damage or destruction in accordance with best industry practice;
- (ix) being responsible for all systems administration functions, including but not limited to: (a) Database Set-up and Maintenance; (b) Operating Systems Maintenance; (c) Client Software Product installation, as required; (d) Maintenance of Minimum hardware and software requirements; (e) Virus Scanning software installation and maintenance; (f) Software Product license management (physical security of Kainos media and necessary third party software media); (g) third party software and operating system patches and virus protection updates;
- (x) providing reasonable and timely and accurate responses to Kainos' requests and communications;
- (xi) the Customer's helpdesk will be expected to perform the responsibilities as described below. It is expected that the interaction between the Customer helpdesk and Evolve Support Service team will include a conversation about issues, where the Customer Helpdesk will triage and raise with supporting

information, Evolve Support team will agree classification with the Customer Helpdesk and request any additional supporting information from the Customer. The Customer's Helpdesk is expected to perform the following activities:

- Receive and log initial call from end users
- Classify and prioritise issue
- Gather information, analyse symptoms and attempt to identify the problem
- Resolve issue or escalate to the customer system manager, Evolve support teams, infrastructure teams, scanning or data response teams
- Closing incidents on Customer's helpdesk
- Provide feedback to end users
- Seek and apply solutions or workarounds based on known problems
- Investigate and diagnose based on Evolve operations and procedures
- Resolve Issue or escalate to Evolve Support with complete supporting information
- Modify Evolve configuration
- Solution monitoring and management
- Correction of operational issues including, but not limited to: Management of HL7 message interface, document ingestion interfaces, data issues etc.
- Investigate and resolve issue outside the remit of Evolve Support including, but not limited, to issues with underlying infrastructure, network, client PC's and systems external to Evolve.

9.2 The Customer acknowledges and agrees that failure of the Customer to comply with the Customer's obligations set out in this section in a timely and prompt manner may impact on the Kainos' ability to deliver the Evolve Support Services and meet the Target Response Times set out in Service Levels in Section 15. The Target Response Times will be extended by a reasonable period to take account of such delay by the Customer.

9.3 Kainos reserves the right to charge time and materials rates for general requests by the Customer for assistance with respect to use of the Software Product or other matters not relating to errors in the Software Product or which are outside the scope of the Evolve Support Services.

9.4 Subject only to section 11 below, in no circumstances shall Kainos request, permit or authorise anyone other than Kainos or its affiliates to provide any of the Evolve Support

Services in respect of the Software Product.

10. REMOTE SUPPORT

- 10.1 Kainos requires unrestricted remote access to Evolve environment on the Customer's system to enable remote troubleshooting and corrective action work. Customer shall provide remote access for the Software Product for as long as Kainos provides Evolve Support Services for the Software Product. Serviceability of Customer's Site(s) is dependent on remote access to Customer's system and an active Customer contact. Customer is responsible for providing Kainos with remote access dial-up telephone numbers and passwords or Virtual Private Networking (VPN) connectivity. Kainos will provide remote support upon approval from Customer on Kainos' request or through verbal confirmation. Customer acknowledges that Kainos may at times access Customer's system in order to review recent corrective actions and their impact on Customer's system performance. If remote access is not granted, Customer acknowledges incident resolution time may be affected. Additionally, if, in Kainos' reasonable opinion, the problem requires Kainos to provide on-site Evolve Support Services, Customer will reimburse Kainos' travel and other expenses actually incurred in connection with performance of such Evolve Support Services.

11. SUPPORT OF THE EMBEDDED SOFTWARE

- 11.1 In accordance with the Agreement licensing the Software Product, the Customer's use of the Embedded Software shall be governed by the Third Party Contracts. Kainos will be responsible for the entering into and the administration of the Third Party Contracts during the Support Term strictly subject to this section 11. Kainos is responsible for passing to the Customer the benefit and burdens of the Third Party Contracts only and nothing in the License Agreement will operate to: a) make Kainos responsible for furnishing the Customer with any additional benefits or services under any Third Party Contract which is not provided for in the Third Party Contract; b) make Kainos liable for any act, omission or breach of contract by the third party; c) make Kainos responsible for the provision of any services to be provided under the Third Party Contract by the third party or by the Customer.
- 11.2 Where the Third Party Contracts include support and maintenance provided by the Third Party, Kainos will be responsible, during the Support Term, for raising any issues with the Embedded Software directly to the third party and in accordance with these terms shall use reasonable efforts to resolve such Incident through recourse to the third party, but the rectification of such Incidents shall not be subject to the Service Levels.

12. RENEWAL OF THIRD PARTY CONTRACTS

In the event that the Support Term is extended, the Kainos will be responsible for the administration and the renewal of the Third

Party Contracts for such extended Support Term. Kainos' responsibilities in respect of the Third Party Contracts will expire at the end of the Support Term or termination or cancellation of the Evolve Support Services in accordance with the Agreement licensing the Software Product. Upon the expiry or termination of the Kainos Evolve Support Services, should the Customer wish to continue to receive support and maintenance under the Third Party Contract, then the Customer will be responsible for:

- (i) renewal of the support and maintenance provided pursuant to the Third Party Contracts;
- (ii) all fees relating to the renewal of the support and maintenance provided under the Third Party Contracts; and
- (iii) raising any issues with the Embedded Software with the third party.

13. EVOLVE SUPPORT SERVICES FOLLOWING EXPIRY OR TERMINATION OF THE SUPPORT TERM

The Customer agrees that should it elect to provide Evolve Support Services in respect of the Software Product or engage a third party to do so following expiry or termination of the Support Term, that the Customer is solely responsible for ensuring that it or any such third party comply with the terms of this License Agreement. The Customer further acknowledges that following such expiry or other termination, the Customer (a) will have no further responsibility in respect of the provision of the Evolve Support Services (to include the provision of KIM); (b) will not provide access to the source code of the Software Product (other than in accordance with clause 43 of the Contract) and (c) will not be responsible for the renewal of Third Party Contracts for support of the Embedded Software. Customer agrees to use best endeavours to require any such third party provider of support to agree in writing to indemnify the Kainos for any failure of such third party to comply with the terms of this License Agreement.

14. DISPUTE RESOLUTION

Any dispute arising out of or in connection with the Evolve Support Services will in the first instance be referred to the Evolve Software Product Support Manager for discussion and resolution, with escalation to the Evolve Service Delivery Manager. If the dispute remains unresolved following escalation to the Evolve Service Delivery Manager, the matter will be referred to the Evolve Software Product Manager.

15. INCIDENT CLASSIFICATION & SERVICE LEVELS

Incident	Classification
Priority 1	A critical fault with the Product where one of the following occurs: • Multiple users cannot logon to Evolve. • Multiple users cannot view case notes. • Multiple users cannot view documents. • Multiple users cannot view and submit eforms. • Iguana cannot process messages.
Priority 2	An error with the Product outside of those defined as a priority 1 which prevent an important function or process from working as per the documented specification and where no work around is available. • Error that prevents the discharge of patients. • Error that has resulted in the corruption of data. • Evolve is unable to ingest any content. • Evolve is unable to scan content. • QMS or iPad is unavailable to users.
Priority 3	A Product error which prevents a non-critical function or process from working as per the documented specification. • Issue uploading a specific document to Evolve. • Single user cannot view and submit eForms. • Single user cannot logon to Evolve. • Single user cannot view case notes or documents. • Isolated defect that is preventing the processing of specific HL7 messages.
Priority 4	A minor or cosmetic issue or a request for routine advice and guidance. • An issue which has no or little impact on production and resolution is not time critical Error such that an eForm is not displayed correctly on screen, although the functionally is working correctly.
Change Request	Request for change or enhancement to Product. Description: - A request for a change to the Support Services or to this Agreement. Example: - Request to perform Product upgrade.

Incident	Target Response Time	Target Resolution Time
Priority 1	2 hours	4 hours
Priority 2	4 hours	6 hours
Priority 3	1 days	On a priority basis
Priority 4	1 days	On a priority basis
Change Request	3 days	On a priority basis

Kainos Evolve

EMR-as-a-Service

Service Description

April 2022
v8.0

Overview

This document describes the key features of the Kainos Evolve EMR-as-a-Service, which is specifically designed for the cloud hosted Evolve product (and licensed modules). The managed service is ISO 20000 and ISO 27001 accredited and operates 24 hours a day, 365 days a year, delivered by a dedicated, expert, UK based team.

The service is comprised of the following elements:

Managed Service

A comprehensive, seamless service for all aspects and components of the Evolve EMR Application (and licensed modules), including databases, integration points, embedded application features, advanced security and Disaster Recovery (DR) management.

It can include **Cloud Hosting** provisioned from Microsoft Azure, or alternatively, the customer can procure **Cloud Hosting** services directly from Microsoft Azure.

The service also consolidates **Evolve EMR Product Support** – ongoing support and enhancement of the Evolve software product (and any licensed Evolve modules).

Appendices 2 and 3 provide information on the activities required to enable the service for new and existing Evolve customers

Service Processes and Features

The ITIL service processes and key service component features that underpin the overarching managed service.

Exit Management

Services and activities to manage closing down and transfer of the service.

Managed Service

The service is designed specifically for EMR using our specialist skills and knowledge of the EMR product and cloud services. It provides proactive operational and advanced security management of the Evolve EMR application (and any licensed modules).

Cloud hosting

Where Kainos provides cloud hosting provisioned from Microsoft Azure, the Customer will be the Licensee under the Azure terms of use which can be found here <https://www.kainos.com/wp-content/uploads/2017/09/Microsoft-Flow-Down-Terms-for-Customer-Agreement-MCA-2015.pdf> Kainos will be registered as the Customer's Digital Partner of Record in the Azure Portal for the duration of any contract with the Customer.

Monitoring

Kainos will continually monitor the cloud hosted environment using tools from the cloud provider's native toolset e.g. Microsoft Azure Operations Management Suite, and others as required, to detect and enable its response to potential issues to ensure the effective operation of the Evolve service.

Monitoring activities include:

- **System Availability & Performance**
 - Kainos will verify that the Evolve application is available and performing to values set within the defined SLA set out below.
- **Capacity Monitoring**
 - Kainos will monitor CPU, memory, storage, networking (e.g. load balancers) to ensure the system has the capacity required to deliver the service.
- **VM Monitoring**
 - Kainos will monitor and respond to OS performance counters and server health.
 - Kainos will monitor and respond to key MS Windows services and Application processes.
- **SQL Monitoring**
 - Kainos will monitor and respond to standard MS SQL Server performance counters.

- Log Monitoring
 - Kainos will monitor application, system event and security logs.
- Alert Tuning and Improvement
 - Kainos will continually assess and refine alerts to ensure the effective monitoring of the platform.

Security

Kainos will provide the following advanced security management in line with best practice and the ISO 27001 standard. This will include the following activities:

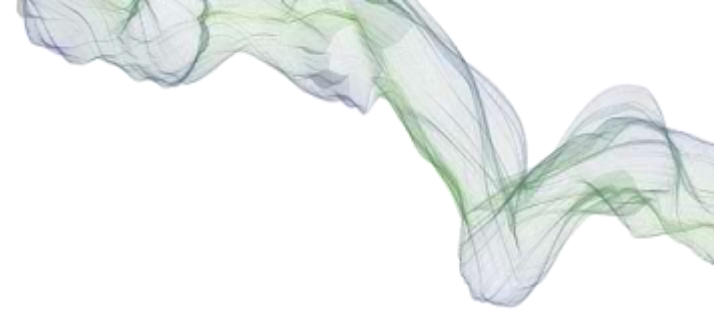
- **Anti-virus Management**
 - Kainos will install and maintain an up to date antivirus service solution.
 - Kainos will monitor and respond to anti-virus alerts as priority incidents.
- **Security Vulnerability Assessments**
 - Scans using industry leading tools will be performed on a regular basis to identify vulnerabilities for software installed in the solution and assess their criticality and the recommended response.
 - Kainos will monitor security feeds for new critical threats and available patches, providing a recommended response.
- **Server Operating Systems Patching**
 - Kainos will patch, test and deploy MS Operating System patches on a regular basis in line with an agreed Change and Release procedure.
 - Kainos will alert the Customer to the requirement for emergency patches and install these as soon as is practical in line with the criticality of the security threat to be addressed.
 - Kainos will patch and test SQL Server as part of Evolve product releases.
- **Protective Monitoring**
 - Kainos will provide intrusion detection to prevent unauthorised access.
- **Log Retention**
 - Operational logs will be retained to facilitate forensic analysis for a minimum of 6 months and maximum 12 months depending on the log type
- **Security Operations**
 - Kainos will use specialist security services to provide 24*7 threat detection, log file analysis and response.

Operational Management

Kainos will provide proactive, comprehensive, operational management carried out by dedicated Evolve solution experts. These tasks are summarised in the Roles and Responsibilities set out in the Appendix.

This will include the following activities for the production environment (a subset of these activities will be performed on non-production environments):

- **Evolve Backup Management**
 - Performing daily database backups
 - Performing transaction log backups at 15-minute intervals
 - Performing daily content backups
 - Performing full VM backups in line with a suitable schedule dependent on VM role
 - Verification of backups as has having run to schedule and success
 - Re-running backups as required to maintain compliance against the backup schedule
 - Performing scheduled test restores on a regular basis
 - Providing backup management report to the client as part of the monthly service report
- **Evolve DR Management**
 - Maintenance of the Evolve EMR DR solution enabling failover to a secondary data centre in an independent Azure region
 - Execution of a suitably scoped annual DR verification
- **Database Management**
 - Ongoing management of database operation and health including SQL Services, database size, Maintenance Plans, archiving (where required) and event management.
- **Application Management**
 - Ongoing management of application component operation and health of Web servers, Document Repository, Search Engine, BPM, the Integration Engine, Audit management, LDAP sync management, Scheduled Tasks, batch e-mailer, application services.
- **Evolve Integration Management**



- HL7 channel alerting and correction of technical faults.
- Base data load monitoring and correction of technical faults.
- Monitoring of file ingestion interface services and correction of technical faults.
- **Software Deployment**
 - Kainos will perform application updates and deployments in consultation with the Customer and in line with the Evolve EULA and this Services Description.

Environments and Hours of Operation

Kainos will provide support for the following environments hosted on the cloud platform to the following hours of service:

Environment	Hours of Operation
Production	24x7x365
Test	8 hours per weekday (9am to 5pm)
Training	8 hours per weekday (9am to 5pm)

Evolve EMR Product (Evolve EMR and licensed modules) Support

The terms of use of the Evolve product and any licensed modules are as set out in the current Evolve EULA.

The terms of use of the Evolve product and licensed modules are as set out in the Evolve EULA which can be accessed here, <https://kainos-prod-assets.s3.amazonaws.com/uploads/2020/04/Evolve-EULA-EMR-in-the-Cloud-v2.0-2.pdf>

Kainos Product Support will include:

- **Incident Corrections**
 - Kainos shall exercise commercially reasonable efforts to correct any Incident reported by Customer in the current unmodified release of Evolve in

accordance with the classification reasonably assigned to such Incident by Kainos.

- If a reported Incident has caused Evolve to be inoperable or Customer's notice to Kainos states that the reported Incident is substantial and material with respect to Customer's use of Evolve, Kainos shall use its reasonable commercial efforts to correct expeditiously such Incident or to provide a software release or bypass around such Incident. Customer acknowledges that all reported Incident may not be corrected.
- Kainos shall have no obligation to support: (i) altered, damaged or modified Evolve Products or any portion of Evolve incorporated into other software; (ii) problems caused by Customer's negligence, abuse, misapplication or use of the Evolve other than as specified in the Evolve Product Specification or other causes beyond the control of Kainos; or (iii) Evolve installed on a system that is not supported by Kainos. Kainos shall have no liability for changes in Customer's hardware necessary to use Evolve due to a workaround or maintenance release.
- Fixes to Incidents will be included in the next scheduled Release which will be the Customer's exclusive remedy for any such Incidents. Kainos shall have no other obligation or liability to Customer in such instance.
- To the extent that an Incident is caused by an error in the Embedded Software, (as defined in the Evolve EULA) Kainos will use reasonable efforts to resolve such Incident through recourse to the Third Party Licensor, but the rectification of such Incidents shall not be subject to the Service Levels.
- Kainos requires unrestricted access to Evolve to enable troubleshooting and corrective action work. Customer acknowledges that Kainos will access Evolve in order to investigate incidents and perform corrective actions. If access is not granted, Customer acknowledges incident resolution time may be affected.

- **New Versions and Maintenance Releases of Evolve**

- Kainos will provide new versions of Evolve for correcting errors, creating minor improvements to existing features or adding new features or functionality or substantial performance improvements (a "Release").
- Kainos will notify the Customer when a Release is available to be installed on the Customers environment. The deployment schedule of the Release to the Customers environment will be communicated to the Customer in writing in advance of the commencement date.

- Kainos will endeavour to provide a minimum 24 hours electronic notice (unless otherwise agreed with the Customer, such agreement not to be unreasonably withheld or delayed) of planned downtime for any critical maintenance activities required outside of a scheduled Release. Examples of critical maintenance activities include fixing critical security vulnerabilities, critical performance issues, critical clinical risks and other critical defects. Kainos will give the Customer key details of the Incident and impact when advising the Customer of the critical maintenance activity required.
- Services are provided only for the current release of the Product ("Supported Version").

Kainos may at its sole discretion, modify Evolve and deliver Evolve Product Releases to its customers which may add new and/or eliminate existing features, functions, operating environment and/or hardware platforms to Evolve.

Kainos Evolve EMR-as-a Service - Service Level Agreement

The service will be managed in accordance with the Service Level Agreement (SLA) set out below. The SLA below only applies to the Supported Version of Evolve.

Incident Response & Resolution

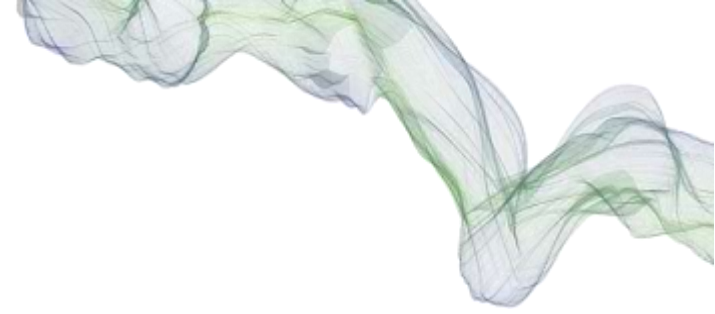
Priority	Classification	Target Response Time	Target Fix Time	Service Hours
1 Critical (and out of hours)	A critical fault with the Product where one of the following occurs: • Multiple users cannot logon to Evolve • Multiple users cannot view case notes. • Multiple users cannot view documents • Multiple users cannot view and submit eForms • Iguana cannot process messages	1 hour	4 hours	24/7
2 Major (and out of hours)	An error with the Product outside of those defined as a priority 1 which prevent an important function or process from working as per the documented specification and where no work around is available.	2 hours	6 hours	24/7

	- Error that prevents the discharge of patients. - Error that has resulted in the corruption of data. - Evolve is unable to ingest any content. - Evolve is unable to scan content. - iPad is unavailable to users.			
3 Medium	A Product error which prevents a non-critical function or process from working as per the documented specification - Issue uploading a specific document to Evolve. - Single user cannot view and submit eForms. - Single user cannot logon to Evolve. - Single user cannot view case notes or documents. - Isolated defect that is preventing the processing of specific HL7 messages.	1 day	*On a priority basis	Core Hours
4 Low	A minor or cosmetic issue or a request for routine advice and guidance An issue which has no or little impact on production and resolution is not time critical Error such that an eForm is not displayed correctly on screen, although the functionality is working correctly.	1 day	*On a priority basis	Core Hours
Change Request	Request for change or enhancement to Product. Description: A request for a change to the Support Services or to this Agreement. Example: Request to perform Product upgrade	1 day	*On a priority basis	Core Hours

*Kainos acknowledges that the Customer will be in the best position to assess the operational impact of Priority 3 and Priority 4 incidents. The parties will discuss in good faith and mutually agree the prioritisation of incidents to be resolved considering the operational impact.

Evolve Product Performance

Kainos will measure Evolve product response times using our monitoring toolsets for the cloud hosted production environment. Kainos will execute and report on Evolve



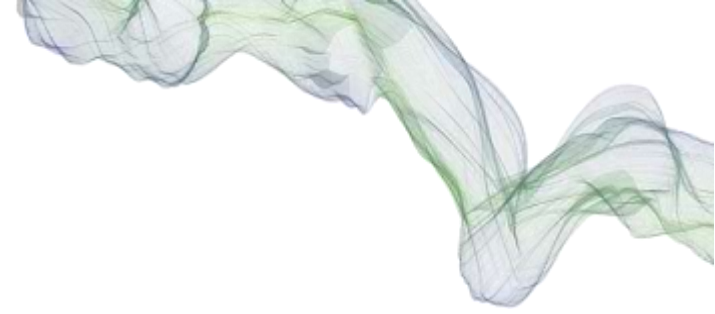
product performance on a quarterly basis by executing the following functional tests.

Activity	Within	Transaction Description
Login	<=5 seconds	Time from initial login request received on Evolve web server to a successful authentication token returned from web server.
Search output	<=4.5 seconds	Time from patient search by Name, DOB, NHS number or Hospital number received on the Evolve web server to return of the patients that match this criteria from the web server.
Opening a document	<=3 seconds	Time from view document request received on Evolve web server for a PDF of up to 300Kb size to return of the first page of the document from the web server.

Response time undertaking

The transaction times defined above will be subject to the following criteria:

1. Measurements shall be conducted on a suitably configured virtual machine hosted within the Evolve Cloud environment, running monitoring software that will calculate response times. The virtual machine will be secured in line with cloud hosting requirements but no unrequired client software will be installed.
2. All tests shall be performed against the cloud hosted production environment.
3. All tests will be for a single user, carrying out each of the transactions shown above, with load on the server. The Response Time is defined to be the time taken for a single transaction as described above from when the request is first received at the Evolve web servers to when the response is returned to the client virtual machine.
4. All tests will be performed using Evolve product configuration options recommended by Kainos. Where this is not possible because of different configuration options being chosen by the Customer, the Customer accepts that this may have an impact on the Response Times for certain transactions, and the times outlined in the table above will no longer apply.



5. The median response times will be measured over 10 operations using different data for each operation (e.g. searching for different patients)
6. Response times will be measured as defined in the Transaction Description field in the table above.
7. For document viewing tests the document will be in the Evolve cache before starting; timings will start when the document is selected from the tree view and will stop when the document is displayed in the viewer, including visible thumbnails.
8. For document viewing tests all timings will be measured using the default document view in the "Tab view" on the Patient Record screen.

Kainos will not be responsible for resolving any performance issue where it is determined (after investigation) that the cause of the performance issue is with the Customer's Active Directory, end user computer, networking or elements of the solution that are hosted on the Customer's site. Kainos will be responsible for resolving any performance issue where it is determined (after investigation) that the cause of the performance issue is with the EMR Cloud Hosted Solution. Where Kainos are responsible for provisioning the Cloud hosts, they will raise and manage support tickets with the hosting provider for any performance issues attributed to the Cloud Platform.

Evolve DR SLA

In the event of the disaster the following SLA will apply.

Scenario	Estimated RTO/RPO
Full loss of Azure region	RTO 6 hours*
Database Recovery	RPO 60 minutes

*From the time of the DR recovery process commencing. Deliberation time in advance is excluded. The initiation of the DR process is mutually agreed with the customer

Evolve Product Availability

Kainos will measure Evolve product uptime availability using our monitoring and alerting toolsets for the production environment.

Evolve availability will be calculated monthly by monitoring the following key Evolve Services:

- 1) Access to patient record\documents; and
- 2) Ability to progress workflow.

Definition	Frequency of Measurement Period	Severity Levels	Service Points
Evolve availability will be calculated by monitoring the following key Evolve Services on the Production Environment: • Access to patient record\documents • Ability to progress workflow	Monthly	Target Performance Level: 99.9%	0
		Minor Failure: 99.8% - 99.0%	1
		Serious Failure: 98.9% - 98.0%	3
		Severe Failure: <97.9%	5

Service Credits

- Availability calculations will exclude periods of planned downtime
- Kainos shall monitor the availability of Evolve and shall send the Customer a report detailing the level of service achieved in accordance with the SLA.
- Service Points, and therefore Service Credits, shall accrue for Availability SLA failure and shall be calculated as follows:
 - If the actual Availability level meets or exceeds the Target Performance Level during the monthly review period, no Service Points shall accrue to Kainos.
 - If the level of Availability performance during a Service Period is below the Target Performance Level, Service Points shall accrue to Kainos as set out in the table above.
 - Service Credits shall be calculated by reference to the number of Service Points accrued in any one month.
- For each month:
 - a) the Service Points accrued shall be converted to a percentage deduction from the Service Charge (as set out below) for the relevant

Service Period on the basis of one point equating to a 1% (one percent) deduction in the Service Charge; and

- b) the total Service Credits applicable for the Service Period shall be calculated in accordance with the following formula: $SC = TSP \times X \times AC$

where:

SC is the total Service Credits for the relevant month;

TSP is the total Service Points that have accrued for the relevant month;

X is 1% (one percent); and

AC is the total monthly Service Charge for the relevant month
(calculated by dividing the annual Service Charge by 12).

- For the purpose of the above calculation the Annual Service Charge, shall be the amount payable under the Order Form with the Customer for the managed services under this Service Description.
- Service Credits are a reduction of the Annual Service Charge payable to reflect the reduced value of the Services actually received and are stated exclusive of VAT.
- Service Credits shall be shown as a deduction from the amount due from the Customer to Kainos in the invoice for the year immediately succeeding the year to which they relate. Customer can request that the annual service credit (or portion thereof) is converted to service days by Kainos up to a maximum of 10 days. Any such adjustment will be agreed in writing by Kainos and Customer (email will suffice).
- Service credits will be capped at £25,000 per annum.

Service Processes and Features

The following ITIL service processes and key service component features underpin the Managed Service:

- **Service Desk**
 - The single point of contact for managed service managing all cloud infrastructure and Evolve application related incidents.
- **Service Manager**
 - A Service Manager who is the main point of contact in relation to all aspects of the service, who will manage the service, issue reports and conduct service reviews.
- **Kainos Incident Management System (KIM)**
 - Web based incident management portal. Provides a central, searchable repository for the recording and tracking of all communication regarding incidents, problems, service requests and change requests.
- **Change and Release Management**
 - Documented control of changes and releases in line with ITIL standards.
- **Escalation Process**
 - A defined escalation process to ensure incidents and alerts are responded to by the correct staff in the correct timeframe.
- **Event Management and Operational Maintenance**
 - Proactive response to monitoring alerts and incidents, and performance of scheduled operational maintenance tasks.
- **Access Management**
 - Managing controlled access to the cloud environment.
- **Monthly reporting**
 - Service reports detailing financial and service performance against the respective SLA, incidents details and a forward schedule of change.
- **Service Reviews**
 - Service reviews to review the monthly reports. This will typically be monthly but the frequency is mutually agreed.

The Kainos Service Desk can be contacted:

- By **telephone** – 028 9057 1200
- By **email** – support@kainos.com

- [Online](https://support.kainos.com) using the KIM system – <https://support.kainos.com>

Service Desk - Hours of Service 8am -6pm Monday-Friday

Out of Hours Service:

Evolve EMR-as-a-Service – P1 and P2 incidents

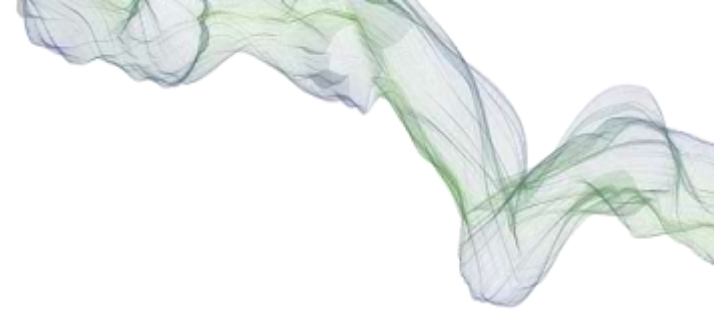
Exit Management

The Customer will notify Kainos not less than six (6) months prior to the expiry of the order that it wishes to avail of assistance from Kainos to transition the service. Kainos will provide this assistance on a time and materials basis (at the applicable rate card). Expenses incurred in conjunction with these services, including the use of third party equipment or services e.g. third party hosting charges required for transition, will be chargeable to the Customer.

Kainos will cooperate fully with the Customer and, if applicable, a replacement provider to assist in the smooth and successful transfer of the Customer's data to the replacement system.

Kainos shall make the Evolve Web API available to provide the Customer with the capability to extract data from within Evolve. On expiry of the contract Kainos will provide the Customer with a temporary extension to the licence for the Evolve Web API (including documentation), free of charge to facilitate the migration process. After the end of the contract the Evolve service will be provisioned for a period of one month to enable the Trust to extract the required data from Evolve. Following extraction of the data, disposal schedules can be configured to trigger the destruction of the electronic records stored within Evolve. Configuring retention and disposal schedules is a topic covered in the 'Evolve for Records Managers' training course. Evidence of destruction would be provided via audit logs of the disposal process.

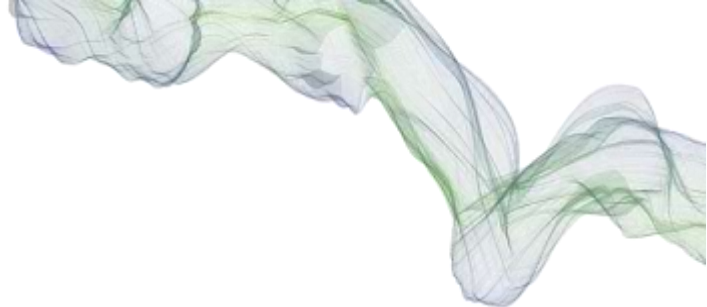
Nothing in these proposed transition services shall require Kainos to assign any of its intellectual property rights to any other party. Live service to users will end on expiry of the order and access to users will be removed at this point prior to the final extract of the Customer's data.



Appendix A – Operational Service Roles and Responsibilities

Customer Roles and Responsibilities

Area	Responsibility
End User Service Desk	1st & 2nd line support including: - Incident triage. - End user queries. - Training issues. - The correction of operational support issues relating to HL7 failures and Ingestion failures. - Escalate issues to Kainos 3rd Line Support.
Clinical Interface Specialist	Management of Evolve configuration settings via Evolve administration screen.
eForm	- Development publication and maintenance of eForm, workflow processes and reports. - Support of Trust developed eForm, workflow and reports including diagnosing and correction of issues. - Support and development of non-Evolve Product eForm databases.
Infrastructure	Investigation of Customer Infrastructure issues outside of Evolve Cloud Infrastructure, including but not limited to: - Customer LAN/Network, Firewalls, DNS. - PCs, iPads, printers & other client devices. - External connection to Evolve Cloud environment e.g. ExpressRoute - 3rd party application and infrastructure external to Evolve such as Agfa PACS Setup, maintain and ensure the performance of external connection to Evolve Cloud Hosted environment e.g. ExpressRoute - Maintain & provide security certificates to Kainos.



- DNS Administration.

Setup and manage external access to Evolve (other NHS organisations). Access to Evolve must appear from a Trust hosted IP address

Management of Evolve on premise scanning Infrastructure:

- Scanning application, database and Reader servers.
- Scanners, scanning clients.
- Scanner infrastructure support.

Evolve Scanning

Operational management of Evolve scanning processes and procedures including maintenance of form packs and correction of operational scanning issues.

Management of non-Evolve 3rd party scanning suppliers, 3rd party scanning software and delivery of files to Kainos managed servers.

Evolve Integration

- Development & maintenance of Evolve Integrations.
- Responding to HL7 Channel alerts.
- Correction of HL7 issues/failures escalated from Kainos.
- Correction of base data loads escalated from Kainos.
- Correction of Ingestion errors and issues escalated from Kainos.
- Correction of failed email tasks escalated from Kainos.
- Correction of data mappings escalated from Kainos.
- Ongoing testing of other external systems dependent on Evolve (for example data warehouse reporting).

Records Management

Record management - relocating incorrectly filed content; managing retention periods; applying and lifting legal holds; and configuring the records repository.

Change Management

Business change management for new features, Evolve configuration, etc.

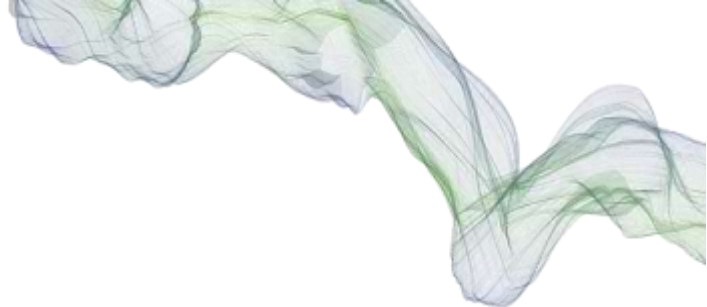
End user training:

- Creation & delivery of end user training.
- Anonymisation and the population of training data.

Change management of customer developed eform, workflow, reports etc.

Release Management

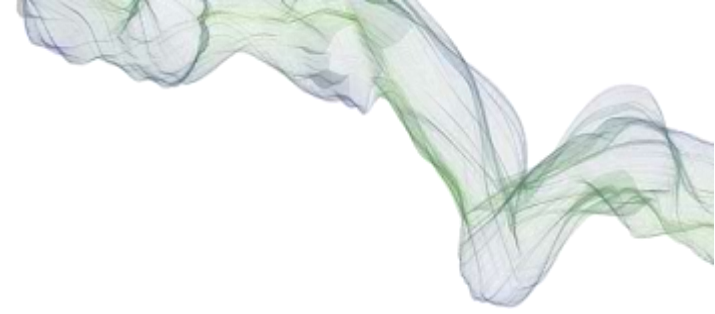
Customer will provide a project manager to coordinate Customer activities and dependencies as required.



Lead User Acceptance Testing:

- Design and execute appropriate test plans/scripts
- Sign off the upgrades prior to go live.

External Printing Service	External hosting, management, monitoring and correction of external printing services.
Client Software Management	Management and installation of Evolve client software: - Scanning client software. - eform client software - e.g. forms designer. - Evolve client software e.g. RMC drivers, Document Repository Admin. iPad device management including deployment of new apps.
Reporting	Development and maintenance of adhoc business reports including Audit reports.
Data Policies	Customer will be responsible for providing Kainos with any Customer information security policies applicable to the project in advance of commencement, otherwise Kainos' own policies shall apply (copies can be provided on request).
Data Access	Customer will be responsible for: - Ensuring Kainos employees only have access it's data for the shortest possible timeframe and only as required to carry out the services. Access shall be revoked immediately when not required. - Ensuring that for non-production test environments, only anonymised data is provided and made accessible to Kainos. - Ensuring that for all other non-production environments anonymised data is provided and made accessible to Kainos. - Ensuring that its data can only be accessed from trusted networks and devices. - Ensuring that it has adequate control in place to manage user access (at least in line with NHS Digital guidelines), Evolve account creation and management and remote user access of its staff in compliance with these responsibilities.



Data Transmission

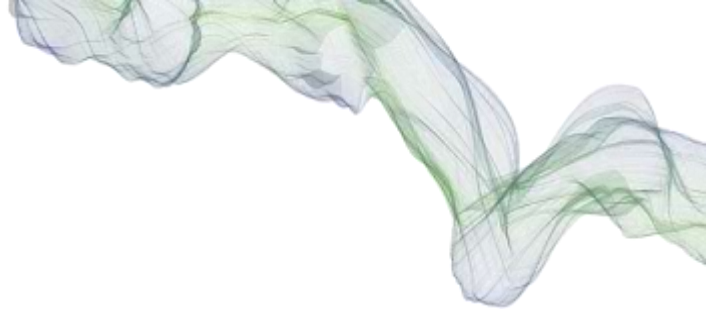
Customer will be responsible for ensuring that data is never sent, provided or otherwise transmitted via email, external devices or via unsecured platforms.

Data Security

Customer will be responsible for ensuring that any data sent to Evolve is done so in a secure manner, is uncorrupted, is scanned for virus' and is encrypted. Kainos reserves the right to not accept any data that is unencrypted.

Kainos Roles and Responsibilities

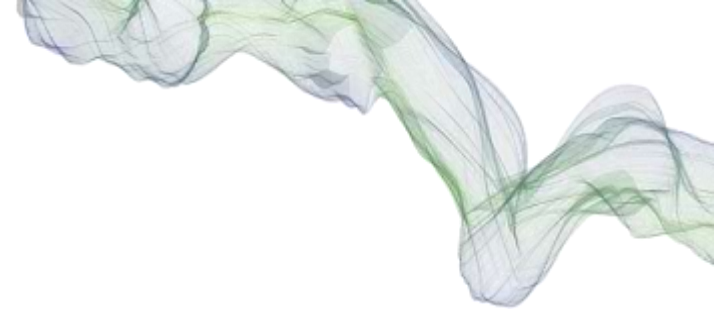
Area	Responsibility
Kainos Service Desk	3rd & 4th line support including: - Call logging. - Initial investigation. - End User queries/advice. - Escalation to the appropriate supplier resolution group, e.g. Cloud hosting or Evolve Product Support.
Evolve Cloud Infrastructure	Cloud Server monitoring & management: - Performance monitoring. - System resources. - Disk space utilisation. - Scheduled tasks. - Load balancing. Application monitoring: - Evolve product service monitoring including Web Servers, Document Repository, Search Engine, BPM, Integration engine & Database etc. - Correction of Evolve product service failures. Log file monitoring & management: - Evolve application logs. - Window Server event logs. Document Repository Audit management. Cloud environment access management: - End user admin/account management. Evolve LDAP sync monitoring.



	Hosting of non-Evolve eform database.
Disaster Recovery	- Maintain Disaster Recovery service. - Perform annual disaster recovery test.
Evolve Integration	- HL7 channel alerting setup & configuration. - Monitoring of base data loads and correction of technical faults. - Ingestion Interface alerting setup & configuration and correction of technical faults. - Monitoring of Evolve Ingestion Services and correction of technical faults. - Monitoring of batch emailer task and correction of technical faults.
Change Management	Evolve product feature enhancements including triage, scope, estimate, develop and implement (via CCN). Evolve product configuration/infrastructure changes including triage, scope, estimate, implement (via CCN). Evolve product bug fixes.
Release Management	Management and deployment of Evolve software releases (Maintenance and Upgrades): - Create plan to upgrade Evolve when new releases are available. - Installation of Software to latest version across supported environments. - Support Customer lead UAT event. - Lead Non-Functional Testing with support as needed from the Customer. - Deployment to Software to Live environment. Release of Infrastructure changes: - Create plan to upgrade Evolve infrastructure. - Support Customer lead UAT event. - Installation infrastructure components across.
Service Management	Account management. Management of service and co-ordination between teams: - Capacity, Availability management, etc.

- Monthly reporting.
- Escalation management.
- Continuous service improvement.
- Service reviews.

Evolve Product support management.

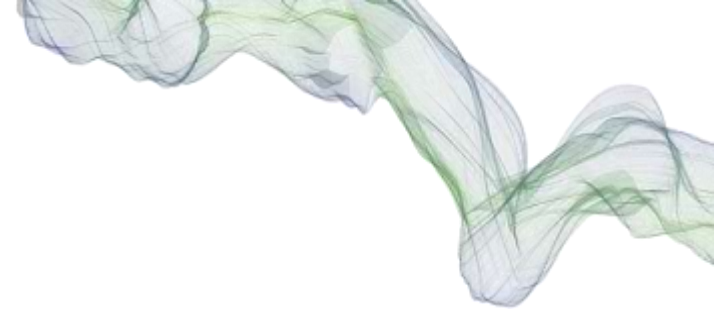


Appendix B – Migration Project Roles and Responsibilities

Migration roles and responsibilities are applicable to existing on-premise Evolve EMR customer who are moving to Evolve EMR-as-a-Service. These cover the responsibilities during a pre-service implementation phase, to move the customer to their cloud instance of Evolve EMR.

Customer Roles and Responsibilities

Area	Responsibility
Project	Customer has overall ownership of the project and will provide a Project Manager to coordinate Customer activities and dependencies.
Infrastructure	The Customer will ensure appropriate Customer internal network, external network and connections, and domain preparation will be in place prior to the work commencing (the requirements for this will be advised early in the project). The Customer is responsible for the ongoing provision and maintenance of these components. The Customer is responsible for User/Group Active Directory and accounts. The Customer will decommission any dormant Evolve environments in an agreed timeframe after the project ends. The Customer will ensure any appropriate third-party licenses will be procured and in place prior to the work commencing. In particular, SQL Server will be licensed by the Customer (to the version required and specified in the Technical Architect Document, including SA where required) in respect of both on premise (for scanning) and cloud environments.
Licence	If the Customer has opted to procure Cloud Hosting services directly from Microsoft Azure they are responsible for procuring for compliance with the applicable Azure terms of use. Kainos accepts no responsibility or liability for the any failures, losses or breaches associated with the use by the Customer of the cloud hosting platform or any acts or omissions of the cloud hosting provider.



Project Staff	The Customer will provide timely access to their internal technical teams in order to identify and resolve any blockers to achieving the Customer to cloud connectivity at a user level and from third party systems, such as the Customer integration engine, PAS, etc.
eForm	The Customer will implement any required changes to the Customer eForms database, eForms/Workflow and reports to support cloud hosting (e.g. remove any direct dependencies on internal Evolve databases).
UAT	The Customer will prepare and execute the UAT Test scripts Sign off the Evolve upgrade prior to go live.
Data Migration	The Customer will provide access to the data to be migrated and will ensure that the devices and network connections are sufficiently performant to facilitate transfer of the content within an agreed time in the project without significantly impacting end users. Sign-off migration process. Testing and where appropriate remediation of other external systems which are dependent on Evolve (for example HL7 messaging)

Kainos Roles and Responsibilities

Area	Responsibility
Project	Kainos will be responsible for: - Creating and maintaining the migration project plan - Preparing Technical Architecture document - Running project workshops
Environment Setup	Kainos will be responsible for the deployment & configuration of Evolve to supported environments.
Data Migration	Kainos will be responsible for the migration of data to Test, Live and Training environments.

Non-Functional Requirement Testing	Kainos will be responsible the: - Preparation of NFR test scripts/plan. - Execution and management of NFR testing.
Go-Live	Plan Go-live event. - Cut over of data/users to the cloud Production environment - Provide post go-live support for an agreed period.
Kainos Staff	Provide suitability skilled staff in accordance with the Kainos activities identified in the agreed project plan
UAT	Provide support to the Customer during acceptance testing and assist with investigate of issues raised.

Appendix C – New Customer EMR-as-a-Service Implementations

The implementation approach below describes the deployment, build and configuration of the Evolve EMR-as-a-Service solution for a new customer. The approach follows a number of phases,

1. Discovery
2. Baseline build of the EMR as a Service Environments
3. Solution Build & Configuration
4. User and Technical Acceptance Testing
5. Dress Rehearsal & Go-Live Prep
6. Go-live
7. Post Live Support,

leading to the BAU Managed Service described at the start of this document.

The overall timeline is subject to confirmation of scope, identification of dependencies and estimates for Customer-owned tasks. These will be reviewed and verified during the Discovery phase with a detailed plan produced as an output.

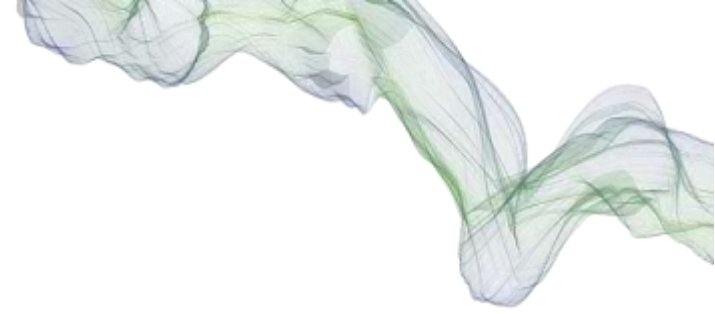
Discovery

The project will start with a Discovery. This comprises of four stages.

1. **Explore** will review the scope of the solution and will confirm which Evolve modules are required for go-live. The requirements for core product configuration and other modules will be agreed.

Separate business and technical workstreams will run in parallel and the Kainos Discovery team will engage with the Customer project and technical teams and 3rd party vendors to gain an understanding of the objectives for the Solution Build and Configuration phase.

During Explore, there will be a workshop to agree the approach to connectivity between the Evolve Cloud environments and Customer's domain. The Customer project team will identify all tasks and dependencies they will be responsible to deliver, including management of any 3rd parties. The Evolve team will do the same.



2. During **Define** the Technical and Business requirements captured in the Explore stage will be used to confirm or update the design of each component of the overall solution. The estimate for these will also be validated at this stage. Any additional modules not included in the baseline implementation services will be estimated and planned during this stage. In parallel, the Customer will produce an initial plan for the change management activities required to agree the 'To Be' processes using the EMR solution.
3. In the **Refine** stage, Kainos and the Customer will playback the intended solution and refine any specific items as necessary.
4. In the final **Ready** stage, the deliverables from Discovery will be finalised in preparation for moving to the Solution Build & Configuration phase. The outputs from Discovery may include:

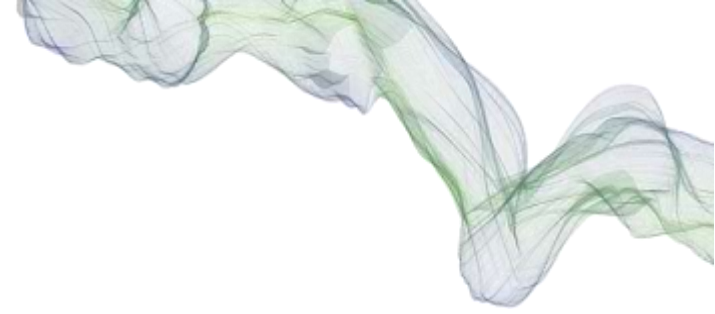
Discovery Outputs
Updated joint project plan
Updated estimates and costs
List of Customer and 3 rd party tasks and dependencies
Risks and issues log
Project initiation document including a detailed description of the tasks and activities to be undertaken during the remainder of the project.
Updated Technical Architecture including connectivity mechanism to the Customer's network
Updated Kainos and Customer roles and responsibilities

Baseline EMR as a Service Environments

In parallel to the Discovery, Kainos will build the new EMR as a Service environments from templates, with Kainos undertaking the following tasks:

- Build of Test and Training environments to a baseline configuration.
- Test and Training Server hardening configuration, set up of anti-virus, patching policies, backups, logging and monitoring

It should be noted that where in scope, the Evolve scanning components (client, server and scanning database components) will reside on-premise. The specification for the scanning components will be provided in the Technical Architecture document.



Solution Build & Configuration

Using the baselined test environment, Kainos will work with the Customer to:

- Enable Evolve EMR-as-a-Service to authenticate Customer users via their existing Active Directory credentials
- set up appropriate Domain Name Services (DNS) in order to route requests to the cloud service
- apply and test Customer-specific application configuration to the cloud environments
- build, configure, integrate and test any other components identified in the outputs from Discovery

In addition, Kainos will undertake:

- the build of the production environment with a baseline configuration.
- production server hardening configuration, set up of anti-virus, patching policies, backups, logging and monitoring
- deployment of Customer-specific configuration and components built during the phase to the production environment in readiness for Acceptance Testing.

During this phase, the Customer will also undertake the build tasks which are their responsibility. This will happen in parallel to the Kainos tasks. Examples include; firewall configuration; configuration of HL7 feeds, 3rd party scanning reconciliation reports and case note tracking

Training Delivery

Training will comprise a number of core courses and optional courses depending on the scope agreed during Discovery. As a minimum the following courses will be delivered:

Core Training
Evolve EMR End User Train-the-Trainer
Operational Procedures / System Administration

training may also include:

Optional Training
eForms and Workflow
In-house Scanning Operator and Admin

User and Technical Acceptance Testing

User Acceptance and Technical Testing will include a full test of Evolve functionality for all in scope modules and integrations and will be driven by the Customer, with full support from Kainos Product Specialists and Infrastructure Engineers. This phase will require Customer signoff before moving forward to the subsequent phase.

In addition to the testing above, technical and non-functional testing including Performance Penetration, Backup/Restore and Disaster Recovery Testing will be jointly undertaken to validate that the production environment performs in line with expectations. This will include validation of the logging, monitoring and alerting on the environment and the associated processes by Kainos.

Go-live Prep

Go-live Preparation will include a dress rehearsal which will test the connectivity and integration with the Customer's other production systems e.g. PAS in readiness for go-live.

During go-live preparation, the Kainos support team will engage with the Customer's support team to confirm support processes, procedures and escalation points inline within the SLA. A support design workshop will be held during the implementation phase of the project to define the lower level service operations and will be documented in the Managed Service Design Plan.

Go-live

Go Live will be scheduled at an agreed time with the Customer and is normally phased over two stages:

- Integration and On Demand Scanning
- Clinical and Day Forward Scanning

Post Go-live Support

Post go-live support will involve Kainos providing support to the Customer, which may include floorwalking as agreed with the Customer, for a short period of time following the scanning and clinical go live milestones. During this time the solution

will be transitioned to the Kainos Evolve-EMR-as-a-Service BAU support team and processes.

Special Conditions Applicable to the Implementation Services

The proposed Implementation Approach and associated Services are subject to the following conditions:

- The majority of the work is expected to be carried out remotely in order to minimise expenses.
- Remote work will be carried out from Kainos offices via VPN connection.
- The Service Charges set out are based on an estimated duration which includes Project Services and QA support of fixed lengths. Customer delays to each stage of the project may increase the overall duration and result in additional costs on a Time & Materials basis based on the agreed rate card. Kainos will proactively notify the Customer when additional charges will be incurred
- The proposed project timelines will be reviewed by both Parties and confirmed or revised as necessary to take into account any new requirements and dependencies during Discovery.
- The Evolve Scanning module described in this document is an optional module. When in scope the components reside on-premise and are managed by the Customer.
- Unless otherwise agreed, the hardware and SQL licences costs associated with the scanning bureau are the responsibility of the Customer.
- The proposed solution and timeline do not include any data migrations other than the data extracts from PAS required to initially populate the Evolve application.

Customer Responsibilities

Project

The Customer:

- has overall ownership of the project and will provide a Project Manager to coordinate Customer activities and dependencies, and a Product Owner to agree and sign off deliverables
- Project Manager will manage and coordinate work required from 3rd Parties.
- is responsible for all change management activities.

Project Staff

- The Customer will provide timely access to their internal business and technical teams in order to identify and resolve any blockers to achieving the Customer to cloud connectivity at a user level and from third party systems, such as the Customer integration engine, PAS etc...

Infrastructure

The Customer:

- will ensure appropriate Customer internal network, external network and connections, and domain preparation will be in place prior to the work commencing (the requirements for this will be advised early in the project).
- is responsible for the ongoing provision and maintenance of these components.
- is responsible for User/Group Active Directory and accounts.
- will provide an on-premise client PC which is accessible by Kainos, to facilitate investigation of any issues
- Provide the servers, clients and base OS builds for the scanning components. (Remote access will be required before the scanning software can be installed and configured).

Licences

- The Customer will ensure any appropriate third-party licenses will be procured and in place prior to the work commencing. In particular, Microsoft SQL Server will be licensed by the Customer (to the version required and specified in the Technical Architect Document, including SA where required) in respect of both on premise (for scanning) and cloud environments. The Customer may also provide the Azure licences

Solution Build & Configuration

The Customer will:

- provide suitable staff to complete Customer owned tasks for the various in scope components. This includes any development necessary to integrate to other 3rd party systems e.g. external scanning providers, PAS integration.
- sign off the solution configuration and component built during this phase as ready for Acceptance testing.

Acceptance Testing

- The Customer will own, prepare and execute the Acceptance Test scripts and sign off the Evolve solution prior to go live.

Change Management and Training Delivery

- The Customer is responsible for the change management activities including the rollout of the solution following the initial go-live.
- The Customer will be responsible for delivering end user training to its staff.

Kainos Responsibilities

Project

Kainos will be responsible for:

- Creating and maintaining joint project plan
- Running discovery

Environment Setup

Kainos will be responsible for:

- Preparing Technical Architecture document
- Baseline Build of Test, Training and Production cloud environments
- Server hardening configuration, set up of anti-virus, patching policies, backups, logging and monitoring

Training Delivery

- Kainos will be responsible for delivering the agreed core and optional Training

Solution Build and Configuration

Kainos will be responsible for:

- the installation and configuration of the on premise Evolve Scanning components
- the implementation of the Kainos aspects of the integrations agreed during Discovery

Acceptance testing

- Kainos will provide support to the Customer during acceptance testing and assist with investigation of issues raised.

Non-Functional Requirement Testing

Kainos will be responsible the:

- Preparation of NFR test scripts/plan
- Execution and management of NFR testing

Go-Live Support

- Kainos will plan the Go-live event and provide post go-live support for an agreed period

Kainos Staff

- Kainos will Provide suitability skilled staff in accordance with the Kainos activities identified in the agreed project plan.

Master Services Agreement Between (“Customer”) And Kainos (“Kainos”)

Part A – Order Form

Part B – The Terms and Conditions

- [1. Term](#)
- [2. Kainos Staff](#)
- [3. Swap-out](#)
- [4. Staff vetting procedures](#)
- [5. Due diligence](#)
- [6. Warranties, representations and acceptance criteria](#)
- [7. Business continuity and disaster recovery](#)
- [8. Payment terms and VAT](#)
- [9. Recovery of sums due and right of set-off](#)
- [10. Insurance](#)
- [11. Confidentiality](#)
- [12. Conflict of Interest](#)
- [13. Intellectual Property Rights](#)
- [14. Data Protection and Disclosure](#)
- [15. Customer Data](#)
- [16. Document and source code management repository](#)
- [17. Records and audit access](#)
- [18. Freedom of Information requests](#)
- [19. Standards and quality](#)
- [20. Security](#)
- [21. Incorporation of terms](#)
- [22. Managing disputes](#)
- [23. Termination](#)
- [24. Consequences of termination](#)
- [25. Kainos' status](#)
- [26. Notices](#)
- [27. Exit plan](#)
- [28. Staff Transfer](#)
- [29. Handover to replacement supplier](#)
- [30. Changes to Services](#)
- [31. Contract changes](#)
- [32. Force Majeure](#)
- [33. Entire agreement](#)
- [34. Liability](#)
- [35. Waiver and cumulative remedies](#)
- [36. Third Party Software](#)
- [37. Prevention of bribery and corruption](#)
- [38. Legislative change](#)
- [39. Publicity, branding, media and official enquiries](#)
- [40. Social Responsibility](#)
- [41. Premises](#)
- [42. Equipment](#)
- [43. Law and jurisdiction](#)
- [44. Non-Solicitation](#)
- [45. Non-Assignment](#)
- [46. General](#)
- [47. Defined Terms](#)

[Schedule 1 – Template Statement of Work \(SOW\)](#)

[Schedule 2 – Form of Change Request \(Change Request\)](#)

1. Part A – Order Form

General	
Customer	[xx]
Customer Contact	Name: Title: e-mail: Phone:
Invoice Details and Contact	Invoices shall be sent to: Name: Title: e-mail: Phone: <i>[Detail any specific invoicing requirements]</i>
Kainos	Kainos [xx] [Address] Company number: [xx]
Kainos Contact	Name: [xx] Title: [xx] e-mail: [xx] Phone: [xx]
Contract Reference	SOXXXXXX
Project	
Project Name	[xx] (the “ Project ”)
Project Description	The Agreement is entered into between the Customer and Kainos for the following purposes: [xx] Work packages will be contracted using Statements of Work (“SOWs”) in the form set out in Schedule 1. As at the Start Date, it is envisaged that the Project will involve [DN: include a high-level description of the overall Project and/or purpose of entering into this Agreement] [and that [xx] SOWs will be required under this Agreement].
Methodology	Kainos uses an agile process, starting with user needs. The agile methodology will be outlined in the SOW. Waterfall methodology will only be used in exceptional and limited circumstances, where it can be shown to best meet user needs and where it is confirmed as the appropriate approach in the relevant SOW.
Location	The Services will be carried out at the location set out in the SOW.

Project Governance	Each of the Parties shall name a senior member of its staff in the SOW (the Kainos Senior Staff Member and Customer Senior Staff Member respectively), who, together with the Kainos Project Manager and the Customer Product Owner, shall form the project board (the "Project Board"). The Project Board shall meet on a regular basis to consider: 1. Project progress against plans and budget; 2. Timelines and any issues caused by delays; 3. Escalations and resolutions; and 4. Such other relevant matters as may be tabled by either Party on the Project Board's agenda.
Warranties and Representations	Kainos warrants and undertakes to the Customer that it: 1. shall use the best applicable and available techniques and standards and will perform the Services with all reasonable care, skill and diligence, and according to Good Industry Practice. 2. shall perform the Services in a timely manner in line with Good Industry Practice; 3. shall promptly bring to the Customer's attention any delays, quality or performance issues arising during the delivery of the Services; 4. has full right, power and authority to undertake the Services and furnish the Deliverables. Customer warrants and undertakes to Kainos that it: 1. shall meet the assumptions, responsibilities and dependencies set out in a SOW on which Kainos relies for the timely provision of the Services and Deliverables; 2. will procure timely access to its premises; 3. will facilitate access to key stakeholders to participate in scheduled workshops and otherwise participate in the provision of the Services and Deliverables; 4. has full right power and authority to enter into this Agreement.
Acceptance	Unless otherwise set out in a SOW, acceptance of the Services shall be satisfied by sign-off, operationally, at sprint reviews by the Customer's product owner in line with the agreed Definition of Done.
Insurance	Kainos shall throughout the Term of this Agreement abide by the Terms and Conditions of Clause 10 and shall maintain minimum levels of insurance.
Commercially Sensitive Information	The Parties agree the following constitutes Commercially Sensitive Information: 1. Kainos staff CVs 2. The Rate Card 3. [Placeholder for other project specific commercially sensitive information]
Term	[xx]
Start date	XX/XX/20XX
End date	XX/XX/20XX
Agreement value	[xx]

Charging Method	The Charging Method is either Time and Materials or Fixed Price or such other Charging Method, as set out in the SOW.
Charges	Charges will be calculated in line with the Charging Method agreed between the Parties and set out in the SOW. Due to the agile-based delivery methodology it is not possible to exactly define the consumption of Services over the duration of the Agreement in a static Order Form or a SOW. The Agreement value is an indicative and estimated initial value of the Services that are likely to be consumed under the Agreement. The actual spend is calculated by reference to the cumulative value of the executed SOWs.
Notice period for termination of the Agreement	A minimum of ninety (90) calendar days is required for termination of the Agreement. The notice period (if any) for termination of a SOW will be set out in the SOW.
Purchase order No.	Unless agreed to the contrary and detailed in a SOW, the Customer shall issue Kainos with a Purchase Order Number for each SOW on signature of the SOW or such later period as set out in a SOW.

CONTRACT FORMATION AND ORDER OF PRIORITY

47.1 The Agreement, which becomes binding on signature of the Order Form, comprises:

- The Order Form (Part A); and
- The Terms and Conditions (Part B); and
- Schedules 1 and 2; and
- All executed Statements of Work (SOWs); and
- All executed Change Requests

collectively (the "**Agreement**").

47.2 During the Term, Customer shall have the right, but not the obligation to request Services from Kainos and Kainos shall have the obligation to either accept or decline requests for Services from the Customer.

47.3 Signature of the Order Form and the existence of an Agreement does not in itself oblige the Customer to buy, or oblige Kainos to supply the Services, to the Agreement value set out in the Order Form or at all. The Agreement becomes operational only on the execution of a Statement of Work ("**SOW**").

47.4 Each signed SOW will be read in conjunction with the Agreement and will form part of the Agreement. Each SOW contains supplementary terms and conditions, specific to the Services to be carried out under that SOW.

47.5 Any Special Conditions detailed in a SOW take priority over, vary and exclude any conflicting provisions within the other documents comprising the Agreement. Any variations made and detailed in a SOW are Statement of Work specific and amend the Agreement **ONLY** in respect of the SOW in which they appear.

47.6 Where Kainos agrees to provide Services, Kainos will complete a draft SOW and submit it to the Customer for review. Once agreed, the Parties will complete and sign a SOW.

47.7 Kainos will provide the Services set out in the SOW, in consideration of which, the Customer will pay for the Services in accordance with the Charging Method set out in the SOW.

47.8 The following order of priority shall apply to the Agreement and in the event and to the extent of any conflict or inconsistency between the documents comprising the Agreement, such documents shall have precedence as listed:

- Any executed Change Request; then
- the Special Conditions contained within a Statement of Work; then
- the Statement of Work; then
- the Order Form; then
- the Terms and Conditions; then
- the Schedules; then
- any documents appended to or incorporated in the Statement of Work by express reference.

47.9 No person other than the Parties to this Agreement shall have any rights to enforce any term of this Agreement and this Agreement shall not confer any rights on any person or party other than the Parties to this agreement and, where applicable, their successors and permitted assigns.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Part B – Terms and conditions

1. TERM

- 1.1. The Agreement comes into effect and is made on the Start Date set out in the Order Form.
- 1.2. Unless the Term has been amended in accordance with Clause 1.3, the Term of the Agreement will end on the earliest of:
 - 1.2.1 the End Date set out in the Order Form; or
 - 1.2.2 early termination of the Agreement in line with the provisions for early termination set out in the Agreement
- 1.3. The Term of the Agreement may be amended by the mutual consent of the Parties, using the Change Request process set out in clause 31.

2. KAINOS STAFF

- 2.1 Kainos Staff will:
 - 2.1.1. act on the Customer's reasonable instructions in performance of the Services;
 - 2.1.2. apply all due skill, care and diligence to the provisions of the Services;
 - 2.1.3. be appropriately experienced, qualified and trained to supply the Services;
 - 2.1.4. respond to any enquiries about the Services as soon as reasonably possible; and
 - 2.1.5. complete any necessary vetting procedures specified by the Customer.
- 2.2 Kainos will strive to ensure that Key Staff are not removed from the provision of the Services during the dates specified in the relevant SOW. Where Kainos requires a change to Key Staff for operational or other reasons within Kainos' control, Kainos will ensure that any replacement staff will be of a similar competency.
- 2.3 Kainos will promptly replace any Key Staff that the Customer considers unsatisfactory at no extra charge. Kainos will promptly replace anyone who resigns with someone who is acceptable to the Customer. If Kainos cannot provide an acceptable replacement, the Customer may terminate the SOW, subject to Clause 23.
- 2.4 Kainos Staff will comply with Customer requirements for the conduct of staff when on Customer's premises.

3. SWAP-OUT OF KAINOS STAFF

- 3.1 Kainos Staff providing the Services may only be swapped out with prior notification to the Customer.

4. STAFF VETTING PROCEDURES

- 4.1 All Kainos Staff will need to be cleared to the level determined by the Customer prior to the commencement of the Services and the Customer will provide such advance notice of its vetting requirements to Kainos, to facilitate sufficient time to achieve clearance, so as not to impact Project timelines.

5. DUE DILIGENCE

- 5.1 The Parties acknowledge that information will be needed to provide the Services throughout the Term and the Parties agree to share such information freely.
- 5.2 Unless otherwise set out in a SOW, each Party agrees that they:
 - 5.2.1 have made their own enquiries and are satisfied by the accuracy of any information supplied by the other Party;
 - 5.2.2 are confident that they can fulfil their obligations according to the terms of the Agreement;
 - 5.2.3 have raised all due diligence questions before signing the Agreement; and
 - 5.2.4 have entered into the Agreement relying on their own due diligence.

6. WARRANTIES, REPRESENTATIONS AND ACCEPTANCE CRITERIA

- 6.1 Kainos will use the best applicable and available techniques and standards and will perform the Services with all reasonable care, skill and diligence, and according to Good Industry Practice.
- 6.2 Kainos warrants that all Kainos Staff assigned to the performance of the Services have the necessary qualifications, skills and experience for the proper performance of the Services.
- 6.3 Kainos represents and undertakes to the Customer that the Deliverables will meet the Definition of Done, or other agreed acceptance criteria relevant to the Deliverables, as set out in a SOW.
- 6.4 Kainos warrants that it has full capacity and authority and all necessary authorisations, consents, licences and permissions to perform the Services and discharge its responsibilities under the Agreement.
- 6.5 Kainos is not aware of any material facts or circumstances that have not been disclosed to the Customer and which might, if disclosed, materially adversely affect the decision of a prudent person considering whether to enter into this Agreement with it.
- 6.6 The Customer warrants to Kainos that it has obtained, and will for the duration of the Agreement obtain, all authorisations, certificates, consents, approvals, licences, permits and registrations required by law to enable it to perform its obligations under this Agreement.
- 6.7 Except as expressly set forth in this Agreement, all warranties, terms and conditions, whether oral or written, express or implied by law, custom or otherwise including all warranties, terms and conditions of fitness for purpose, description and quality, are hereby excluded.

7. BUSINESS CONTINUITY AND DISASTER RECOVERY

- 7.1 If required by the Customer, Kainos will ensure a disaster recovery approach for the Project is captured in a clear disaster recovery plan.

8. PAYMENT TERMS AND VAT

- 8.1 The Customer will pay Kainos within thirty (30) days of receipt of a valid invoice submitted in accordance with the Agreement.
- 8.2 Kainos will ensure that each invoice contains the information specified by the Customer in the Order Form.
- 8.3 Unless otherwise stated in a SOW, all payments under this Agreement will be by electronic funds transfer in pounds sterling.
- 8.4 Sums payable to Kainos under this Agreement shall be made free and clear of and without deduction for or on account of taxes.
- 8.5 All charges and estimates are quoted exclusive of VAT, which will be invoiced in addition, at the then prevailing rate, if applicable. Where VAT is due, it will be itemised separately, the invoice will state Kainos' VAT registration number and it will be compliant with relevant VAT legislation.
- 8.6 In the event of persistent late payment by Customer, Kainos may cancel or suspend the Services until payment is received in full.
- 8.7 Unless otherwise set out in the SOW:
 - 8.7.1. Annual indexation shall apply to agreed charging rates/Rate Card; and
 - 8.7.2. Unless a per diem is agreed in lieu of expenses in a SOW, expenses incurred in the provision of the Services, to include travel and subsistence, shall be charged to the Customer at cost.
- 8.9 Each Party shall pay its own costs, charges and expenses incurred in connection with the negotiation, preparation and completion of this Agreement.
- 8.10 Customer will notify Kainos in writing within ten (10) calendar days of receipt of an invoice if Customer considers such invoice incorrect or invalid for any reason.
- 8.11 Further details in relation to payments are set out in the Order Form and the SOW.

9. RECOVERY OF SUMS DUE AND RIGHT OF SET-OFF

- 9.1 If Kainos owes an undisputed amount to the Customer, the Customer may deduct that sum from the total due to Kainos under a SOW.

10. INSURANCE

- 10.1 Kainos will maintain the following insurance cover during the Agreement and for six (6) years after the

termination or expiry of the Agreement:

- 10.1.1. Professional indemnity insurance with a minimum limit of indemnity of £1,000,000 for each individual claim or any higher limit the Customer requires (and as required by law); and
- 10.1.2. Employers' liability insurance with a minimum limit of £5,000,000 or any higher minimum limit required by law.

10.2 **SUBCONTRACTORS, AGENTS AND PROFESSIONAL CONSULTANTS**

Kainos will ensure that, during the Agreement, Subcontractors hold third-party public and product liability and professional indemnity insurance.

10.3 **ADDITIONAL OR EXTENDED INSURANCE**

- 10.3.1 If requested by the Customer, Kainos will obtain additional insurance policies, or extend existing insurance policies procured under the Agreement.
- 10.3.2 If requested by the Customer, Kainos will provide the Customer, with the following evidence of insurance:
 - 10.3.2.1. a broker's verification of insurance; or
 - 10.3.2.2. receipts in respect of the insurance premium; or
 - 10.3.2.3. other satisfactory evidence of payment of the latest premiums due.

10.4 **KAINOS LIABILITIES:**

- 10.4.1 Insurance will not relieve Kainos of any liabilities under the Agreement.
- 10.4.2 Without limiting the other provisions of the Agreement, Kainos will:
 - 10.4.2.1. take all risk control measures relating to the Services as it would be reasonable to expect of a contractor acting in accordance with Good Industry Practice, including the investigation and reports of claims to insurers; and
 - 10.4.2.2. promptly notify the insurers in writing of any relevant material fact under any insurances of which Kainos is, or becomes, aware.
- 10.4.3 Kainos will not knowingly do or omit to do anything, which would entitle any insurer to refuse to pay any claim under any of the insurances.

10.5 **INDEMNITY TO PRINCIPALS**

- 10.5.1 Where specifically outlined in the Agreement, Kainos will ensure that the third-party public and products liability policy will contain an 'indemnity to principals' clause under which the Customer will be compensated for both of the following claims against the Customer:
 - 10.5.1.1. death or bodily injury; and
 - 10.5.1.2. third-party Property damage arising from connection with the Services and for which Kainos is legally liable.

10.6 **CANCELLED, SUSPENDED, TERMINATED OR UNRENEWED POLICIES**

- 10.6.1. Kainos will notify the Customer as soon as possible if Kainos becomes aware that any of the insurance policies have been, or are due to be, cancelled, suspended, terminated or not renewed.

10.7 **PREMIUM, EXCESS AND DEDUCTIBLE PAYMENTS**

- 10.7.1 Where any insurance requires payment of a premium, Kainos will:
 - 10.7.1.1. be liable for the premium; and
 - 10.7.1.2. pay such premium promptly.
- 10.7.2 Where any insurance is subject to an excess or deductible Kainos will be liable for it. Kainos will not be entitled to recover any sum paid for insurance excess or any deductible from the Customer.

11. **CONFIDENTIALITY**

- 11.1 Except where disclosure is clearly permitted by the Agreement, neither Party will disclose the other Party's Confidential Information without the other Party's prior written consent.
- 11.2 Disclosure of Confidential Information is permitted where information:

- 11.2.1. must be disclosed to comply with legal obligations placed on the Party making the disclosure;
 - 11.2.2. belongs to the Party making the disclosure (who is not under any obligation of confidentiality) before its disclosure by the information owner;
 - 11.2.3. was obtained from a third party who is not under any obligation of confidentiality, before receiving it from the disclosing Party;
 - 11.2.4. is, or becomes, public knowledge, other than by breach of this Clause or the Agreement;
 - 11.2.5. is independently developed without access to the other Party's Confidential Information; or
 - 11.2.6. is disclosed to obtain confidential legal professional advice.
- 11.3 The Customer may disclose Kainos' Confidential Information:
- 11.3.1. if the Customer (acting reasonably) deems disclosure necessary or appropriate while carrying out its public functions;
 - 11.3.2. on a confidential basis to exercise its rights or comply with its obligations under the Agreement; or
 - 11.3.3. on a confidential basis, to a proposed transferee, assignee or successor in title to the Customer.
- 11.4 References to disclosure on a confidential basis will mean disclosure subject to a confidentiality agreement or arrangement containing the same terms as those placed on the Customer under this Clause.
- 11.5 Kainos may only disclose the Customer's Confidential Information to Kainos Staff or Customer authorised third parties who are directly involved in the provision of the Services and who need to know the information to provide the Services. Kainos will ensure that its supplier's staff will comply with these obligations.
- 11.6 Either Party may use techniques, ideas or knowledge gained during the Agreement unless the use of these things results in them disclosing the other Party's Confidential Information where such disclosure is not permitted by the Agreement or is an infringement of Intellectual Property Rights.
- 12. CONFLICT OF INTEREST**
- 12.1 The Parties will take all appropriate steps to ensure that neither Party nor their respective staff are in a position where there is or may be an actual conflict between the financial or personal interests of Kainos and the Customer.
- 12.2 Where Kainos identifies a risk of a conflict or potential conflict, they will inform the Customer of such conflicts of interest and how they plan to declare, mitigate or avoid the conflict. Details of such arrangements are to be sent to the Customer as soon as possible. On receiving this notification, the Customer will, at its sole discretion, notify Kainos if the arrangements are acceptable.
- 13. INTELLECTUAL PROPERTY RIGHTS**
- 13.1 Unless otherwise specified in a SOW:
- 13.1.1. the Customer will not have any right to the Intellectual Property Rights ("IPRs") of Kainos or its licensors, including Kainos Background IPRs and any IPRs in Proprietary Software.
 - 13.1.2. Kainos will not, without prior written approval from the Customer, include any Kainos Background IPRs or third party IPRs in any Deliverable in such a way to prevent its publication or assignment to the Customer.
 - 13.1.3. Kainos will not have any right to the Intellectual Property Rights of the Customer or its licensors, including:
 - 13.1.3.1. the Customer Background IPRs;
 - 13.1.3.2. the Project-Specific IPRs;
 - 13.1.3.3. IPRs in the Customer Data.
- 13.2 Where either Party acquires, by operation of law, right to IPRs that is inconsistent with the allocation of rights set out above, it will assign in writing such IPRs as it has acquired to the other Party on the request of the other Party (whenever the request is made).
- 13.3 Except where necessary for the performance of the Agreement (and only where the Customer has given its prior approval), Kainos will not use or disclose any of the Customer Background IPRs, Customer

Data or the Project-Specific IPRs to or for the benefit of any third party.

- 13.4 Kainos will not include any Kainos Background IPRs or third-party IPRs in any release or Deliverable that is to be assigned to the Customer under the Agreement, without approval from the Customer.
- 13.5 Unless agreed to the contrary and detailed in a SOW, Kainos will grant the Customer (and any replacement supplier) a perpetual, transferable, sub-licensable, non-exclusive, royalty-free licence to copy, modify, disclose and use Kainos Background IPRs comprised in any Deliverable or output of the Services for any purpose connected with the receipt of the Services under the Agreement and which may be required to enable the Customer:
 - 13.5.1. to receive the Services;
 - 13.5.2. to make use of the Services provided by any replacement supplier; and/or
 - 13.5.3. to use any Kainos Deliverables.
- 13.6 The Customer grants Kainos a non-exclusive, non-assignable, royalty-free licence to use the Customer Background IPRs, the Customer Data and the Project-Specific IPRs during the Term of the Agreement for the sole purpose of enabling Kainos to provide the Services.
- 13.7 At the end of the Term of the Agreement, the Customer grants Kainos a licence to use the Project-Specific IPRs (excluding any information which is the Customer's Confidential Information, or which is subject to the Data Protection Legislation).
- 13.8 Neither Party gives any warranty as to the suitability of any IPRs licensed to the other party under this Agreement. Any such licence:
 - 13.8.1. includes the right to grant sub-licences to Subcontractors engaged in providing any of the Services (or part of them) provided that any such Subcontractor has entered into a confidentiality undertaking with the licensee on the same terms as in Clause 11 (Confidentiality) and that any such subcontracts will be non-transferable and personal to the relevant Subcontractor; and
 - 13.8.2. is granted solely to the extent necessary for the provision of the Services in accordance with the Agreement and each Party will ensure that the Subcontractors do not use the licensed materials for any other purpose.
- 13.9 No unlicensed software or Open Source Software (other than the OSS specified by the Customer) shall be interfaced with or embedded within any Customer Software or Deliverable. The Customer's specification or approval shall be managed by Kainos at an operational level.
- 13.10 Where Kainos is granted permission to use third-party IPRs, they will be provided subject to the third-party IPR owner's standard licence terms. Where changes to such terms are required, Customer will liaise directly with the third-party IPR owner to negotiate these.
- 13.11 Kainos will, on written demand, indemnify the Customer for Losses incurred as a result of any claim (whether actual alleged asserted and/or substantiated and including third party claims) that the rights granted to the Customer by Kainos in accordance with the Agreement or the performance by Kainos of the Services or the possession or use by the Customer of the Services or Kainos Deliverables, allegedly infringes a third party's Intellectual Property Rights (an "**IPR Claim**").
- 13.12 Clause 13.11 will not apply if the IPR Claim arises from:
 - 13.12.1. designs supplied by the Customer;
 - 13.12.2. the use of data supplied by the Customer;
 - 13.12.3. work carried out by the Customer's staff (where they are working with Kainos as part of a joint delivery team); or
 - 13.12.4. other material provided by the Customer necessary for the provision of the Services.
- 13.13 The Customer will promptly notify Kainos in writing upon receipt of any IPR Claim made against the Customer and the Customer will not make any admissions which may be prejudicial to the defence or settlement of the IPR Claim. Kainos will at its own expense conduct all negotiations and any litigation arising in connection with the IPR Claim provided always that Kainos:
 - 13.13.1. consults the Customer on all substantive issues which arise during the conduct of such litigation and negotiations;
 - 13.13.2. takes due and proper account of the interests of the Customer;
 - 13.13.3. considers and defends the IPR Claim diligently using competent counsel and in such a way as not to bring the reputation of the Customer into disrepute; and

- 13.13.4. does not settle or compromise the IPR Claim without the prior approval of the Customer (such decision not to be unreasonably withheld or delayed).
- 13.14. If an IPR Claim is made (or in the reasonable opinion of Kainos is likely to be made) in connection with the Agreement, Kainos will, at Kainos' own expense and subject to the prompt approval of the Customer, use all reasonable endeavours to:
- 13.14.1. modify the relevant part of the Services or Deliverables without reducing their functionality or performance, or substitute Services or Deliverables of equivalent functionality or performance, to avoid the infringement or the alleged infringement;
 - 13.14.2. buy a licence to use and supply the Services or Deliverables, which are the subject of the alleged infringement, on terms which are acceptable to the Customer (such decision not to be unreasonably withheld or delayed); and
 - 13.14.3. promptly perform any responsibilities and obligations in relation to the Agreement.
- 13.15. If an IPR Claim is made (or in the reasonable opinion of Kainos is likely to be made) against Kainos, Kainos will immediately notify the Customer in writing.
- 13.16. If Kainos does not comply with provisions of this Clause within 20 Working Days of receipt of notification by Kainos from the Customer under Clause 13.13 or receipt of the notification by the Customer from Kainos under Clause 13.15 (as appropriate), the Customer may terminate the Agreement for Material Breach and Kainos will, on demand, refund to the Customer all monies paid for the Service or Deliverable that is subject to the IPR Claim.
- 13.17. Kainos will, as an enduring obligation throughout the term of the Agreement, where any software is used in the provision of the Services or information uploaded, interfaced or exchanged with the Customer systems, use software and the most up-to-date antivirus definitions from an industry-accepted antivirus software vendor. It will use the software to check for, contain the spread of, and assist in minimising the impact of Malicious Software (or as otherwise agreed between the Customer and Kainos).
- 13.18. If Malicious Software is found, Kainos will co-operate with the Customer to reduce the effect of the Malicious Software. If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, Kainos will use all reasonable endeavours to help the Customer to mitigate any losses and restore the provision of the Services to the desired operating efficiency as soon as possible.
- 13.19. Any costs arising from the actions of the Customer or Kainos taken in compliance with the provisions of the above Clause 13.8, and Clause 20.3, will be dealt with by the Customer and Kainos as follows:
- 13.19.1. by Kainos, where the Malicious Software originates from Kainos Software or the Customer Data while the Customer Data was under the control of Kainos, unless Kainos can demonstrate that such Malicious Software was present and not quarantined or otherwise identified by the Customer when provided to Kainos.
 - 13.19.2. by the Customer if the Malicious Software originates from the Customer Software or the Customer Data, while the Customer Data was under the control of the Customer.

14. DATA PROTECTION AND DISCLOSURE

- 14.1. Kainos shall comply with any notification requirements under the Data Protection Legislation and both Parties will duly observe all their obligations under the Data Protection Legislation which arise in connection with the Agreement.
- 14.2. Where Kainos is processing Customer Personal Data, Kainos shall ensure that it has in place appropriate technical and organisational measures to ensure the security of the Customer Personal Data (and to guard against unauthorised or unlawful processing or accidental loss, destruction of or damage to the Customer Personal Data).
- 14.3. Kainos shall provide the Customer with such information as the Customer may reasonably request to satisfy itself that Kainos is complying with its obligations under the Data Protection Legislation including:
- 14.3.1. to promptly notify the Customer of any breach of the security measures to be put in place pursuant to this Clause; and
 - 14.3.2. to ensure that it does not knowingly or negligently do or omit to do anything which places the Customer in breach of its obligations under the Data Protection Legislation; and
 - 14.3.3. not to cause or permit to be processed, stored, accessed or otherwise transferred outside the United Kingdom and/or European Economic Area, as applicable, any Customer Data supplied to it by the Customer without approval.

15. CUSTOMER DATA

- 15.1 Kainos will not remove any proprietary notices relating to the Customer Data.
- 15.2 Kainos will not store or use Customer Data except where necessary to fulfil its obligations.
- 15.3 If Customer Data is processed by Kainos, Kainos will supply the data to the Customer as requested, and where applicable, in the format specified, by the Customer.
- 15.4 Kainos will preserve the integrity of Customer Data processed by Kainos and prevent its corruption and loss.
- 15.5 Kainos will ensure that any system which holds any Customer Data complies with the security requirements prescribed by the Customer.
- 15.6 Kainos will ensure that any system on which Kainos holds any protectively marked Customer Data will be accredited to then current industry assurance standards.
- 15.7 If at any time Kainos suspects that the Customer Data has or may become corrupted, lost, breached or significantly degraded in any way for any reason, then Kainos will notify the Customer immediately and will agree remedial action with the Customer.
- 15.8 Kainos will provide, at the request of the Customer, any reasonable information relating to Kainos' compliance with its obligations under the Data Protection Legislation. Kainos will also ensure that it does not knowingly or negligently fail to do something that places the Customer in breach of its obligations of Data Protection Legislation.
- 15.9 Kainos agrees to use the appropriate organisational, operational and technological processes and procedures to keep the Customer Data safe from unauthorised use or access, loss, destruction, theft or disclosure.
- 15.10 Kainos shall not share, distribute or provide access to Customer Data to any third party without the prior consent of the Customer.

16. DOCUMENT AND SOURCE CODE MANAGEMENT REPOSITORY

- 16.1 Kainos will comply with any reasonable instructions given by the Customer as to where it will store documents and source code, both finished and in progress, during the Term of the Agreement.
- 16.2 Kainos will ensure that all items that are uploaded to any repository contain sufficient detail, code annotations and instructions so that a third-party developer with the relevant technical abilities within the applicable role would be able to understand how the item was created and how it works together with the other items in the repository within a reasonable timeframe.

17. RECORDS AND AUDIT ACCESS

- 17.1 Kainos will allow the Customer to access its information and conduct audits of the Services provided under the Agreement (subject to reasonable and appropriate confidentiality undertakings and upon fifteen (15) days' prior written notice) and not more than once annually.

18. FREEDOM OF INFORMATION (FOI) REQUESTS

- 18.1 Kainos will transfer any Request for Information to the Customer within 2 Working Days of receipt.
- 18.2 Kainos will provide all necessary help reasonably requested by the Customer to enable the Customer to respond to the Request for Information within the time for compliance set out in the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (or equivalent local legislation).
- 18.3 To the extent it is permissible and reasonably practical for it to do so, Customer will make reasonable efforts to promptly notify Kainos when it receives a request under the Freedom of Information Act 2000 and/or the Environmental Information Regulations 2004 (or equivalent local legislation), so that Kainos may make appropriate representations.

19. STANDARDS AND QUALITY

- 19.1 Kainos will have in place appropriate mechanisms to assess the quality of the Services and to comply with Good Industry Practice in the provision of the Services.
- 19.2 The Customer will have the right to conduct reviews of Kainos' quality management system and to verify compliance with the requirements of this Agreement. Such reviews may be performed by the Customer, or by its appointed representatives, provided always that Kainos is given not less than fifteen (15) days' prior written notice.

20. SECURITY

- 20.1 Kainos shall perform the Services in accordance with Customer's Data security policies, provided to Kainos for review and agreement in advance of the Start Date. Kainos will promptly bring to the Customer's attention any aspect of the Customer's Data security policies that it is unable to comply with or which conflicts with the Kainos security protocols and the Parties will agree a definitive Data security policy to govern this Agreement.
- 20.2 Kainos will use software and the most up-to-date antivirus definitions available from an industry accepted antivirus software vendor to minimise the impact of Malicious Software.
- 20.3 If Malicious Software causes loss of operational efficiency or loss or corruption of Customer Data, Kainos will help the Customer to mitigate any losses and will restore the Services to their desired operating efficiency as soon as possible.
- 20.4 Kainos will immediately notify the Customer of any breach of security in relation to the Customer's Confidential Information.
- 20.5 The Customer will specify any security requirements for this project in the relevant SOW.

21. INCORPORATION OF TERMS

- 21.1 Upon the execution of a Statement of Work (SOW), the terms and conditions agreed in the SOW will be incorporated into the Agreement.

22. MANAGING DISPUTES

- 22.1 When either Party notifies the other of a dispute, both Parties will attempt in good faith to negotiate a settlement as soon as possible.
- 22.2 Nothing in this Agreement prevents a Party from seeking any interim order restraining the other Party from doing any act or compelling the other Party to do any act.
- 22.3 Either Party may request by written notice that the dispute is referred to expert determination if the dispute relates to:
- 22.3.1. any technical aspect of the delivery of the digital services;
 - 22.3.2. the underlying technology; or
 - 22.3.3. is otherwise of a financial or technical nature.
- 22.4 An expert will be appointed by written agreement between the Parties, but if there's a failure to agree within 10 Working Days, or if the person appointed is unable or unwilling to act, the expert will be appointed on the instructions of the President of the British Computer Society (or any other association that has replaced the British Computer Society).
- 22.5 The expert will act on the following basis:
- 22.5.1. they will act as an expert and not as an arbitrator and will act fairly and impartially;
 - 22.5.2. the expert's determination will (in the absence of a material failure to follow the agreed procedures) be final and binding on the Parties;
 - 22.5.3. the expert will decide the procedure to be followed in the determination and will be requested to make their determination within 30 Working Days of their appointment or as soon as reasonably practicable and the Parties will help and provide the documentation that the expert needs for the determination;
 - 22.5.4. any amount payable by one Party to another as a result of the expert's determination will be due and payable within 20 Working Days of the expert's determination being notified to the Parties;
 - 22.5.5. the process will be conducted in private and will be confidential;
 - 22.5.6. the expert will determine how and by whom the costs of the determination, including their fees and expenses, are to be paid.
- 22.6 Without prejudice to any other rights of the Customer under the Agreement, the obligations of the Parties under the Agreement will not be suspended, ceased or delayed by the reference of a dispute submitted to mediation or expert determination.

23. TERMINATION

- 23.1 The Customer will have the right to terminate the Agreement at any time for convenience by giving

the notice to Kainos specified in the Order Form. Kainos' obligation to provide the Services will end on the date set out in the Customer's notice. Where the Customer terminates the Agreement for convenience, the Customer will continue to pay Kainos for the Services, for the duration of the notice period, calculated on a pro-rated average consumption basis, on each of the then current SOWs.

- 23.2 Either Party will have the right to terminate the Agreement at any time, with immediate effect by written notice to the other Party if the other Party commits a Default and if such Default cannot, in the opinion of the non-Defaulting Party (acting reasonably), be remedied.
- 23.3 Either Party may terminate the Agreement at any time with immediate effect by written notice to the other if:
- 23.3.1. the other Party commits a Material Breach of any term of the Agreement and, if such breach is remediable, fails to remedy that breach within a period of thirty (30) calendar days of being notified in writing to do so;
 - 23.3.2. an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business;
 - 23.3.3. a Force Majeure Event occurs for a period of more than thirty (30) consecutive calendar days.
- 23.4 The Parties acknowledge and agree that:
- 23.4.1. the Customer's right to terminate under this Clause 23 is reasonable in view of the subject matter of the Agreement and the nature of the Service being provided.
 - 23.4.2. the Agreement Charges paid during the notice period given by the Customer in accordance with this Clause are a reasonable form of compensation and are deemed to fully cover any avoidable costs or Losses incurred by Kainos which may arise either directly or indirectly as a result of the Customer exercising the right to terminate under this Clause without cause.
 - 23.4.3. If the Customer terminates the Agreement, it will indemnify Kainos against any commitments, liabilities or expenditure which result in any unavoidable Loss by Kainos, provided that Kainos takes all reasonable steps to mitigate such Loss. Kainos will submit a fully itemised and costed list of such Loss, with supporting evidence of unavoidable Losses incurred by Kainos as a result of termination.

24. CONSEQUENCES OF TERMINATION

- 24.1 If the Customer contracts with another supplier, Kainos will comply with Clause 29.
- 24.2 The rights and obligations of the Parties in respect of the Agreement (including any executed SOWs) will automatically terminate upon the expiry or termination of the Agreement, except:
- 24.2.1. Where a SOW sets out a minimum term or subscription period for any Services or Deliverables AND includes a Special Condition that the SOW will continue, even if the Agreement is terminated then, if the Agreement is terminated:
 - 24.2.1.1. such SOW(s) will be deemed to continue on, and for the purpose of the surviving SOWs only, the Agreement will be deemed to be continuing and effective up to and including the end date of the surviving SOW (or if more than one SOW, the end date of the later SOW);
 - 24.2.1.2. no new SOWs may be entered into under the Agreement;
 - 24.2.1.3. Change Requests may be raised against the surviving SOW(s) and the Agreement to facilitate the continued provision of the Services under such SOW(s);
 - 24.2.1.4. the Customer may 'buy out' the SOW by electing to pay for the Services or Deliverables that are subject to the minimum term/subscription period by paying an equivalent sum; This election should be formalised using the Change Request process set out at Clause 31.
 - 24.2.2. Those rights and obligations set out in Clause 24.6.
- 24.3 At the end of the Term of the Agreement (howsoever arising), Kainos must:
- 24.3.1. immediately return to the Customer:

- 24.3.1.1. all Customer Data including all copies of Customer Software and any other software licensed by the Customer to Kainos under the Agreement;
- 24.3.1.2. any materials created by Kainos under the Agreement where the IPRs are owned by the Customer; and
- 24.3.1.3. all equipment provided to Kainos. This equipment must be handed back to the Customer in good working order (allowance will be made for reasonable wear and tear).
- 24.3.2. immediately upload any items that are or were due to be uploaded to the repository when the Agreement was terminated (as specified in Clause 16);
- 24.3.3. cease to use the Customer Data and, at the direction of the Customer, provide the Customer and the replacement supplier with a complete and uncorrupted version of the Customer Data in electronic form in the formats and on media agreed with the Customer and the replacement supplier;
- 24.3.4. destroy all copies of the Customer Data when they receive the Customer's written instructions to do so or 12 months after the date of expiry or termination (whichever is the earlier), and provide written confirmation to the Customer that the data has been destroyed, except where the retention of Customer Data is required by law;
- 24.3.5. vacate the Customer premises;
- 24.3.6. subject to Clause 29, work with the Customer on any work in progress and ensure an orderly transition of the Services to the replacement supplier;
- 24.3.7. return any sums prepaid for Services which have not been delivered to the Customer by the date of expiry or termination;
- 24.3.8. subject to Clause 29, provide all information requested by the Customer on the provision of the Services so that:
 - 24.3.8.1. a competent IT professional can understand how the Services have been provided; and
 - 24.3.8.2. the Customer and the replacement supplier can conduct any necessary due diligence.
- 24.4. Each Party will return all the other Party's Confidential Information. Each Party will confirm that it does not retain the other Party's Confidential Information except where the information must be retained by the Party as a legal requirement or where the Agreement states otherwise.
- 24.5. Unless otherwise provided in a SOW or in this Agreement, all licences, leases and authorisations granted by the Customer to Kainos in relation to the Services will be terminated at the end of the Term (howsoever arising) without the need for the Customer to serve notice.
- 24.6. Termination or expiry of the Agreement will not affect:
 - 24.6.1. any rights, remedies or obligations accrued under the Agreement prior to termination or expiration;
 - 24.6.2. the right of either Party to recover any amount outstanding at the time of such termination or expiry;
 - 24.6.3. the continuing rights, remedies or obligations of the Customer or Kainos under Clauses:
 - 24.6.3.1. 8 - Payment Terms and VAT
 - 24.6.3.2. 9 - Recovery of Sums Due and Right of Set-Off
 - 24.6.3.3. 11 - Confidentiality
 - 24.6.3.4. 12 - Conflict of Interest
 - 24.6.3.5. 13 - Intellectual Property Rights
 - 24.6.3.6. 24 - Consequences of Termination
 - 24.6.3.7. 28 - Staff Transfer
 - 24.6.3.8. 34 - Liability
 - 24.6.3.9. 35 - Waiver and cumulative remedies
 - 24.6.4. any other provision of the Agreement which expressly or by implication is to be performed or observed notwithstanding termination or expiry.

25. KAINOS' STATUS

- 25.1 Kainos is an independent contractor and no contract of employment or partnership is created between Kainos and the Customer. Neither Party is authorised to act as an agent of, or in the name of, or on behalf of, the other Party.

26. NOTICES

- 26.1 Any notices sent must be in writing.

- 26.2 For the purposes of this Agreement:

26.2.1. references to "writing" in this Agreement if provided in an electronic form (for example, email) shall be deemed to be "writing" for the purposes of all applicable legislation where "writing" is required; and

26.2.2. words in an electronic form (using e-signature software) shall be deemed to be "signed" for the purposes of all applicable legislation where a "signature" is required.

- 26.3 The following table sets out the method by which notices may be served under the Agreement and the respective deemed time and proof of Service:

Delivery type	Deemed delivery time	Proof of Service
Email	9am on the first Working Day after sending	Dispatched in a pdf form to the correct email address without any error message

- 26.4 The address and email address of each Party will be the address and email address in the Order Form.

27. EXIT PLAN

- 27.1 Where agreed under a SOW, the Customer and Kainos will agree an exit plan during the Term to enable Kainos Deliverables to be transferred to the Customer and/or supported for the benefit of the Customer at the end of the Term. The exit plan will be updated to reflect any material changes to the Services.

28. STAFF TRANSFER

- 28.1 The Parties agree that nothing in the Agreement or the provision of the Services is expected to give rise to a transfer of employment to which the Employment Regulations apply.

- 28.2 Kainos will indemnify the Customer against claims arising as a result of any claims brought against the Customer due to any act or omission of Kainos, or any Kainos Staff, which are in breach of the Employment Regulations.

29. HANDOVER TO REPLACEMENT SUPPLIER

- 29.1 When requested, Kainos will (at the Customer's expense) help the Customer to migrate the Services to a replacement supplier in line with an agreed exit plan (Clause 27) to ensure continuity of the Services. Such help may include Supplier demonstrations of the existing code and development documents, software licences used and Customer approval documents. Kainos will also answer Service and development-related clarification questions.

- 29.2 Within 10 Working Days of a request by the Customer (at the Customer's expense), Kainos will provide any information needed by the Customer to prepare for any procurement exercise or to facilitate any potential replacement supplier undertaking necessary due diligence or to understand how the Services work in the absence of Kainos. The exception to this is where such information is deemed to be Commercially Sensitive Information, in which case Kainos will provide the information in a redacted form.

30. CHANGES TO SERVICES

- 30.1 The flexibility inherent in agile projects means that it is likely that there will be changes to the scope of the Services during the Term. Agile projects are not static and have a scope that will change over time. The detailed scope (e.g. as defined in user stories) evolves and items can be de-prioritised or reprioritised during the Term and during sprints. These changes do not require formal Change Request or contract changes but do require the Customer and Kainos to agree and document these changes operationally (e.g. through the backlog).

- 30.2 Any changes to the high-level scope of the Services must be agreed between the Customer and Kainos.
- 31. CHANGE REQUESTS**
- 31.1 All changes to the Agreement or to an individual SOW which cannot be accommodated at a Project level as described in Clause 30, will require a Change Request.
- 31.2 Either Party may raise a Change Request by completing and sending a draft Change Request Form in the form set out in Schedule 2, to the other Party, giving sufficient information to enable the other Party to assess the extent of the change and any additional cost that may be incurred.
- 31.3 The Party making the Change Request will bear the costs of preparation of the Change Request Form. Neither Party will unreasonably withhold or delay consent to a Change Request.
- 31.4 The Parties shall process each Change Request promptly.
- 31.5 Any Change Request may be withdrawn at any time prior to execution.
- 31.6 Until any Change Request is signed by both Parties, Kainos will continue to perform and be paid for the Services as if the Change Request had not been proposed.
- 31.7 Those parts of the Agreement or SOW affected by the Change Request will be deemed to be contractual modification/variation upon signature of the Change Request or receipt by Kainos of an authorisation email from the Customer.
- 32. FORCE MAJEURE**
- 32.1 Neither Party will be liable to the other Party for any delay in performing, or failure to perform, its obligations under the Agreement (other than a payment of money) to the extent that such delay or failure is a result of a Force Majeure Event. Each Party will use all reasonable endeavours to continue to perform its obligations under the Agreement for the length of a Force Majeure Event. If a Force Majeure Event prevents a Party from performing its obligations under the Agreement for more than 15 consecutive calendar days, the other Party may terminate the Agreement with immediate effect by notice in writing.
- 33. ENTIRE AGREEMENT**
- 33.1 The Agreement constitutes the entire agreement between the Parties relating to the matters dealt within it. It supersedes any previous agreement between the Parties relating to such matters.
- 33.2 Each of the Parties agrees that in entering into the Agreement it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as described in the Agreement.
- 33.3 Nothing in this Clause or Clause 34 will exclude any liability for (or remedy relating to) fraudulent misrepresentation or fraud.
- 34. LIABILITY**
- 34.1 Neither Party excludes nor limits its liability for:
- 34.1.1. death or personal injury;
 - 34.1.2. bribery or fraud by it or its employees;
 - 34.1.3. any liability to the extent it cannot be excluded or limited by law.
- 34.2 In respect of the indemnities in Clause 13 (Intellectual Property Rights) and Clause 28 (Staff Transfer) Kainos' total liability will be unlimited.
- 34.3 Subject to the above, each Party's total aggregate liability relating to all Losses due to a Default in connection with this agreement:
- 34.3.1. resulting in direct loss or damage to physical Property (including any technical infrastructure, assets or Equipment) of the other Party, will be limited to the sum of £1,000,000 in the aggregate.
 - 34.3.2. For all other claims, will be limited to a sum equal to 150% of the Charges paid in the 12-month period immediately preceding the event giving rise to the liability.
- 34.4 Subject to Clause 34.1, in no event will either Party be liable to the other for any (i) loss of profits; (ii) loss of business; (iii) loss of revenue; (iv) loss of or damage to goodwill; (v) loss of savings (whether anticipated or otherwise); or (vi) any indirect, special or consequential loss or damage.

- 34.5 Unless otherwise expressly provided, the obligations of each Party under the Agreement are obligations in a Party's capacity as a contracting counterparty and nothing in the Agreement will be an obligation on, or in any other way constrain either Party in any other capacity, nor will the exercise by either Party of its duties and powers in any other capacity lead to any liability under the Agreement on the part of either Party to the other.

35. WAIVER AND CUMULATIVE REMEDIES

- 35.1 The rights and remedies provided by this Agreement may be waived only in writing by the Customer or Kainos representatives in a way that expressly states that a waiver is intended, and such waiver will only be operative regarding the specific circumstances referred to.
- 35.2 Unless a right or remedy of the Customer is expressed to be exclusive, the exercise of it by the Customer is without prejudice to the Customer's other rights and remedies. Any failure to exercise, or any delay in exercising, a right or remedy by either Party will not constitute a waiver of that right or remedy, or of any other rights or remedies.

36. THIRD PARTY SOFTWARE

- 36.1 Where the procurement, resale, customisation, configuration or integration of Proprietary Software forms part of the Services:
- 36.1.1 The Customer will ensure that all such End User Licence Agreements (or subscription agreements) ("**EULA(s)**") are suitable for their intended purpose(s), and that their terms are complied with.
- 36.1.2 No liability is accepted by Kainos for defects with, or delays or issues caused by any defect in Proprietary Software, or the consequences of those defects, whether latent or manifest and Kainos assumes no responsibility for rectifying any such defects. The Customer's rights and remedies for issues with and in Proprietary Software (if any) are as set out in the associated EULA.
- 36.1.3 Kainos will assist with minimising the consequences of delays to the provision of its Services occasioned by issues with Proprietary Software provided by it under this Agreement and will liaise with the Proprietary Software vendor to rectify such issues (where possible) and/or establish a work around or propose an alternative way forward provided that where such assistance constitutes additional effort which is not met by the Proprietary Software vendor, it will be at the Customer's cost and subject to prior agreement of a Change Request.
- 36.1.4 No warranty is conferred by Kainos in respect of any Proprietary Software. The full extent (if any) of the warranties offered for Proprietary Software are as set out in the accompanying EULA or subscription agreement. Where on occasion, Kainos is also the Proprietary Software vendor, the remedies lie under the respective EULA governing the use of the Proprietary Software and not under this Agreement.
- 36.1.4.1 Proprietary Software shall be provided in the format it is received from the Proprietary Software vendor and shall be supplied subject to the terms and conditions of any associated EULA.
- 36.1.4.2 Kainos shall not be responsible for identifying or planning replacements and/or upgrades of Proprietary Software unless specifically requested by the Customer as part of the Services and set out (together with the associated capital, implementation and run costs) in a SOW.
- 36.1.5 Where Kainos is provided with Proprietary Software, or access to third party systems by the Customer for the performance of the Services, the Customer will ensure that all relevant EULAs or subscriptions are obtained and fully paid for the periods of development and use and that Kainos is authorised to use the Proprietary Software or access the relevant system for the performance of the Services.
- 36.1.6 Nothing in this Clause 36 or in this Agreement shall operate to make Kainos responsible for the consequences of or rectification of problems attributable to the Customer's systems.

37. PREVENTION OF BRIBERY AND CORRUPTION

- 37.1 Kainos will not commit any Prohibited Act.
- 37.2 Kainos will, on demand, compensate the Customer in full of and against:
- 37.2.1. the amount of value of any such gift, consideration or commission; and

37.2.2. any other loss sustained by the Customer in consequence of any breach of this Clause.

38. LEGISLATIVE CHANGE

- 38.1 Kainos will neither be relieved of its obligations under the Agreement nor be entitled to increase the Agreement prices as the result of a general change in law without prior written approval from the Customer.
- 38.2 Notwithstanding the general provisions of clause 38.1, if a Brexit Trigger Event occurs, the impacted Party may require the other Party to negotiate, in good faith, an amendment to this Agreement to alleviate the Brexit Trigger Event. In the event that the Parties are unable to agree an amendment to this Agreement within thirty (30) calendar days, the impacted Party may terminate this Agreement by giving the other Party not less than thirty (30) days' written notice. In the event of termination under this clause 38.2, the provisions of clause 24 (Consequences of Termination) shall apply.
- 38.3 For the purposes of clause 38.2 "**Brexit Trigger Event**" shall mean any of the following events occurring at any time after the United Kingdom (regardless of which countries comprise the United Kingdom at such date) ceases to be a Member State of the European Union, member of the European Economic Area and/or member of the European Union customs union: (i) a substantial adverse impact on a Party's ability to perform the Agreement in accordance with its terms and the law; or (ii) a significant increase in the costs incurred by a Party in performing the Agreement.
- 38.4 In the event that the United Kingdom (regardless of which countries comprise the United Kingdom at such date) leaves the European Union and where: (i) no adequacy decision has been made by the European Commission concerning the United Kingdom under Article 45 of the GDPR; and (ii) the United Kingdom is not subject to a legal transition period under which it is treated by the European Union as a Member State for the purposes of European Union law, any transfer of Personal Data from the European Economic Area to the United Kingdom shall be governed by the Standard Contractual Clauses as set out at: <https://publications.europa.eu/en/publication-detail/-/publication/473b885b-31d6-4f3b-a10f-01152e62be6e> or such other valid safeguard as may be introduced by a relevant supervisory authority or European Commission. For the purposes of this clause 38.4, "Standard Contractual Clauses" shall mean the standard data protection clauses adopted by the European Commission under Article 46(2)(c) of the GDPR (and which remain valid under the GDPR pursuant to Article 46(5) of the GDPR), in relation to the transfer of personal data from a controller established in the European Economic Area to a processor established in a third country.

39. PUBLICITY, BRANDING, MEDIA AND OFFICIAL ENQUIRIES

- 39.1 Each Party will take all reasonable steps to not do anything which may damage the public reputation, or which may cause material adverse publicity to the other.
- 39.2 Neither Party will make any announcement relating to this Agreement or its subject matter without the prior written approval of the other Party except as required by law or by any legal or regulatory authority in which case it shall notify the other Party of the announcement as soon as is reasonably practicable.
- 39.3 Kainos may reference the Customer as a client of Kainos on its website and in marketing literature. The Customer may request that Kainos desists from referencing the Customer at any time.
- 39.4 Kainos shall only offer the Customer as a client reference to any prospective client in accordance with such terms as shall be agreed with the Customer.

40. SOCIAL RESPONSIBILITY

- 40.1 Kainos will, in the performance of the Agreement, observe the requirements and standards of any international conventions, covenants and agreements to which the United Kingdom is a signatory or contracting party and which may be directly effective and justiciable in the United Kingdom.
- 40.2 Kainos shall pay rates of wages and observe hours and conditions of labour not less favourable than those established in the trade or industry in the district where the Agreement is carried out.
- 40.3 In the absence of any established rates and conditions as described in Clause 40.2 above Kainos shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which would be considered within the bounds of industry norms and verifiable by an independent third-party source.
- 40.4 Kainos will ensure that the employers of all Kainos staff:
- 40.4.1. pay all wages and other money due to each work person;
 - 40.4.2. ensure that Kainos staff wages are paid in accordance with the Employment Rights Act 1996 (or equivalent local legislation) and are never more than one (1) month in arrears or unpaid;

- 40.4.3. pay all required pension contributions and other amounts due to be paid on behalf of each of Kainos staff;
- 40.4.4. make all deductions from payments to work persons required by law, and pay them as required by law;
- 40.4.5. keep proper records (including time sheets copies of pay slips) showing the wages and other sums paid to and the time worked by each of Kainos staff, deductions including pension and other contributions made in respect of Kainos staff;
- 40.4.6. respect the right under law of Kainos staff to be members of trade unions; and
- 40.4.7. observe, in relation to the employment of Kainos staff on Customer sites, the Health and Safety at Work Act 1974, and all employment law including the Employment Act 2002, Working Time (Amendment) Regulations 2001, Equality Act 2010 and regulations, codes of practice, legally binding determinations of the Employment Tribunals and employment agreements under those laws (or equivalent local legislation).

- 40.5 The Customer may seek information under the provisions of this Clause 40 only for the purpose of ensuring the obligations described in this Clause 40 to Kainos staff have been properly discharged. All information provided under the provisions of this Clause 40 will be returned or destroyed if the Customer is satisfied that Kainos has complied with its legal obligations to Kainos staff.
- 40.6 If Kainos has not complied with this Clause 40, the Customer may (without limiting its other rights or remedies) withhold the estimated amount required for compliance from any payment due to Kainos, until such time as the Customer is satisfied that the employees have been paid correctly and Kainos is in compliance.

41. PREMISES

- 41.1 Where either Party uses the other Party's premises, such Party is liable for all Loss or damage it causes to the premises. Such Party is responsible for repairing any damage to the premises or any objects on the premises, other than fair wear and tear.
- 41.2 Kainos will use the Customer's premises solely for the Agreement.
- 41.3 Kainos will vacate the Customer's premises upon termination or expiry of the Agreement.
- 41.4 This Clause does not create a tenancy or exclusive right of occupation.
- 41.5 While on the Customer's premises, Kainos will:
- 41.5.1. ensure the security of the premises;
 - 41.5.2. comply with Customer requirements for the conduct of personnel;
 - 41.5.3. comply with any health and safety measures implemented by the Customer;
 - 41.5.4. comply with any instructions from the Customer on any necessary associated safety measures; and
 - 41.5.5. notify the Customer immediately in the event of any incident occurring on the premises where that incident causes any personal injury or damage to Property which could give rise to personal injury.

42. EQUIPMENT

- 42.1 Unless otherwise set out in a SOW, any Equipment brought onto Customer premises will be at Kainos' own risk and the Customer will have no liability for any loss of, or damage to, any Equipment.
- 42.2 Upon termination or expiry of the Agreement, Kainos will remove the Equipment, and any other materials, leaving the premises in a safe and clean condition.

43. LAW AND JURISDICTION

- 43.1 The Agreement will be governed by the laws of England and Wales.
- 43.2 Each Party agrees to submit to the exclusive jurisdiction of the courts of England and Wales and for all disputes to be conducted within England.

44. NON-SOLICITATION

- 44.1 Neither Party will directly or indirectly solicit any employee of the other, involved in the provision of the Services, for a period of twelve (12) months from completion of the Services. Nothing in this clause shall operate to restrict either Party from employing staff of the other Party who apply unsolicited in response to a general advertising or other general recruitment campaign.

45. NON-ASSIGNMENT

45.1 This Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under this Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party; provided, however, that:

45.1.1 either Party may assign this Agreement without such consent in connection with a merger, demerger, corporate reorganisation or asset sale; and

45.1.2 Kainos may assign this Agreement without such consent to any member within the Group.

Subject to the foregoing, this Agreement shall bind and inure to the benefit of the Parties, their respective successors and permitted assigns.

46. GENERAL

46.1 If any term or condition is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such portion shall be deemed severed and the Agreement shall not fail in its entirety, but the surviving terms and conditions shall continue in full force and effect.

46.2 A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both, from time to time and any subordinate legislation made under the statutory provision.

46.3 No variation of this Agreement or of any of the documents referred to in them shall be valid unless it is in writing (email will not satisfy the requirement for writing under this clause 46.3) and is signed by or on behalf of each Party. The terms on either Party's purchase orders, invoices or other business forms are not binding on the other Party unless they are incorporated into a formal written agreement which is expressly stated to vary this Agreement, and which is signed by both Parties.

46.4 The terms and conditions of this Agreement will prevail over any inconsistent term or condition in, contained, or referred to in Customer's correspondence, purchase orders, or elsewhere, or implied by trade, practice or course of dealings.

47. DEFINED TERMS

The following terms shall have the following meanings in this Agreement:

'Background IPRs'	For each Party: - IPRs owned by that Party before the date of the Agreement, including IPRs contained in any of the Party's know-how, documentation, processes and procedures; - IPRs created by the Party independently of the Agreement; and/or but excluding: - IPRs owned by that Party subsisting in Customer Software or Kainos Software; - Proprietary Software; - OSS.
'Customer'	The entity set out in the Order Form who is entering into the Agreement and procuring the Services from Kainos.
'Customer Background IPRs'	Background IPRs of the Customer
'Customer's Confidential Information'	means all Customer Data and any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and suppliers of the Customer, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above. Any other information clearly designated as being confidential or which ought reasonably to be considered to be confidential (whether or not it is marked 'confidential')
'Customer Data'	means data that is owned or managed by the Customer, including Personal Data gathered for user research, e.g. recordings of user research sessions and lists of user research participants

'Customer Software'	means Software owned by or licensed to the Customer (other than under or pursuant to this Agreement), which is or will be used by Kainos for the purposes of providing the Services
'Charges'	means the prices (excluding any applicable VAT), payable to Kainos by the Customer under the Agreement, as set out in the applicable SOW(s), in consideration of the performance by Kainos of the Services under the Agreement and the specific obligations in the applicable SOW
'Commercially Sensitive Information'	Information, identified in the Order Form which Kainos deems to be commercially sensitive
'Confidential Information'	Customer's Confidential Information or Kainos' Confidential Information, which may include (but is not limited to): - any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above - any other information clearly designated as being confidential or which ought reasonably to be considered confidential (whether or not it is marked 'confidential')
'Controller, Processor, Data Subject, Personal Data, Personal Data Breach, Data Protection Officer'	Each take the meaning given in the GDPR.
Data Loss Event	Any event that results, in unauthorised access to Personal Data held by Kainos under this Agreement, and/or actual loss and/or destruction of Personal Data in breach of this Agreement, including any Personal Data Breach.
'Data Protection Impact Assessment'	An assessment by the Controller of the impact of the envisaged processing on the protection of Personal Data.
'Data Protection Legislation'	(i) The GDPR, the LED and any applicable national implementing laws as amended from time to time; (ii) the DPA 2018 to the extent that it relates to processing of personal data and privacy; and (iii) all applicable laws related to the processing of personal data and privacy.
Data Subject Access Request	A request made by, or on behalf of, a Data Subject in accordance with rights granted pursuant to the Data Protection Legislation to access their Personal Data.
'DPA 2018'	Data Protection Act 2018.
'Default'	Any material breach of the obligations of a Party or any other default, act, omission, negligence or negligent statement of a Party, or its subcontractors in connection with or in relation to the Agreement.
Definition of Done	The Definition of Done applies a set of acceptance criteria to each user story and is a tool used by the development team in agile projects during the course of sprints to evaluate user stories and decide if they are completed. The Definition of Done is not static and may be revisited and iterated by the Project team during sprint retrospective meetings.
'Deliverable'	A tangible work product, professional service, outcome or related material or item that is to be achieved or delivered to the Customer by Kainos as part of the Services as defined in the Order Form and all subsequent Statements of Work.
'Employment Regulations'	means the Transfer of Undertakings (Protection of Employment) Regulations 2006 (SI 2006/246) as amended or replaced or any other Regulations implementing the European Council Directive 77/187/EEC on the approximation of laws of European member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses, as amended or re-enacted from time to time.
'Equipment'	means Kainos' hardware, computer and telecoms devices, plant, materials and such other items supplied and used by Kainos (but not hired, leased or loaned from the Customer) in the performance of its obligations under the Agreement
'FoIA'	means the Freedom of Information Act 2000
'Force Majeure Event'	Means any event beyond the reasonable control of a party including, without limitation, acts of God, war, riot, civil commotion, malicious

	damage, compliance with any law or governmental order, rule, regulation or direction or any overriding emergency procedures, accident, fire, flood, storm and strikes or any industrial action by employees of any person other than the Party relying on the event.
'GDPR'	The General Data Protection Regulation (Regulation (EU) 2016/679).
'Good Industry Practice'	Standards and procedures conforming to the law and the application of skill, care and foresight which would be expected from a person or body who has previously been engaged in a similar type of undertaking under similar circumstances.
'Group'	means a company plus any subsidiary or holding company. 'Holding company' and 'Subsidiary' are defined in section 1159 of the Companies Act 2006.
'Insolvency Event'	may be: • a voluntary arrangement • a winding-up petition • the appointment of a receiver or administrator • an unresolved statutory demand • a Schedule A1 moratorium
'Intellectual Property Rights' or 'IPR'	means: a) copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not; b) applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and c) all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off
'Kainos Background IPRs'	Background IPRs of Kainos
'Kainos Staff'	all persons employed by Kainos including Kainos' agents and consultants used in the performance of its obligations under the Agreement
'Kainos Staff Liabilities'	any claims, actions, proceedings, orders, demands, complaints, Losses and any awards or compensation reasonably incurred in connection with any claim or investigation related to employment
'Key Staff'	means Kainos Staff named in the SOW as such
'LED'	Law Enforcement Directive (Directive (EU) 2016/680).
'Loss'	all losses, liabilities, damages, costs, expenses (including legal fees), disbursements, costs of investigation, litigation, settlement, judgment, interest and penalties whether arising in contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise and 'Losses' will be interpreted accordingly
'Malicious Software'	any software program or code intended to destroy or cause any undesired effects. It could be introduced wilfully, negligently or without Kainos having knowledge of its existence
'Material Breach'	A single serious breach of, or persistent failure to perform as required in the Agreement
'Open Source Software' or 'OSS'	OSS or Open Source Software means any software licensed under any form of open-source licence meeting the Open Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php) included or used by Kainos in the provision of the Services.
'Order Form'	An order in the form set out in Part A of the Agreement for Services placed by a Customer with Kainos;
'Party'	Kainos or the Customer, and 'Parties' will be interpreted accordingly,
'Personal Data'	As described in GDPR
'Prohibited Act'	To directly or indirectly offer, promise or give any person working for or engaged by a Customer a financial or other advantage to: • induce that person to perform improperly a relevant function or activity

	• reward that person for improper performance of a relevant function or activity • commit any offence: ◦ under anti-bribery and anti-corruption legislation ◦ under legislation creating offences concerning fraud ◦ at common law concerning fraud ◦ committing or attempting or conspiring to commit fraud
'Project-Specific IPRs'	• Intellectual Property Rights in items, including Deliverables, created by Kainos (or by a third party on behalf of Kainos) specifically for the purposes of the Agreement and updates and amendments of these items including (but not limited to) database schema; and/or • Intellectual Property Rights arising as a result of the performance of Kainos' obligations under the Agreement; but not including Kainos Background IPRs, Proprietary Software or any OSS.
'Property'	The property, other than real property and IPRs, issued or made available to Kainos by the Customer in connection with an Agreement
'Proprietary Software'	Commercial Off-the Shelf (COTs) software which is proprietary to Kainos, or its licensors or to third parties and which is, or will be, used by Kainos for the purposes of providing the Services.
'Protective Measures'	Appropriate technical and organisational measures which may include: pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the such measures adopted by it.
'Rate Card'	The Kainos time and material charging rates applicable to a SOW as set out in the SOW.
'Request for Information'	A request for information or an apparent request under the FOIA or the Environmental Information Regulations 2004.
'Services'	The Services to be provided by Kainos to Customer under an Agreement as more particularly described in a SOW.
'Special Conditions'	the special conditions detailed in a Statement of Work (if any), applicable only to that Statement of Work, which take precedence over the provisions of this Agreement.
'Statement of Work' (SOW)	the document outlining discrete packages of work, to be read in conjunction with the Order Form and to be undertaken as part of the Agreement between the Customer and Kainos. Multiple SOWs can apply to one Agreement
'Subcontractor'	each of Kainos' Subcontractors or any person engaged by Kainos in connection with the provision of the Services
'Sub-processor'	Any third party appointed to process Personal Data on behalf of Kainos related to this Agreement.
'Working Day'	any day other than a Saturday, Sunday or public holiday, from 9am to 5pm unless otherwise agreed with the Customer and Kainos in a SOW.

Schedule 1: Template Statement of Work (SOW)**A. SOW Details**

SOW DETAILS					
Order Form Reference:	SOXXXXXX				
Purchase Order Number:	[xx] or [Shall be provided [xx] days after signature of this SOW]				
SOW Number:	SOW 1_20XX				
SOW Start Date:	XX/XX/20XX				
SOW End Date:	XX/XX/20XX				
Duration of SOW:	[xx] (or until completion of the Services, if earlier). Where the provision of the Services extends beyond the SOW End Date, the Parties may agree in writing (email will suffice) to extend the Duration of SOW to facilitate completion of the Services.				
Requirements	The high-level requirements for this SOW are set out in Section C.				
Services	The Services to be delivered under this SOW are set out in Section C.				
Location	The Services will be carried out at [• [and at Kainos' premises]]				
Methodology	The [agile] methodology used in the provision of the Services is set out in Section C.				
Charging Method for this SOW:	<table border="1"> <tbody> <tr> <td>Time and materials (T&M)</td> <td>☐</td> </tr> <tr> <td>Fixed price</td> <td>☐</td> </tr> </tbody> </table>	Time and materials (T&M)	☐	Fixed price	☐
Time and materials (T&M)	☐				
Fixed price	☐				
Project Board	Kainos Senior Staff Member: [xx] Customer Senior Staff Member: [xx] Kainos Project Manager: [xx] Customer Product Owner: [xx]				
Key Staff:	The Key Staff for the Project are set out in Section F of this SOW.				
Hardware and Proprietary Software:	[DN: Include a table detailing the specification and cost of any Hardware and/or Proprietary Software being procured under the SOW and any associated terms].				
SOW Charges:	[xx] Estimated (T&M) or [xx] Fixed Price				
Rate Card:	The Rate Card for this SOW is set out in Section E.				
Currency:	[xx]				
Open Source Software:	The Open Source Software which will be used by Kainos in the provision of the Services under this SOW (if any) is set out in Section I.				

SOW Notice Period:	The Customer may terminate this SOW by giving Kainos not less than [xx] ([xx]) days' prior written notice of such termination.
Special Conditions	The following Special Conditions shall apply to this SOW and shall take either supplement or take precedence over any conflicting provisions in the Agreement. [xx]

B. OPERATION OF SOWS

- 1.1 The Parties will execute a SOW for each tranche of Services undertaken under the Agreement.
- 1.2 This SOW supplements and incorporates the terms and conditions contained in the Agreement and when signed by Kainos and the Customer establishes the terms and conditions under which Kainos shall supply the Services detailed within it. References in this SOW to clauses and schedules refer to clauses and schedules of the Agreement.
- 1.3 Multiple SOWs can operate concurrently.
- 1.4 The rights, obligations and details agreed by the Parties and set out in this SOW are SOW specific, apply only in relation to the Services that are to be delivered under this SOW and will not apply to any other SOW's executed or to be executed under this Agreement.

C. SERVICES, REQUIREMENTS AND METHODOLOGY

- 1.1 Kainos will provide man days of professional services work to achieve such of the requirements, deliverables and objectives detailed below and arising out of sprints, within the duration of the SOW and the available SOW Charges.
- 1.2 Requirements and outcomes may be varied or subject to further elaboration as part of the agile process and any indicative staff profiles may flex to accommodate changes to the Customer's requirements.
- 1.3 *[DN: Where required, detail the agile methodology project requirements and/or processes (if any) specific to this SOW.]*

D. CHARGES

- 1.1 The Charging Method is selected on a per SOW basis. The Charging Method agreed by the Parties for this SOW is set out in Section A.
- 1.2 Where **Time and Materials** (T&M) is the agreed Charging Method for this SOW, the following terms shall apply:
 - (a) Kainos will provide a detailed monthly breakdown of rates based on time and materials Charges, expenses (if any) and VAT (if any) with enough detail to enable the Customer to verify the accuracy of the T&M Charges incurred.
 - (b) The detailed breakdown for the provision of Services during the term of the SOW will include (but will not be limited to):
 - a role description per Kainos staff;
 - the agreed relevant rate per day;
 - any expenses charged per day, or at cost;
 - the number of days, or pro rata for every part day, they will be actively providing the Services during the term of the SOW;
 - Total amount spent of the estimated SOW Charges;
 - Overall Agreement value;
 - Remainder, where:
 - Remainder of value under overall Agreement value = overall Agreement value - sum of total value of all SOWs
 - Whether there is any risk of exceeding overall Agreement value (and thereby requiring a Change Request to continue delivery of Services).

- (c) Kainos will keep accurate records of the time spent by Kainos staff in providing the services and will provide records to the Customer for inspection on request.
- (d) If the estimated SOW Charges are exceeded and Kainos staff are still required to deliver the Services, under a T&M Charging Model, the Customer may elect to continue until the Services are completed.
- (e) Where the overall Agreement value set out in the Order Form is exceeded, then a Change Request must be used to increase the Agreement value, in order to facilitate further Services being carried out under the SOW.

1.3 Where **Fixed Price** is the agreed Charging Method for a SOW, the following terms shall apply:

- (a) The Fixed Price will be set out in the SOW and, subject to the terms of this SOW and the Agreement, Kainos will continue at its own cost and expense to provide the Services even where the Fixed Price has been exceeded.
- (b) When calculating the Fixed Price, Kainos has relied on:
 - the Customer fulfilling its responsibilities and dependencies as set out in Section G;
 - the assumptions set out in Section H;
 the failure of any of which may impact the Fixed Price and/or the Project timeline.
- (c) Customer requested changes to the Services which are subject to the Fixed Price, do not fall within the Fixed Price and will be impacted and dealt with using the Change Request process at the agreed Rate Card.
- (d) For Fixed Price SOWs, the amounts, method and timing of the payment of the Fixed Price will be as per the following payment profile:

FIXED PRICE PAYMENT PROFILE:

Description	Due Date	%	Amount

- (e) Where there are staged payments of the Fixed Price on, payment will fall due on the Due Date if the failure of Kainos to meet the Due Date is not attributable to Kainos' default or is as a result of any act or omission of the Customer, (for example, failure of an assumption, dependency or responsibility).

E. RATE CARD

1.1 The Rates applicable to this SOW are detailed in the following Rate Card:

[xx]

[insert Day Rate(s)/Hourly Rates]

- (a) The rates set out in the Rate Card are role specific, are quoted in [insert currency] and shall apply per Kainos staff member carrying out that role [per hour/per Day] (or a pro-rata apportionment of it).
- (b) The Rate Card will be revised on an annual basis, in line with indexation.

- (c) The rates are exclusive of VAT and expenses which will be invoiced in addition (where applicable) at the then prevailing rate and expenses, which, in the absence of an agreed and stated per diem, will be invoiced in addition at cost.
- (d) Where Kainos staff work any additional hours at Customer's request or on the Customer's approval, an overtime rate calculated as either Day rate or Hourly Rate + ½ (or a pro-rata apportionment of it) shall apply.

F. KEY STAFF

- 1.1 The Key Staff for this SOW during [DN: specific the time period within which staff will be considered "Key Staff"] are:

Key Staff (name or role)

G. CUSTOMER RESPONSIBILITIES

- 1.1 The Customer will:
- [xx]
 - make available a suitable and sustainable working environment and ensure suitable provision of seating, desks and internet connectivity are available for Kainos staff where there is a requirement to work at the Customer's location;
 - provide information reasonably requested by Kainos in a timely manner;
 - provide a designate Product Owner for each SOW;

H. ASSUMPTIONS AND DEPENDENCIES

- 1.1 The following assumptions and dependencies apply to the Project:
- [xx]
 - A Change Request will be raised for time spent by Kainos staff where they were available to perform the Services but could not do so by virtue of a delay caused by the Customer or a failed assumption, dependency or Customer responsibility. The Parties will use all reasonable endeavours and work together collaboratively to mitigate the consequences of any delay.

I. OPEN SOURCE SOFTWARE

- 1.1 The following Open Source Software has been identified for use in this SOW: [xx]

J. GDPR - DATA AND DATA PROCESSING FOR THE SERVICES TO BE CARRIED OUT UNDER THE SOW:

- 1.1 The parties to the Agreement acknowledge that for the purposes of the Data Protection Legislation, the Customer is the Controller and Kainos is the Processor. The only processing that Kainos is authorised to do is listed in section J by the Customer and may not be determined by Kainos.
- 1.2 Kainos shall notify the Customer immediately if it considers that any of the Customer's instructions infringe the Data Protection Legislation.
- 1.3 Kainos shall provide all reasonable chargeable assistance to the Customer in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Customer, include:
- 1.3.1 a systematic description of the envisaged processing operations and the purpose of the processing;
 - 1.3.2 an assessment of the necessity and proportionality of the processing operations in relation to the Services set out in the SOW;

- 1.3.3 an assessment of the risks to the rights and freedoms of Data Subjects;
- 1.3.4 the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- 1.4 Kainos shall, in relation to any Personal Data processed in connection with its obligations under this SOW:
 - 1.4.1 process that Personal Data only in accordance with Section J, unless Kainos is required to do otherwise by law. If it is so required Kainos shall promptly notify the Customer before processing the Personal Data unless prohibited by law;
 - 1.4.2 ensure that it has in place Protective Measures, which have been reviewed and approved by the Customer as appropriate to protect against a Data Loss Event having taken account of the:
 - 1.4.2.1 nature of the data to be protected;
 - 1.4.2.2 harm that might result from a Data Loss Event;
 - 1.4.2.3 state of technological development;
 - 1.4.2.4 cost of implementing any measures;
 - 1.4.3 ensure that:
 - 1.4.3.1 Kainos staff do not process Personal Data except in accordance with the Agreement (and in particular Section J of the SOW);
 - 1.4.3.2 it takes all reasonable steps to ensure the reliability and integrity of any Kainos personnel who have access to the Personal Data and ensure that they:
 - 1.4.3.2.1 are aware of and comply with Kainos' duties under this Section J;
 - 1.4.3.2.2 are subject to appropriate confidentiality undertakings with Kainos or any Sub-processor;
 - 1.4.3.2.3 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third party unless directed in writing to do so by the Customer or as otherwise permitted by this Agreement;
 - 1.4.3.2.4 have undergone adequate training in the use, care, protection and handling of Personal Data;
 - 1.4.4 not transfer Personal Data outside of the United Kingdom and/or European Economic Area as applicable unless the prior written consent of the Customer has been obtained and the following conditions are fulfilled:
 - 1.4.4.1 the Customer or Kainos has provided appropriate safeguards in relation to the transfer (whether in accordance with GDPR Article 46 or LED Article 37) as determined by the Customer;
 - 1.4.4.2 the Data Subject has enforceable rights and effective legal remedies;
 - 1.4.4.3 Kainos complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred (or, if it is not so bound, uses its best endeavours to assist the Customer in meeting its obligations);
 - 1.4.4.4 Kainos complies with any reasonable instructions notified to it in advance by the Customer with respect to the processing of the Personal Data;
 - 1.4.5 at the written direction of the Customer, delete or return Personal Data (and any copies of it) to the Customer on termination of the Agreement unless Kainos is required by law to retain the Personal Data.
- 1.5 Subject to sub-section 1.7 of Section J, Kainos shall notify the Customer immediately if it:
 - 1.5.1 receives a Data Subject Access Request (or purported Data Subject Access Request);
 - 1.5.2 receives a request to rectify, block or erase any Personal Data;
 - 1.5.3 receives any other request, complaint or communication relating to either party's obligations under the Data Protection Legislation;
 - 1.5.4 receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;

- 1.5.5 receives a request from any third party for disclosure of Personal Data where compliance with such request is required or purported to be required by law;
- 1.5.6 becomes aware of a Data Loss Event.
- 1.6 Kainos' obligation to notify under sub-section 1.6 of Section J shall include the provision of further information to the Customer in phases, as details become available.
- 1.7 Taking into account the nature of the processing and the information available to Kainos, Kainos shall provide the Customer with chargeable assistance in relation to the Controller's obligations under Data Protection Legislation and any complaint, communication or request made under sub-section 1.6 of Section J (and insofar as possible within the timescales reasonably required by the Customer) including by promptly providing:
- 1.7.1 the Customer with full details and copies of the complaint, communication or request;
- 1.7.2 such assistance as is reasonably requested by the Customer to enable the Customer to comply with a Data Subject Access Request within the relevant timescales set out in the Data Protection Legislation;
- 1.7.3 the Customer, at its request, with any Personal Data it holds in relation to a Data Subject;
- 1.7.4 assistance as requested by the Customer following any Data Loss Event;
- 1.7.5 assistance as requested by the Customer with respect to any request from the Information Commissioner's Office, or any consultation by the Customer with the Information Commissioner's Office.
- 1.8 Kainos shall allow for audits of its Data Processing activity by the Customer or the Customer's designated auditor.
- 1.9 Kainos shall be responsible for all acts or omissions of any Sub-processor. Before allowing any Sub-processor to process any Personal Data related to this Agreement, Kainos must:
- 1.9.1 notify the Customer in writing of the intended Sub-processor and processing;
- 1.9.2 obtain the written consent of the Customer;
- 1.9.3 enter into a written agreement with the Sub-processor which give effect to the terms set out in this policy such that they apply to the Sub-processor;
- 1.9.4 provide the Customer with such information regarding the Sub-processor as the Customer may reasonably require.
- 1.10 The Customer may, at any time on not less than 30 Working Days' notice, revise this policy by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when incorporated by attachment to this Agreement).
- 1.11 The parties agree to take account of any guidance issued by the Information Commissioner's Office. The Customer may on not less than thirty (30) Working Days' notice to Kainos amend this agreement to ensure that it complies with any guidance issued by the Information Commissioner's Office.
- 1.12 **DESCRIPTION OF DATA AND DATA PROCESSING**

Personal Data	
Data Subject(s)	
Description of Data	

Type of processing (How is the data processed?)	
1.1 Location of processing (Geographically, incl. location for disaster recovery/back-up/mirror)	
1.2 Purpose of processing (What is the processing scope)	
Processor (Kainos or Subcontractor)	
Duration of processing	

K. Kainos Support Services [DN: Only to be used where Kainos is providing support services, otherwise, please delete or mark as 'Not Used'.]

Supported Items	XXX software developed by Kainos XXX 3 rd Party Software [Delete if not applicable]
(i) Supported Software: (ii) Infrastructure: [Delete if not applicable]	[Detail items subject to General IaaS Support and VMs to go into Core Support]
Service Period:	[Insert dates or Support Services will commence on the earliest of (i) go live of the Software; (ii) the first support call received by Kainos or (iii) [insert longstop date] (Commencement Date) and will end [12] months following the Commencement Date]
Service Hours:	XXX Monday to Friday excluding UK/ROI public holidays
Service Desk Number:	All Incidents must be logged by the Customer in KIM (Kainos Incident Management). The Customer may also access the Kainos Service Desk on: +44 28 9057 1200 or for ROI Customers +353 (0) 1 6369530

Kainos Manager:	Service	[Name] [Email Address] [Contact Telephone Number]
Annual On-Call Service Charge		£/€
3rd Party Software		
Contract		
Start Date		
End Date		
3rd Party Charge		£/€

For the purposes of Support Services, the supplemental terms and conditions in Kainos Support Services as at https://www.kainos.com/wp-content/uploads/2019/05/Kainos-Support-Services-Terms-and-Conditions-Word_RH-1.0.pdf will apply (the “**Support Services Terms and Conditions**”)

[DN: Delete 1 or 2 below or above if no software / IaaS supported items as applicable]

1. The following Support Services will be provided by Kainos in respect of Supported Items comprising the Supported Software detailed in the table above:
 - 1.1. Kainos using all reasonable endeavours to maintain the Supported Software in good working order.
[Delete if not applicable]
 - 1.2. The provision of 3rd and 4th Line support, comprising telephone advice and assistance relating to enquiries by the Customer in respect of the use or operation of the Supported Software during the Service Hours, for the Service Period; and
 - 1.3. The entering into, administration and renewal of contracts for the 3rd Party Software (if any) set out in the table above with third parties (**3rd Party Contracts**).
2. The following Support Services will be provided by Kainos in respect of Supported Items comprising Infrastructure:
 - 2.1. the General IaaS Support Activities as set out below in response to Incidents raised in KIM; and
 - 2.2. Core Support, as defined in the Support Services Terms and Conditions.
3. The Customer will promptly notify Kainos of any Incidents arising and will provide Kainos (in so far as the Customer is reasonably able) with a documented example of the Incident. Kainos will provide professional services on a time and materials basis at the relevant Day Rate as detailed above in the Rate Card at Section E, to support the Customer in their design, implementation and support of their cloud environment. These General IaaS Support Activities will be supplied in response to incidents raised in KIM or otherwise on reasonable notice in respect of a specific Customer request. The following is an indicative list of the activities with which Kainos shall assist the Customer (**General IaaS Support Activities**):

3.1. CONSULTANCY

- Advice and guidance on technical design of cloud environment;
- Estimation and budgetary calculation assistance on efficient costing of potential environments;
- Analysis of potential hosted applications to assess suitability and effective architectural design;
- Advice and guidance on security and accreditation;
- Advice and guidance on data security assessment levels;
- Best practice disaster recovery design consultancy;
- Review of requirements and recommendation of infrastructure environment;
- Setup and Environment Implementation;
- Engagement with IaaS hosting provider;
- Set up and configuration of designed architecture;

- Creation of access provision;
- Testing of environment; and
- Hardening of environment.

3.2. MIGRATION

- Secure transfer of existing applications and data to cloud environment by either:
 - Lift and shift of existing application and data; and/or
 - Application installation and data transfer.
- Testing assistance of migrated environments.

3.3. ONGOING MANAGED IAAS SUPPORT ACTIVITIES

- Incident response and resolution including remedial actions to issues identified under Core Support;
- Implementation of changes to environment;
- Firewall and infrastructure configuration and management;
- Restore services including disaster recovery scenarios;
- Assistance in disaster recovery test events; and
- Application level support service.

3.4. Where Core Support is stipulated in this SOW as applicable Kainos will supply the following support services in respect of the relevant virtual server or machine:

- Deployment of virtual servers from pre-configured templates;
- Monitoring and Alerting / Event Monitoring;
- Capacity monitoring;
- Availability monitoring;
- Anti-virus management of installed anti-virus software;
- Backups management;
- Operating System Security patching;
- Agreed system failure process;
- Help desk support;
- Incident logging and tracking service;
- Application of service level agreement;
- Agreed escalation procedures; and
- Monthly standard reporting against any agreed SLAs.

4. The Core Support is up to and including the operating system level for the server. Support for items above the operating system, can be provided under General IaaS Support Activities, where mutually agreed.
5. At any time during the Service Period, the Customer may request Kainos to place a virtual server under Core Support. This can be completed by email or KIM exchange between the Customer and the Kainos Service Manager. The variation will be validly contracted once Kainos has issued an email or KIM confirmation to the Customer in response to a Customer request detailing the virtual server(s) to be put into Core Support. Core Support comprises the above services in respect of the relevant virtual server. The Customer may remove a virtual server from Core Support by giving Kainos thirty (30) days written notice of same (email will suffice).
6. The Customer will provide 1st and 2nd Line Support for all Supported Items comprising software and is responsible for fulfilling the following Customer responsibilities:
 - 6.1. The Customer responsibilities set out in the Support Services Terms and Conditions; and
 - 6.2. [List any additional Customer or engagement specific responsibilities].
7. Additional Invoicing Provisions for Kainos Support Services:
 - 7.1. The Service Fee shall be invoiced at the start of the Service Period.
 - 7.2. Pre-Paid days shall be invoiced at the start of the Service Period and must be used during the Service Period. No refund or credit shall be given for unused Pre-Paid days remaining at the end of the Service Period.
 - 7.3. 3rd Party Software shall be invoiced in advance of the order for 3rd Party Software being placed and/or before any renewal.

7.4. Additional days, On-Call Support, Change Requests, Overtime, or expenses (if any) shall be invoiced monthly in arrears based on the preceding month's usage.

8. Kainos will not be responsible for providing Support Services where SOWs are incomplete, unsigned or, do not have an associated purchase order number.

BY SIGNING this SOW, the parties agree to be bound by the terms and conditions set out in this SOW:

This SOW is made between the Customer and Kainos and shall take effect on the date signed by both Parties.

This SOW is read in conjunction with the Agreement and words and expressions in this SOW shall have the meanings given to them in the Agreement.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Schedule 2: Template Change Request Form

The Agreement between the Customer and Kainos is varied as set out in this Change Request Form and shall take effect on the date signed by both Parties.

CHANGE REQUEST DETAILS	
Date:	XX/XX/20XX
Order Form ref. for the Agreement being varied:	SOXXXXXX
Change Request to SOW reference:	SOW
Raised by:	[xx]
Reason for the change:	[xx]
Description of the change:	[xx]
Timeline:	[xx]
Cost:	[xx]
Impact:	[xx]
Risks:	[xx]

Words and expressions in this Change Request Form shall have the meanings given to them in the Agreement. Save as expressly set out in this Change Request Form, the Agreement shall remain in full force and effect.

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Kainos Services Order Form

Status
Security
Version No.

Definitive
Confidential
5.0

KAINOS | SERVICES ORDER FORM

Customer Details	
Customer Name	
Registered Office Address	
Customer Contact, Number & Email	XXX XXX XXX
Invoice Contact, Number & Email	XXX XXX XXX

Kainos Details	
Kainos Name	Choose an item.
Registered Office Address	Choose an item.
Kainos Contact, Number & Email	XXX XXX XXX
Kainos Reference	PIDXXXXXX v0.1

Service Period	
Term	
Start Date	Day Month Year
End Date	Day Month Year
Notice period for termination	A minimum of [X] working days written notice is required for termination of this Order Form.

Description of Services
Kainos will carry out the services detailed below (Services): [DN: Insert a brief description of the services.] To provide the Services Kainos relies on the following assumptions and dependencies, failure of which may have an impact on the provision of the Services, timescales and/or cost: (a) [X] (b) [X] [DN: Include any relevant assumptions, dependencies or customer responsibilities which may impact on delivery, price or timelines]

Location
[DN: Specify where the Services will be carried out or delete drafting note and rely on default statement below] Services will be carried out remotely. Onsite work may be agreed on a case by case basis where necessary to progress the Services.

GDPR
Kainos and the Customer will comply with their respective GDPR obligations in line with this Data Processing Annex which forms part of the Agreement. The data that Kainos is authorised to process is set out in the Data Table. Changes to the Data Table will be managed operationally and the Data Table will be updated by the Customer where the information in the Data Table changes.

Charges												
[DN: Include the following wording if charging basis is Fixed Price and delete the T&M wording below] [Kainos will charge the Customer the <u>fixed price</u> of [£/€/€] for the provision of the Services, plus VAT and expenses (if any) (Fixed Price). Invoices for the Services shall be raised in line with the Payment Profile below. Payment terms are thirty (30) days net. Trigger dates should be objective and line as closely as possible with WIP.]												
<table> <tr> <th colspan="3">Payment Profile</th> </tr> <tr> <th>Invoiced on</th> <th>%</th> <th>Amount</th> </tr> <tr> <td>Signature of Order Form</td> <td></td> <td></td> </tr> <tr> <td>Delivery of X by Kainos</td> <td></td> <td></td> </tr> </table>	Payment Profile			Invoiced on	%	Amount	Signature of Order Form			Delivery of X by Kainos		
Payment Profile												
Invoiced on	%	Amount										
Signature of Order Form												
Delivery of X by Kainos												

Completion of the Services by Kainos		

[DN: Include the following wording if charging basis is **T&M** and delete the Fixed Price wording above]

Kainos will charge the Customer on a time and materials basis, [at the Man Day Rate of [£/€/€] per Man Day] OR [in accordance with the Rate Card set out below.]

The estimated cost for the provision of the Services is [£/€/€] plus VAT and reasonable expenses (if any) **(Estimated Cost)**.

The Customer will be invoiced for actual utilisation which may be more or less than the Estimated Cost. Invoices shall be raised monthly in arrears and shall be paid by the Customer within thirty (30) calendar days of the invoice date.]

[Rate Card DN: Insert Rate Card (if applicable)]

Terms & Conditions

These Services Terms and Conditions apply to this Services Order Form (**Terms and Conditions**) and signature confirms acceptance by the authorised representatives of both Parties. Order Forms should be completed in full and returned to Kainos (with a physical or electronic copy of the purchase order, where applicable) before the start of the Service Period. Kainos is not responsible for delivering the Services where Order Forms are incomplete or unsigned.

Special Conditions

[DN under the terms and conditions the Customer will own all Intellectual Property Rights (IPR) in Services performed by Kainos exclusively for the Customer. If Kainos is seeking to retain (or reuse) any aspect of the IPR in the Services, please raise this with the Commercial Team so an appropriate special condition can be drafted]

Signed by the Customer		Signed by Kainos	
Signature		Signature	
Print Name		Print Name	
Title		Title	
Date		Date	

Kainos Services Terms

KAINOS SERVICES TERMS

1. Kainos will provide the Services set out under a Services Order Form in accordance with these terms and conditions (**Terms**).
2. Unless set out in these Terms, all conditions, warranties, terms, undertakings and representations of any kind whatsoever, express or implied, whether by statute, common law or otherwise in respect of the Services are excluded by the Parties to the fullest extent permitted by law.
- 3. LIABILITY**
 - 3.1. Each Party's liability in connection with, or in relation to, the Services whether in contract, tort under an indemnity or otherwise (a **Default**) shall be as set out in this clause 3. Each Party's entire liability for actual damages in respect of a Default shall (except as provided in clause 3.3) be limited to a sum equal to 150% of the Charges actually paid under the Services Order Form in the twelve (12) month period immediately preceding the event giving rise to the liability.
 - 3.2. To the greatest extent permissible by law, in no event shall either Party be liable to the other for loss or losses of: (i) profits (actual or anticipated); (ii) loss of revenue; (iii) loss of business; (iv) loss or damage to goodwill; (v) loss of savings (whether anticipated or otherwise); or (vi) any indirect, special or consequential loss or damage.
 - 3.3. Neither Party excludes or limits its liability for: (i) death or personal injury; (ii) bribery or fraud by it or its employees; or (iii) liabilities which cannot be excluded or limited by law.
 - 3.4. Kainos is not: (i) responsible for delivering any additional benefits or services which is not provided for under any Third Party Software contract; (ii) liable for any act, omission or breach of contract by any Third Party Software vendor; (iii) responsible for the provision of any services to be provided by the Third Party Software vendor or the Customer; (iv) responsible for the consequences of early termination of any Third Party Software contract, for whatever reason; (v) providing services which are reliant on Third Party Software, where there is not associated Third-Party Software contract in place.
- 4. CONFIDENTIALITY**

For a period of two (2) years from the Start Date, the Parties will not disclose or use any Confidential Information (except as necessary for the legitimate performance of the Services) without the prior written consent of the other Party. This clause 4 shall not apply to: (i) Any information in the public domain other than in breach of the Agreement; (ii) Information already in the lawful possession of the receiving Party before its receipt from the disclosing Party; (iii) Information obtained from a third party who is free to and legally entitled to divulge it; (iv) Disclosure of information which is required by law; (v) information developed or created by one Party independently of the other.
- 5. INTELLECTUAL PROPERTY RIGHTS**
 - 5.1. The IPR (if any) in any third party or Kainos proprietary or commercial software remains vested in Kainos and/or the third party software vendor(s); the IPR in pre-existing Kainos components, tools and implementation techniques together with the Usage Metrics derived from the operation of the Services, and including (but not limited to) AI models, algorithms, training methods and materials, re-trained datasets, methodologies, frameworks, playbooks, onboarding guides and design blueprints or similar, used to run and/or enhance the Services, vest in and will remain vested in Kainos; the IPR in Customer data and Customer developments vests in the Customer (provided that customisations made to any third party software and/or Kainos proprietary or commercial software will be made subject to its associated end user licence agreement which shall take precedence); subject to the carve outs in this clause 5.1, the IPR in Services performed by Kainos exclusively for the Customer under a Services Order Form shall vest in the Customer on creation, provided that in consideration for such assignment the Customer hereby grants an unrestricted, non-time limited, non-exclusive licence to Kainos to use as it sees fit, the IPR in the Services.
 - 5.2. Nothing in this clause 5 shall operate to restrict either Party's ability to use for any purpose it thinks fit any know how or experience (including programming tools, skills and techniques and AI-related methods, materials, tools or techniques or similar), gained or arising from the performance of the Services, provided it complies with any obligations of confidentiality owed to the other Party and these Terms.
- 6. DATA PROTECTION**

The Parties will comply with their respective obligations under the applicable data protection legislation when carrying out the Services.
- 7. MANAGING DISPUTES**

Any dispute arising out of or in connection with the Agreement will in the first instance be referred to the Project Managers for discussion and resolution within seven (7) working days of the dispute being referred (or such other date as is mutually agreed). If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Head of Delivery level, who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute. If the dispute is not resolved within the agreed timeframe then the dispute will be referred to Managing Director level who must meet within seven (7) working days of the escalation date (or such other date as is mutually agreed), to attempt to resolve the dispute.
- 8. TERMINATION**
 - 8.1. The Agreement may be terminated with immediate effect, without penalty, by either Party serving on the other a written notice to terminate if (a) the other Party commits a Material Breach of any term of the Agreement and, if such breach is remediable, fails to remedy that breach within a period of thirty (30) calendar days of being notified in writing to do so; (b) an Insolvency Event of the other Party occurs, or the other Party ceases or threatens to cease to carry on the whole or any material part of its business; or (c) a

- Force Majeure Event occurs for a period of more than thirty (30) consecutive calendar days.
- 8.2. If the Agreement is terminated for any reason before the Services are completed, Kainos will provide (and will only be responsible for completing) such Services that can be reasonably completed up to and including the date of termination.
- 8.3. Termination, cancellation, or expiration of the Agreement will not affect the accrued rights or liabilities of either Party
- 9. FORCE MAJEURE Neither Party shall be liable to the other for any delay or failure to perform arising from a Force Majeure Event.**
- 10. ADDITIONAL WORK**
- 10.1. Kainos will where possible accommodate the Customer's reasonable requests for Additional Work. Where Kainos agrees to carry out Additional Work, the Parties will confirm the scope of and charges for the Additional Work, any related assumptions or dependencies and any special terms using this [Change Request Form](#). Signed Change Requests Forms shall constitute authorisation for Kainos to undertake the Additional Work set out in it and shall be treated as a variation of the Agreement. Change Request Forms may be authorised by email. An email authorisation by a Customer shall have the same status as a Customer signature and Kainos is entitled to treat the Customer representative providing any email authorization as having actual authority to enter into contracts on the Customer's behalf.
- 10.2. Where the Customer asks for the Services to be provided (outside standard Working Day hours (**Overtime**), Kainos will subject to availability endeavour to accommodate the Customer's requests. Overtime will be charged (pro-rated hourly) at the applicable Working Day Rate plus ½ plus VAT and expenses (at cost).
- 11. PREMISES**
- The Customer shall arrange access to and shall provide and procure Kainos such facilities, if any, for the performance of the Services as are reasonably necessary. Kainos shall ensure that any personnel provided to perform the Services comply with all reasonable rules, regulations, orders and directions as are advised by the Customer, in relation to the Customer's premises.
- 12. PREVENTION OF BRIBERY AND CORRUPTION**
- Each Party shall comply with all applicable laws, statutes, regulations and codes relating to anti-bribery and anti-corruption, and shall not engage in any activity, practice or conduct which would constitute an offence under the relevant anti-corruption laws.
- 13. NON-SOLICITATION**
- Neither Party will for the Service Period set out in a Services Order Form or within twelve (12) months of its termination or expiry solicit, canvass or entice away, directly or indirectly any developer, manager or senior employee of the other. Recruitment arising out of an employee responding to a general recruitment campaign will not be deemed 'solicitation' under this clause 13.
- 14. ASSIGNMENT**
- The Agreement is personal to the Parties and neither Party may assign any of its rights or delegate any of its obligations under the Agreement, whether by operation of law or otherwise, without the prior express written consent of the other Party.
- 15. ENTIRE AGREEMENT**
- 15.1. The Agreement constitutes the entire agreement between the Parties relating to the Services, and supersedes any previous agreement between the Parties relating to the Services.
- 15.2. Each of the Parties agrees that in entering into the Agreement it does not rely on, and will have no remedy relating to, any agreement, statement, representation, warranty, understanding or undertaking (whether negligently or innocently made) other than as set out in the Agreement.
- 15.3. No variation of the Agreement shall be valid unless it is in writing (email will not satisfy the requirement for writing under this clause 15.3) and is signed by each Party. The terms on either Party's purchase orders, invoices or other business forms are not binding on the other Party unless they are incorporated into a signed written agreement which is expressly stated to vary the Agreement.
- 16. GENERAL**
- 16.1. The Services may be supported by Generative AI. No responsibility is assumed by Kainos for the accuracy, completeness or suitability of the content generated by Generative AI or for Customer's reliance on Generative AI, or its operations or outputs.
- 16.2. Each Party reserves all rights which are not expressly granted under the Agreement. No person who is not a party to the Agreement shall acquire rights under it or be entitled to benefit from any of its terms even if that person has relied on such term.
- 16.3. If any term or condition is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such portion shall be deemed severed and the Agreement shall not fail in its entirety, but the surviving terms and conditions shall continue in full force and effect.
- 16.4. A reference to a statutory provision includes a reference to the statutory provision as modified or re-enacted or both, from time to time and any subordinate legislation made under the statutory provision.
- 16.5. Nothing in the Agreement shall make either Party an employee, partner or agent of the other Party and the relationship between Customer and Kainos shall be one of principal and independent contractor.
- 17. GOVERNING LAW AND JURISDICTION**
- The Agreement is governed by the laws of England and the Parties submit to the non-exclusive jurisdiction of the Courts of England.
- 18. DEFINITIONS**
- The following definitions apply to the Agreement:

Additional Work	means work in addition to the Services which Kainos agrees to carry, as set out in a signed Change Request Form, or authorized by email.
Agreement	means a signed Services Order Form, read with these Terms and any related signed Change Requests.
Confidential Information	includes but is not limited to: • any information that relates to the business, affairs, developments, trade secrets, know-how, personnel, and third parties, including all Intellectual Property Rights (IPRs), together with all information derived from any of the above any other information clearly designated as being confidential or which ought reasonably to be considered confidential (whether it is marked 'confidential').
Day Rate	means the applicable pro-rata time and materials charging rate, detailed in the Services Order Form for per personnel, per Working Day exclusive of VAT and Expenses (which shall be invoiced in addition where applicable). Annual indexation shall apply to Day Rate(s).
Force Majeure Event	means any event beyond the reasonable control of a party
Generative AI	means artificial intelligence capable of generating text, images, or other media, using generative models. Generative AI models learn the patterns and structure of their input training data and then generate new data that has similar characteristics.
Insolvency Event	may be: a voluntary arrangement; a winding-up petition; the appointment of a receiver or administrator; an unresolved statutory demand; and or a Schedule A1 moratorium.
Intellectual Property Rights or IPR	means: • copyright, rights related to or affording protection similar to copyright, rights in databases, patents and rights in inventions, semi-conductor topography rights, service marks, logos, database rights, trade marks, rights in internet domain names and website addresses and other rights in trade or business names, design rights (whether registerable or otherwise), Know-How, trade secrets and moral rights and other similar rights or obligations whether registerable or not; • applications for registration, and the right to apply for registration, for any of the rights listed at (a) that are capable of being registered in any country or jurisdiction; and • all other rights whether registerable or not having equivalent or similar effect in any country or jurisdiction and the right to sue for passing off.
Material Breach	means a single serious breach of, or persistent failure to perform as required in the Agreement.
Services	means the work to be carried out by Kainos as detailed in a signed Services Order Form and/or any Additional Work.
Third Party Software	means any commercial off the shelf (COTS) or productised software, or SaaS, or other software, applications, tools or systems developed in whole or in part by parties other than the Parties to this Agreement.
Usage Metrics	means the aggregated and statistical metrics and performance results derived from the operation of the Services.
Working Day	means 7.5 hours per day worked, by Kainos, Monday-Friday between the hours of 8am-6pm, excluding Public Holidays.

MICROSOFT AZURE | TERMS AND CONDITIONS

The latest applicable Microsoft Azure terms and conditions are found at
<https://docs.microsoft.com/en-us/partner-center/csp-documents-and-learning-resources>.