

## TERMS & CONDITIONS



### 1. Interpretation

1.1 Unless the context otherwise states or requires:

1.1.1 the terms defined in our engagement letter shall have the meaning given to them there when used in these Terms & Conditions; and

1.1.2 all other capitalised words used in these Terms & Conditions shall have the meanings set out below:

**Agreement** means the agreement formed between EVOLVE Advice and the Customer comprising the engagement letter, these Terms & Conditions, the Schedules (if any) and any document expressly or impliedly incorporated by reference.

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

**Customer Materials** means all documents, information, items and materials in any form, whether owned by the Customer or a third party, which are provided by the Customer to EVOLVE Advice in connection with the Services.

**Data Protection Laws** means all applicable laws relating to privacy or data protection including UK GDPR, the Data Protection Act 2018, and the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI2003/2426).

**Disclosing Party** has the meaning given to it in clause 8.1.

**Engagement Letter** means the outline of the services and agreement between the parties.

**Intellectual Property Rights** means patents, rights to inventions, copyright and related rights, moral rights, trade marks and service marks, business names and domain names, rights in get-up, goodwill and the right to sue for passing off, rights in designs, rights in computer software, database rights, and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.



**Modern Slavery Legislation** has the meaning given to it in clause 15.4.

**Receiving Party** has the meaning given to it in clause 8.1.

**Third Party Material** has the meaning set out in clause **Error! Reference source not found..**

1.2 In this Agreement:

1.2.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time. A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

1.2.2 Any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

## 2. Commencement and duration

This Agreement shall commence on the Commencement Date and shall continue for the Term, subject to earlier termination in accordance with clause 11.

## 3. The Services

3.1 EVOLVE Advice shall [use reasonable endeavours to perform the Services during the Term in accordance with the Agreement.

3.2 EVOLVE Advice warrants and undertakes that it is entitled to enter into this Agreement and that it shall use reasonable endeavours to ensure that the Services are performed:

3.2.1 with reasonable skill and care, in a professional, timely and workmanlike manner;

3.2.2 using suitably skilled and experienced personnel;

3.2.3 in accordance with applicable laws and having obtained all necessary licenses and consents; and

3.2.4 in accordance with all health and safety and security requirements that apply at the Customer's premises



and that have been communicated to it, provided that it shall not be liable under this Agreement if, as a result of such observation, it is in breach of any of its obligations under this Agreement;

3.3 Since EVOLVE Advice has given commitments as to compliance of the Services with relevant specifications in clause 3.2, EVOLVE Advice excludes any terms implied by the Supply of Goods and Services Act 1982 to the extent permitted by law.

#### **4. Customer's Obligations**

4.1 The Customer shall:

4.1.1 provide EVOLVE Advice with reasonable access at reasonable times to the Customer's premises and personnel for the purpose of providing the Services; and

4.1.2 provide such information and cooperation to EVOLVE Advice as EVOLVE Advice may reasonably request and which is reasonably necessary to enable EVOLVE Advice to perform the Services.

4.2 The Customer shall not, without the prior written consent of EVOLVE Advice, at any time from the date of this Agreement to the expiry of 12 months after the termination of this Agreement, solicit or entice away from EVOLVE Advice or employ or attempt to employ any person who is, or has been, engaged as an employee, consultant or subcontractor of EVOLVE Advice in the provision of the Services.

#### **5. Charges**

5.1 The Customer shall pay EVOLVE Advice the Charges as set out in the Engagement Letter.

5.2 The Charges are exclusive of VAT but otherwise include all taxes.

5.3 EVOLVE Advice shall issue invoices in accordance with the Invoicing Arrangements. The Charges shall be payable by the Customer against the proper submission of invoices by EVOLVE Advice.

5.4 The Customer shall pay each invoice which is due and submitted to it by EVOLVE Advice, within thirty (30) days of



receipt, to a bank account nominated in writing by EVOLVE Advice .

- 5.5 Any dispute relating to the payment of an invoice shall be dealt with in accordance with the provisions contained in clause 13.
- 5.6 EVOLVE Advice has the right to suspend performance of the Services if the Customer fails to pay any Charges in accordance with this Agreement .
- 5.7 If the Customer fails to pay any amount payable by it under this Agreement, EVOLVE Advice may charge the Customer interest on the overdue amount from the due date until payment of the overdue sum, whether before or after judgement. Interest under this clause 5.7 will accrue each day at four percent (4)% a year above the Bank of England base rate from time to time.
- 5.8 The Charges shall be fixed during the Term.

## **6. Changes**

- 6.1 No change to this Agreement, or the Services supplied under it, shall be valid unless made in writing and signed by the parties.
- 6.2 If EVOLVE Advice requests a change to the scope or execution of the Services or Deliverables, in order to comply with any applicable safety or statutory requirements, the Customer shall not unreasonably withhold or delay consent to it.

## **7. Intellectual Property Rights**

- 7.1 In relation to the Deliverables:
  - 7.1.1 EVOLVE Advice and its licensors shall retain ownership of all Intellectual Property Rights in the Deliverables, excluding the Customer Materials;
  - 7.1.2 EVOLVE Advice grants the Customer, or shall procure the direct grant to the Customer of, a fully paid-up, worldwide, non-exclusive, royalty-free licence during the term of this Agreement to copy and modify the Deliverables (excluding the Customer Materials) for the purpose of receiving and using the Services and the Deliverables in its business.
- 7.2 The Customer shall not sub-license, assign or otherwise transfer the rights granted in Clause 7.1.2 except with EVOLVE Advice's prior written consent.



- 7.3 In relation to the Customer Materials, the Customer:
- 7.3.1 and its licensors shall retain ownership of all Intellectual Property Rights in the Customer Materials; and
  - 7.3.2 grants EVOLVE Advice a fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify the Customer Materials for the term of this agreement for the purpose of providing the Services to the Customer.
- 7.4 EVOLVE Advice warrants that the receipt and use of the Services and the Deliverables by the Customer shall not infringe the rights, including any Intellectual Property Rights, of any third party except to the extent that the infringement arises from:
- 7.4.1 the use of the Customer Materials in the development of, or the inclusion of the Customer Materials in any Deliverable;
  - 7.4.2 any modification of the Deliverables or Services, other than by or on behalf of EVOLVE Advice; or
  - 7.4.3 the Customer not complying with any reasonable instructions provided by EVOLVE Advice in respect to the use of third party materials.
- 7.5 The Customer warrants that the receipt and use of the Customer Materials in the performance of this Agreement by EVOLVE Advice, its agents, subcontractors or consultants shall not infringe the rights, including any Intellectual Property Rights, of any third party.

## 8. Confidentiality

- 8.1 If either party (**Disclosing Party**) making available to the other (**Receiving Party**) confidential information relating to its business, technical or other activities in the course of providing the Services, the Receiving Party shall use its best endeavours to maintain the confidentiality of such information (to the extent that such information is within its control) and not use or disclose such confidential information except to the extent necessary to enable the performance of the Receiving Party's obligations under this Agreement, or as otherwise permitted by this clause 8.



- 8.2 Each party may disclose confidential information:
- 8.2.1 to its employees, officers, representatives, advisers, agents or subcontractors who need to know such information for the purposes of carrying out that party's obligations under this Agreement or advising or assisting that party in any matter relating to this Agreement; and
  - 8.2.2 as may be required by law, court order or any governmental or regulatory authority. The Receiving Party will use all reasonable endeavours to consult the Disclosing Party whenever possible prior to providing such information.
- 8.3 The obligations in clause 8.1 shall not apply to data or information which the Receiving Party can clearly demonstrate:
- 8.3.1 was known to the Receiving Party prior to disclosure by the Disclosing Party, or is independently developed or conceived by the Receiving Party; or
  - 8.3.2 was in or enters the public domain through no fault of the Receiving Party or breach by a third party of an obligation of confidence; or
  - 8.3.3 becomes available to the Receiving Party by an unconnected third party with the lawful right to make such a disclosure.

## 9. Data protection

- 9.1 In this clause 9 **personal data, data subject, processor, controller, Commissioner and supervisory authority** shall have the meaning set out in Data Protection Laws
- 9.2 To the extent that EVOLVE Advice processes personal data in the performance of this Agreement, the parties agree that the Customer shall be deemed the controller and EVOLVE Advice will be deemed a processor and EVOLVE Advice shall:
- 9.2.1 process the personal data only on the Customer's documented instructions, including with regard to transfers of personal data outside of the UK, unless required to do so by a law to which EVOLVE Advice is subject (in which case EVOLVE Advice shall inform the Customer of that legal requirement before processing, unless that law prohibits EVOLVE Advice



- informing the Customer on grounds of public interest);
- 9.2.2 ensure the reliability of all its employees or other representatives who have access to the personal data and shall ensure that all such persons have committed themselves to confidentiality obligations or are under an appropriate statutory obligation of confidentiality;
- 9.2.3 implement and maintain throughout the Term appropriate technical and organisational measures against unauthorised, unlawful or unintended processing, use of, access to, or theft of the personal data and against loss or destruction of or damage to, the personal data;
- 9.2.4 promptly inform the Customer if any personal data is lost, altered or destroyed or become damaged, corrupted or unusable and shall take such steps as the Customer may reasonably require to restore the personal data to its original condition;
- 9.2.5 not engage a sub-processor without the Customer's prior specific or general written authorisation and only then on terms which replicate this clause 9.2. EVOLVE Advice shall remain liable to the Customer for any acts or omissions of its sub-processors;
- 9.2.6 promptly notify the Customer and provide the Customer with reasonable co-operation and assistance in relation to any complaint, notice or communication which relates directly or indirectly to the processing of personal data or to compliance by EVOLVE Advice with Data Protection Laws (including requests from data subjects for the exercising of their statutory rights);
- 9.2.7 provide all reasonable assistance to the Customer, having regard to the nature of processing and the information available to EVOLVE Advice , in order to assist the Customer to comply with its obligations under Data Protection Laws (including the notification of a personal data breach to the Commissioner (or other appropriate supervisory authority) and to the data subject(s) affected without undue delay, the preparation of data protection impact assessments,



and prior consultation with the ICO (or other appropriate supervisory authority);

- 9.2.8 on termination of this Agreement or any earlier termination of EVOLVE Advice 's right or obligation to process personal data, and as otherwise directed by the Customer, EVOLVE Advice shall either: (a) delete the personal data and all copies thereof; or (b) return the personal data to the Customer, in each case subject to any Data Protection Laws which may require EVOLVE Advice to store the personal data or copies of it;
- 9.2.9 make available to the Customer all information necessary (and allow for and contribute to audits or inspections) to demonstrate compliance with EVOLVE Advice 's obligations set out in this clause 9.2;
- 9.2.10 inform the Customer if, in EVOLVE Advice's opinion, an instruction regarding processing by EVOLVE Advice infringes the Data Protection Laws;
- 9.2.11 not transfer personal data outside the UK without the Customer's prior written consent and subject to the requirements of Data Protection Laws.

## **10. Insurance and Liability**

- 10.1 EVOLVE Advice shall take out and maintain during the Term at its own cost the following insurance policies with a reputable insurance company in respect to the provision of Services:
  - 10.1.1 public and product liability insurance of not less than £5,000,000 (five million pounds);
  - 10.1.2 employers' liability insurance of not less than £5,000,000 (five million pounds); and
  - 10.1.3 professional indemnity insurance of not less than £2,000,000 (two million pounds).
- 10.2 EVOLVE Advice shall provide to the Customer on request both the insurance certificate giving details of cover and the receipt for the current year's premium in respect of each insurance.
- 10.3 Nothing in this Agreement is intended and nor shall it be construed as an attempt by either party to exclude or limit its liability for:





- 10.3.1 any liability which cannot be excluded or limited under applicable law, including liability for death or personal injury caused by negligence or for fraud;
- 10.3.2 the payment of the Charges due under this Agreement.
- 10.4 Subject to clause 10.3 neither party shall be liable whether in tort (including for negligence or breach of statutory duty), contract, or otherwise for any loss of profits, loss of revenue, loss of business, depletion of goodwill and/or similar losses, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this Agreement
- 10.5 Subject to clauses 10.3 and 10.4 the maximum liability of each party in respect to an event or series of connected events whether in tort (including for negligence or breach of statutory duty), contract, or otherwise shall not exceed the Charges paid in the 12 months preceding the event (or the first event in a series of connected events) that gave rise to the liability.
- 10.6 Neither party shall be deemed to be in default of any obligations under this Agreement to the extent it is unable to perform any obligation due to the other party's default.

## **11. Termination**

- 11.1 Either party will have the right to terminate this Agreement with immediate effect upon written notice if:
  - 11.1.1 the other party commits a material breach of this Agreement and (in the case of a material breach which is capable of remedy) fails to remedy that breach within [thirty (30) days] of being notified in writing of the breach; or
  - 11.1.2 a winding up petition is present at court, or an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
  - 11.1.3 an order is made for the appointment of an administrator to manage the affairs, business and/or property of the other party, or documents are filed for the appointment of an administrator for such purposes, or notice of intention to appoint an



administrator for such purposes is given by the terminating party or other third party; or

- 11.1.4 a receiver is appointed over any of the other party's assets or undertaking, or if circumstances arise which entitle a court or a creditor to appoint a receiver or manager in respect of any part of that party's undertaking or assets; or
- 11.1.5 the other party makes any arrangement or composition with its creditors, or makes an application to a court for the protection of its creditors in any way, or becomes bankrupt, or if the other party ceases to trade or threatens to cease to trade; or
- 11.1.6 the other party takes or suffers any similar or analogous action to those referred to in sub-clauses 11.1.2 to 11.1.5 (inclusive) in any jurisdiction.

11.2 Either party has the right to terminate this Agreement on providing the other party with 3 months' notice.

## **12. Consequences of Termination**

- 12.1 Termination of this Agreement, however arising, shall not affect or prejudice the accrued rights of the parties as at termination or the continuation of any provision expressly stated to survive, or implicitly surviving, termination.
- 12.2 On termination or expiry (howsoever caused) where payment remains due, the Customer shall pay EVOLVE Advice the amounts owed in respect of the Services provided up to the date of termination.

## **13. Dispute Resolution**

- 13.1 If a dispute arises out of or in connection with this Agreement the parties will, following a written request from one party to the other, attempt in good faith to resolve the dispute through discussions between the Customer's Authorised Representative and EVOLVE Advice's Authorised Representative.
- 13.2 Neither party may commence any court proceedings in relation to the dispute until it has attempted to settle the dispute by the process described at clause 13.1 or the other party fails to participate in the discussions, provided that the right to issue proceedings is not prejudiced by a delay.



13.3 All disputes arising out of or in connection with this Agreement shall be finally settled by the English courts.

#### 14. Force Majeure

Neither party shall have any liability under or be deemed to be in breach of this Agreement for any delays or failures in the performance of this Agreement which result from circumstances beyond the reasonable control of that party. The party affected by such circumstances shall promptly notify the other party in writing when such circumstances cause a delay or failure in performance and when they cease to do so and shall be entitled to a reasonable extension of time for performing such obligations. If such circumstances continue for a continuous period of more than [three] months, either party may terminate this Agreement by written notice to the other party.

#### 15. General

15.1 Assignment and sub-contracting. Neither party may assign, transfer, charge or otherwise deal with all or any of its rights or obligations under or pursuant to this Agreement, or sub-contract the performance of any of its obligations under or pursuant to this Agreement without the prior written consent of the other party.

15.2 Discrimination. EVOLVE Advice shall not discriminate either directly or indirectly on such grounds as race, colour, ethnic or national origin, disability, gender, sex or sexual orientation, pregnancy or maternity, religion or belief or age. EVOLVE Advice shall not discriminate within the meaning and scope of the Equality Act 2010.

15.3 Anti-Bribery. EVOLVE Advice shall not, in the performance of its obligations under this Agreement, act in a manner that constitutes a breach of applicable laws, regulations, codes and sanctions relating to anti-bribery and anti-corruption including the Bribery Act 2010.

15.4 Anti-Slavery and Human Trafficking. In performing its obligations under this Agreement, EVOLVE Advice shall comply with all applicable anti-slavery and human trafficking laws, statutes, regulations and codes from time to time in force including the Modern Slavery Act 2015 (**Modern Slavery Legislation**).



15.5 Publicity. EVOLVE Advice is permitted to shall publicise the existence but not details of this Agreement via its social channels and on its website and will to use the Customer name and logo as part of the publicity.

15.6 Notices. Any notice to be given by one party to the other under, or in connection with, this Agreement shall be in writing and signed by or on behalf of the party giving it. It shall be served by sending it by hand or recorded delivery to the address identified in Part 1, or sent by email to the Authorised Representative identified in Part 1. Any notice so served shall be deemed to have been received:

15.6.1 if delivered by hand, on signature of a delivery receipt;

15.6.2 if delivered by recorded delivery, on the second Business Day following the date of posting; or

15.6.3 if sent by email, at the time of transmission.

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

15.7 Severability. If any provision or part of a provision of this Agreement is held to be invalid or unenforceable, it shall be given no effect and shall be deemed not to be included in this Agreement. This shall not affect the validity and enforceability of the rest of this Agreement.

15.8 Waivers. No failure or delay by a party to exercise any right or remedy provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

15.9 Variation. Subject to the provisions of clause 6 above (Changes), no amendment or variation of this Agreement shall be valid unless it is in writing and signed by or on behalf of duly authorised representatives of each of the parties.

15.10 Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes and extinguishes all previous agreements, promises, assurances, warranties, representations and understandings between them relating to its subject matter. Each party agrees that it shall



have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in this Agreement.

- 15.11 Relationship of the parties. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the parties, authorise a party to act as the agent of the other, or authorise any party to make or enter into any commitments for or on behalf of the other party except as expressly provided in this Agreement.
- 15.12 Third Party Rights. No person other than a party to this Agreement shall have any rights to enforce any term of this Agreement (whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise).
- 15.13 Governing Law. This Agreement and the relationship between the parties shall be governed by, and interpreted in accordance with, the laws of England and Wales.
- 15.14 Invoicing Arrangements. The Charges shall be payable in advance for the coming year and against submission of invoices from EVOLVE Advice. Payment terms are 30 days.