

## 1. Scope of Agreement

**1.1** The parties have agreed that the terms and conditions set out in this agreement ('the General Terms and Conditions' or 'the Agreement') will apply to all support and maintenance services provided to the Customer by Deadline ('the Services').

**1.2** The parties agree that the initial services required by the Customer are those set out on the proposal appended to this Agreement. On receipt of a signed Agreement from the Customer, Deadline will either confirm to the Customer that it is willing to provide the requested Services or will advise that it is unwilling to do so. This Agreement shall come into force on the earlier of the commencement date (as agreed in the proposal) or the date on which Deadline actually begins providing services to the Customer ('the Commencement Date') and the parties agree that these General Terms and Conditions shall automatically apply to those Services.

**1.3** From time to time Deadline may agree to provide further or amended Services to the

Customer on foot of requests made by the Customer. The scope of the services provided may be amended or extended by means of an additional proposal document (which will typically describe the nature and scope of the Services, the costs and related matters) or by such other means as may be agreed by the parties (e.g. telephoned, emailed or oral requests); in such cases, the parties agree that these General Terms and Conditions shall automatically apply to such amended or extended Services as soon as Deadline begins providing them to the Customer. In the event that specific charges are not agreed to regarding the amended or extended service then Deadline shall be entitled to be remunerated for those Services at the rates set out in the most recent proposal document agreed with the Customer.

Deadline shall only be obliged to provide Service to the Customer in respect of those matters described in the proposal documents or otherwise expressly agreed by the parties.

## 2. Term and Duration

This Agreement will become effective on the date provided for in clause 1.2 and will continue for the Contract Minimum Period (where such a period is set out on a proposal). Where no Contract Minimum Period is specified or after the expiry of the Contract Minimum Period this Agreement will automatically renew and continue indefinitely from month to month unless terminated by either party on giving

the other not less than thirty (30) day's prior written notice. Should such termination take place during a period for which the Customer has paid fees in advance for services which owing to the termination will no longer be performed, Deadline shall be entitled to retain any such advance fees paid, without deduction.

## 3. Support and Maintenance Services

**3.1** Throughout the duration of this Agreement and subject to the provisions of this Agreement Deadline shall perform the Services during Normal Working Hours where reasonably possible or practicable.

**3.2** In the event that the Customer requests Services to be performed outside the Normal Working Hours ('Out of Hours Services'), Deadline will, subject to clause 4.2, use reasonable endeavours to provide such Out of Hours Services.

### 4. Charges

**4.1** The charges set out in each agreed proposal document shall be payable by the Customer in respect of the Services described in that proposal document. The charges for any additional Services provided hereunder (as described in clause 1.3) shall be the charges set out in the most recent proposal as agreed by the parties for such Services.

**4.2** Where “Per Call “ charges are specified in a proposal the Customer shall be liable to pay Evolve IT the ‘Per Call’ charges so specified for Out of Hours Services. The Customer shall also be obliged to reimburse Deadline all reasonable expenses incurred as a direct result of providing any Out of Hours Services.

**4.3** All Charges stated are exclusive of Value Added Tax (“VAT”) or any other government charges, taxes or levies all of which shall be chargeable in addition to any other charges mentioned herein in accordance with the relevant laws applicable thereto.

**4.4** All Charges are payable within 30 days of date of invoice. Invoices shall be issued by Deadline in the manner described in the proposal.

**4.5** Without prejudice to any other rights or remedies available to Deadline, Deadline may at any time, on giving the Customer one month’s written notice, vary any or all of its Charges if (a) the cost to Deadline of performing the Services is, in Deadlines reasonable opinion, increased by reason of non-compliance by the Customer with the provisions of this Agreement (and without prejudice to the generality of the foregoing compliance by the Customer with the provisions of clause 8); or (b) the cost of acquiring hardware or software as set out in a proposal increases between the date of submission of the proposal by Deadline and the date of ordering/confirming agreement to the proposal by the Customer.

**4.6** Deadline may at any time increase the Charges on one month’s written notice to the Customer.

### 5. Contacts

**5.1** In the event that a service call needs to be logged with Deadline, the Customer shall contact Deadline by phone at 0419810408 or 0863941136 to log the call.

### 6. Service Obligations

**6.1** During Normal Working Hours Deadline will respond to Customer calls reporting faults in the manner (and timelines) described in the proposal document.

**6.2** Subject to payment of the appropriate Charges described in the proposal document it is hereby agreed between the parties that maintenance will continue on the basis set out in the proposal document until the reported faults have been remedied, if Deadline in their absolute discretion consider the faults to be capable of remedy in such a

manner. If a service engineer is not available to attend the Customer’s premises within the timelines set out in the proposal, Deadline shall not be liable for its failure to provide the Services.

**6.3** If a call for maintenance is received by Deadline outside Normal Working Hours, no response from Deadline will occur until the next working day save where Deadline and the Customer have expressly agreed that Deadline should provide those Services at the Per Call charges as specified in clause 4.2.

## 7. Responsibilities of Deadline

**7.1** In consideration of the payment of the Charges by the Customer, Deadline will provide the Services in accordance with these Terms and Conditions.

**7.2** In the event of loss of data or software caused as a result of the performance or otherwise by Deadline of the Services, Deadline IT will co-operate with any party restoring such data for the

Customer HOWEVER notwithstanding Deadline may have duties of surveillance of the Customers systems in the Services, it is ultimately the Customer's responsibility to regularly and properly back up all of its data (this includes all of the Customer's equipment e.g. servers, laptops, PDAs, personal computers) and Deadline shall not be responsible for any loss, corruption or damage to data incurred as a result of the performance or otherwise of the Services or any losses arising there from.

## 8. Customer's Obligations

**8.1** The Customer shall:

**(a)** make all payments of the Charges to Deadline within thirty days of date of invoice;

**(b)** ensure that the environmental and electrical supply conditions for the Customer's Network is maintained in accordance with specifications provided by the manufacturer of the hardware comprising the Customer Network;

**(c)** make adequate working space and facilities available to Deadline personnel at no charge where such space and facilities are required for the performance of the Services;

**(d)** keep and operate its Network in a proper and prudent manner and ensure that only competent trained employees are allowed to operate the hardware;

**(e)** ensure that the external surfaces of the hardware are kept clean and in good condition;

**(f)** ensure full co-operation with Deadline personnel in the diagnosis of the reasons for any malfunction of the Network;

**(g)** provide such information as is reasonably available to it at the time concerning the problem

experienced and will perform supplementary investigations as agreed with Deadline to gain further evidence;

**(h)** regularly and properly back up all of its work related data (this includes all of the Customer's equipment e.g. servers, laptops, PDAs, personal computers);

**(i)** ensure that original license documentation and software discs are available to Deadline on request;

**(j)** ensure that its anti-virus and internet security software (on both its network and for remote workers) is fully licensed at all times and that the software is regularly and properly updated.

**8.2** The Customer accepts that it is a fundamental condition of this Agreement that no third party or person in the Customer's organisation shall service or attempt to repair or remedy any defect or in any way interfere with the Customer's Network except under the specific instructions of Evolve IT personnel. Any unapproved interference with the Customer's Network shall relieve Deadline of any support obligations it may have under the contract.

## 9. Exclusions from Services

**9.1** The Services do not include:

**(a)** the provision of spare parts, consumables (including, but not limited to paper, ribbons, print heads, laser printer drum assemblies, laser printer fuser units, laser printer toner cartridges), operating supplies or accessories;

**(b)** electrical work external to the machines or maintenance of accessories, alterations, attachments or other devices not furnished by Deadline unless specifically agreed herein;

**(c)** services performed at any time to resolve a problem known or proven to be of the Customer's Network and which was not caused directly or indirectly by Deadline or any product supplied by Deadline;

**(d)** except where clause 4.2 applies, services performed outside Normal Working Hours. Such services are not included in the basic maintenance

Charges and will be billed at Deadline's Per Call rate as notified to the Customer;

**(e)** repairs or services made necessary by customer error, neglect, misuse, abuse or negligent acts, including failure by the Customer to follow Deadline's reasonable instructions notified to the Customer and any calls or replacement of parts required as result of infection by virus, spyware, trojans and adware.

**(f)** maintenance required to repair damages, malfunctions or failures caused by failure of non-Evolve IT supplied equipment or software not maintained by Deadline;

**(g)** any other services specifically excluded elsewhere herein.

**9.2** Deadline will be under no obligation to provide Services in respect of software where the Customer is using the software in violation of any software licence in respect of such software.

## 10. Warranties, Indemnities and Limitation of Liability

**10.1** Deadline warrants that:

**(a)** the Services will be performed by personnel (which may include independent contractors) who are in Deadline's view suitably qualified and with reasonable skill, care and diligence;

**(b)** the Services shall be performed in compliance with all applicable laws, enactments, orders, regulations and other similar instruments.

**10.2** Deadline excludes to the fullest extent permitted by law all other warranties, conditions, guarantees or representations.

**10.3** Nothing in this Agreement shall limit or seek to exclude a party's liability for death, personal injury or fraudulent misrepresentation.

**10.4** The total liability of Deadline under this Agreement howsoever arising, shall be limited to compensation, including legal fees and other relevant expenses, to a maximum of the amount of payments actually made at that date to Deadline by the Customer hereunder (the "Contract Value") and in no event shall be liable for loss of profits or other consequential or indirect damage to the Customer or any User irrespective of whether such liability arises (1) in contract or (2) in tort in relation to the performances under this Agreement or (3) whether caused by breach of a fundamental or other term of this Agreement.

**10.4.1** Deadline shall not be liable in any event for any indirect, special, incidental or consequential losses or expenses or for any loss of data, loss of use of data or loss of profits, opportunity, anticipated savings or wasted expenditure.

**10.5** Deadline shall not be liable for any liabilities, losses or damages suffered by the Customer or any of its servants or agents or by any third party which arise directly or indirectly from use of the Customer's Network.

**10.6.1** Each party shall insure with a reputable insurance company against loss of or damage to

property and injury to persons (including death) arising out of or in consequence of its obligations under this Agreement. The Customer shall specifically insure against the loss of data, loss of use of data and loss of profits.

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## 11. Termination

In the event that the Customer fails to pay any sums due to Deadline within thirty (30) days of its due date, Deadline may terminate this agreement by giving the Customer seven (7) days prior written notice.

Either Party may terminate this agreement forthwith, by written notice if the other party:

**(a)** commits any material breach of its duties or obligations under this agreement and, in the case of a breach capable of remedy, fails to remedy same within 14 days of receipt of a written notice giving full particulars of the breach and requiring it to be remedied; or

**(b)** is unable to pay its debts within the meaning of the Companies Act, 1963-2003; or

**(c)** has a receiver or examiner appointed in relation to all or any of its property or assets; or

**(d)** has an order made or a resolution passes for its winding up (other than for the purpose of amalgamation or reconstruction); or

**(e)** enters into a voluntary arrangement with creditors under the Companies Acts, 1963-2003; or

**(f)** ceases or threatens to cease to carry on business or any relevant statutory licence expires or is revoked or terminated without the immediate renewal thereof.

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## 12. VAT

**12.1** Charges stated in this Agreement are stated exclusive of Value Added Tax ('VAT') unless otherwise stated. VAT shall be payable at the rate and in the manner prescribed by law from time to time. Deadline shall, upon request, provide such information, as may be reasonably required by the Customer, regarding the amount of VAT charged on invoices submitted

## 13. Notice

**13.1** A notice shall be duly served if:

**(a)** delivered by hand, at the time of actual delivery;

**(b)** sent by facsimile, instantaneously on successful transmission provided a confirmation copy is sent under cover of ordinary prepaid post within 48 hours of transmission;

**(c)** sent by prepaid registered post, 2 Working Days after the day of posting;

**(d)** sent by reputable courier by recorded delivery, at the time of actual delivery.

**13.2** Except if otherwise specifically provided all notices and other communications relating to this agreement shall be in writing and shall be sent to the persons identified in Schedule 1 hereto.

## 14. Confidentiality

**14.1** In this Agreement: "Confidential Information" means all information in whatever form (including but without limitation, written, oral, visual and electronic forms) relating to a party, its business or this Agreement (including but not limited to ideas, discoveries, inventions, specifications, formulae, computer programmes and systems, drawings, patents, designs, configurations, models, requirements, standards, processes, operations, client identities, correspondence, services, sales, marketing and business plans, forecasts, analysis, studies, memoranda, reports, financial / commercial / marketing / technical / organisational or trading information, trade or manufacturing secrets, and all intellectual and industrial property rights and know-how belonging to that party), which is directly or indirectly disclosed by the party to the other party before or after the date of this Agreement or which is learned by a party through observations made during visits to any premises of the other party or its agents.

**14.2** Each party will keep the specific terms of this agreement confidential and not disclose them to any third party (other than to its employees and professional advisors who need to know same) without the other party's prior written consent, except as required by law.

**14.3** In addition, in connection with the negotiation and performance of this Agreement, a party (the "Receiving Party") may receive or have received Confidential Information of the other party (the "Disclosing Party") which is confidential or proprietary in nature.

**14.4** The Receiving Party agrees that, during the term of this agreement and thereafter, it will keep the Confidential Information in strictest confidence and, in addition, protect such Confidential Information by no less stringent security measures as it takes to protect its own Confidential Information.

**14.5** The Receiving Party also agrees that it will not use any Confidential Information for any purpose other than in connection with the performance of its obligations under this agreement.

**14.6** The term Confidential Information shall not include information which is or becomes generally available to the public without breach of this agreement, is in the possession of the Receiving Party prior to its disclosure by the Disclosing Party, becomes available from a third party not in

breach of any obligations of confidentiality, is independently developed by the Receiving Party, or is required by law to be disclosed.

**14.7** The parties recognise that the disclosure or use of the Disclosing Party's Confidential Information by the Receiving Party in violation of the provisions of this clause would cause irreparable injury to the Disclosing Party and each party accepts that any such breach could cause injury to the other party and that monetary damages would not

be an adequate remedy. In the event of such a breach or threatened breach by the Receiving Party, the Disclosing Party shall be entitled to injunctive relief in any court of competent jurisdiction and reimbursement for any costs, claims, demands or damages arising directly out of such breach. Nothing contained in this clause shall be construed as prohibiting either party from pursuing other legal remedies available to it for breach or threatened breach of this agreement.

## 15. Dispute Resolution

**15.1** Both parties to this Agreement shall seek to resolve any dispute between them arising under or in connection with this Agreement, amicably.

**15.2** All disputes between the parties arising out of or relating to this Agreement shall be referred in the first instance, by either party, to the parties respective Managing Directors/CEOs/Managing Partner for resolution. If any dispute cannot be resolved by those parties' within a period of fourteen (14) days following referral, then:

- (a) if the dispute is of a technical or predominately technical nature, it may be referred by either party for final determination to an expert (the "Expert") who shall be deemed to act as an expert and not as arbitrator; and
- (b) in all other aspects the disputes be referred to a single Mediator.

**15.3** The Expert or Mediator shall be selected by mutual agreement of the parties or, failing agreement, within fourteen (14) days after a request by one party to the other, shall be chosen at the request of either party by the President for the

time being of the Institution of Engineers in Ireland (for expert) or President for the time being of the Law Society of Ireland (for mediator), who shall respectively be requested to choose a suitably qualified and experienced expert or mediator for the dispute in question. The mediator shall be selected from a professional mediation organisation such as the Dublin branch of CEDR.

**15.4** The expert shall have the same powers to require any party to produce any documents or information to him and the other party and each party shall in any event supply to him such information which it has and is material to the matter to be resolved and which it could be required to produce on discovery.

Fees

**15.5** The fees of the expert or mediator shall be borne by the parties in the proportion as shall be determined by the expert or mediator having regard (amongst other things) to the conduct of the parties.

## General

**15.6** Work and activity to be carried out under this Agreement shall not cease or be delayed by this dispute resolution procedure.

**15.7** The parties, and the expert or mediator, shall treat as confidential information all information

obtained in relation to the reference to the expert/ mediator, the fact that a dispute has been referred to the expert/ mediator, its occurrence and the decision arising from it.

## 16. Force Majeure

**16.1** No party shall be deemed in default hereunder, nor shall it hold the other party responsible for, any cessation, interruption or delay in the performance of its obligations hereunder (other than a payment obligation) due to causes beyond its reasonable control, including but not limited to: earthquake, flood, fire, storm or other natural disaster, act of God, labour controversy or threat thereof (PROVIDED THAT, in such circumstances the affected Party can demonstrate that it has taken all reasonable steps to continue service under this Agreement), civil disturbance or commotion, disruption of the public markets, war or armed conflict (whether or not officially declared) or the inability to obtain sufficient

material, supplies, labour, transportation, power or other essential commodity or service required in the conduct of its business, any change in or the adoption of any law, ordinance, rule, regulation, order, judgement or decree (each a "Force Majeure Event"); provided that the party relying upon this provision shall (a) have given the other party written notice thereof promptly and, in any event, within 5 (five) days of discovery thereof; and (b) shall take all steps reasonably necessary under the circumstances to mitigate the effects of the Force Majeure Event upon which such notice is based. Notwithstanding any other provision herein either Party shall have the right to terminate this agreement upon written notice if any Force Majeure Event continues for more than 90 (ninety) days.

## 17. No Agency

**17.1** This agreement shall not be deemed to create any partnership, joint venture, agency or contract of employment between the parties. Each party represents and undertakes that it is entering this agreement as principal and not as an agent for any

other party. In performance of this agreement, the status of each party including its employees and agents shall be that of independent contractor and not of employee, agent or fiduciary of the other party. Neither party has any right to make any commitments for or on behalf of another party hereto.

## 18. Severability

**18.1** If any provision of this agreement shall be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this agreement which shall

remain in full force and effect. The parties hereby agree to attempt to substitute for any invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the economic, legal and commercial objectives of the invalid or unenforceable provision.

## 19. Assignment

**19.1** Subject to the following sentence, neither party may assign, mortgage, charge or otherwise transfer any or all of its rights and obligations under this Agreement without the prior written agreement of the other party. A party may, however, assign and transfer all its rights and obligations under this agreement to any person to which it transfers all of its business, provided

that the assignee undertakes in writing to the other party to be bound by the obligations of the assignor under this Agreement.

**19.2** The Customer acknowledges that Deadline may from time to time engage sub-contractors to perform some or all of its obligations hereunder, for the avoidance of doubt the acts or omissions of such sub-contractors shall be deemed the acts or omissions of Deadline.

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## 20. Governing Law

**20.1** This agreement shall be governed by and construed in accordance with the laws of Ireland and the parties hereby submit to the non-exclusive jurisdiction of the Irish Courts.