



## GENERAL TERMS AND CONDITIONS

### 1. Definitions and Interpretation

In the Contract herein, the following definitions will be applicable:

**“Service Level Agreement”** means the part of this Contract negotiated by the parties that indicates the service qualities committed to and the associated penalties if not achieved.

**“Evolutio”** means Evolutio Cloud Enabler S.A.U, VAT A-80448194, address Isabel de Colbrand 6-8, 28050 (Madrid)

**“Fees”** means the price to be paid for the Products and Services under this Contract, as indicated on the Order Document or in the Specific Service Conditions.

**“Cancellation Fees”** means the sum to be paid by the Customer to EVOLUTIO upon termination of the Contract or any contracted service for some reason attributable to the former, which will be indicated on the Order Document.

**“Customer”** means the company with which EVOLUTIO has agreed to supply the Product or Service, indicated on the Order Document.

**“Specific Service Conditions”** means the specific conditions to supply each of Evolutio’s Products or Services.

**“Contract”** means the General Terms and Conditions herein, the Order Document, the Specific Service Conditions, as well as any other document or agreement signed by the parties and incorporated into it.

**“Customer Data”** means any data that the Customer has provided to EVOLUTIO that is the object of processing by EVOLUTIO or that is housed on its own databases or systems or those of third parties including personal data.

**“Personal Data”** means the data of a personal nature that is protected by the applicable data protection legislation.

**“Customer Personal Data”** means the Customer Data that is also Personal Data.

**“Working Day”** means any day that is considered in Spain or in the town/city where the Products or Services are rendered to be a normal day for people to work, excluding national or legal public holidays. When the deadline to carry out an action is not a Working Day, it will be done on the following Working Day.

**“Order Document”** means the document that indicates the agreements negotiated and signed by the Parties, whether physically or electronically, which include, among other things, the service contracted, the fees and method of payment, the validity period and termination conditions, and that is a part of the Contract.

**“DPI” or “Intellectual Property Right”** means any intellectual or industrial property right, including any patent, brand, copyright, right over a database, design, topography of semi-conductor products, utility model, right over confidential information, or any other similar right that has been registered or requested to be registered in any part of the world.

**“EVOLUTIO Equipment”** means any device (including any software) owned by or whose use by EVOLUTIO has been authorized and delivered by EVOLUTIO or third parties reporting to it to the Customer’s site for the purpose of providing a Service.

**“Customer Equipment”** means any device (including any software) that is not owned by EVOLUTIO, used by the Customer in relation to the Services.



**“Ready for Service Date”** or **“FSO”** means the date on which any Service or part of a Service is placed at the Customer’s disposal by EVOLUTIO.

**“Affiliate”** of a Party means any legal entity that controls, is controlled or that is under the common control of any Party.

**“Confidential Information”** means all the documentation, technical information, software, know-how, business information or other materials (be they written, oral or in electronic format) regarding a Party’s business that are disclosed with all reserve to the other while this Contract is in force.

**“Party”** means EVOLUTIO or the Customer and **“Parties”** means both EVOLUTIO and the Customer.

**“EVOLUTIO Parties”** means the employees, agents, and subcontractors of EVOLUTIO or its Affiliates.

**“Service Period”** means the time period beginning on the **Ready for Service Date** that has been negotiated and indicated on the Order Document, as the time during which both parties undertake to keep the Contract in force.

**“Products”** and **“Services”** mean the devices and/or Software sold to the Customer or each of the services contracted, respectively, indicated on the Order Document or in the Specific Service Conditions.

**“Site” or Venue”** means the place where EVOLUTIO provides a Product or Service.

**“User”** means any end user authorized by the Customer to use or to have access to a Service or Product. The Users of the Service will be limited to those within the object and corporate use of the service by the Customer unless there is an agreement between EVOLUTIO and the Customer that extends the scope of the Service to other types of users.

## **2 Priority application**

If a conflict arises among the different documents making up the Contract, the order of priority will be as follows:

- (a) Any mandatory legal or regulatory provision that is applicable to the Services contracted.
- (b) Order Document.
- (c) Specific Conditions for the Product or Service contracted.
- (d) General Terms of Contract.

## **3 EVOLUTIO’s Obligations**

3.1 EVOLUTIO will provide the Products and Services to the Customer pursuant to the agreements indicated in the Contract. The term of each Service will be what is set up in the Specific Service Conditions or corresponding Order Document. Unless otherwise agreed, the supplying of the Service will be tacitly extended for twelve (12)-month periods until one of the parties’ state in writing its purpose of not continuing extending it, pursuant to what is stipulated in Clause 11. Unless otherwise agreed, this renewal will be subject to the conditions and Fees applicable on the date of the renewal. The information concerning EVOLUTIO’s conditions for rendering the Services, in compliance with what is indicated in article 12 of RD 899/2009, is available on the following web page <https://www.evolutio.com>

3.2 EVOLUTIO will do what is reasonably within its reach to meet any delivery date or service level that it has told the Customer; however, given the nature itself of telecommunications services, of their complexity and of their dependence upon third-party providers, unless it has been specifically agreed upon and quoted in a Service Level Agreement, the dates and service parameters will be considered approximate.

3.3 EVOLUTIO, either directly or through third parties appointed by it, undertakes to comply with the occupational hazards’ prevention rules and regulations and the safety requirements applicable to the

Venue, which have been accepted by EVOLUTIO in writing. Given that these requirements do not originate at EVOLUTIO but rather from the Customer itself, the Customer accepts that the delays in the delivery or the changes that might occur because of the due adherence to these requirements in the Service will not be EVOLUTIO's responsibility.

The client may require Evolutio the documentation proving to be up to date with its obligations in terms of prevention of occupational hazards and for this purpose may request any of the following documents: TC1 stamped + receipt of payment, TC2-RNT, ITA, Certificate of social security, Certificate of being up to date with social security, civil liability insurance policy and/or accident insurance policy as well as proof of payment or certificate from the insurance company where it is indicated to where it is up to date with the payment or documents of similar nature that may be imposed or is necessary by provision of the regulations of prevention of occupational risks both relating to the company and to Evolutio workers who provide services to the Client.

The costs arising to Evolutio by the request of any other document not included in the previous paragraph or by specific additional requirements established by the Client that exceed those standard established by the occupational risk prevention legislation may be charged to the client.

3.4 EVOLUTIO will solve and compensate for any anomaly that occurs in the Service pursuant to what is indicated in the Service Level Agreement that both parties have agreed. If such an agreement has not been negotiated, what is indicated in articles 8.1 d) and 15 to 18 of Royal Decree 899/2009 of May 22<sup>nd</sup>, whereby the charter of rights of the electronic communications services' user has been approved, will be applied. The compensations and reimbursements that EVOLUTIO should practice will be deducted from the next invoice to the Customer.

3.5 The Customer will be entitled to disconnect certain services in the cases considered in article 24 of Royal Decree 899/2009 of May 22<sup>nd</sup>.

3.6 As long as EVOLUTIO notifies it to the Customer as soon as is reasonably possible, EVOLUTIO may:

(a) suspend a Service in the case of an emergency and/or to protect the integrity and security of its network and/or to repair or upgrade its network's performance.

(b) for operational reasons, change the codes or the numbers assigned to the Customer, the Service's technical solution, if the Service's performance is not substantially reduced or downgraded; or

(c) provide an equivalent, alternative service when necessary and reasonably possible to do so.

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

4.1 Without prejudice to Clause 8.1, when the Customer is responsible for any prior activity required by EVOLUTIO to be able to provide the Products and/or Services, the Customer shall ensure that such preliminary work, information, elements or consents are finished, provided or obtained (as the case may be), picking up the cost, sufficiently in advance in order to allow EVOLUTIO to complete its work and deliver the Products and/or Services contracted. If the Customer transfers or changes the location of any EVOLUTIOE equipment without EVOLUTIO's prior consent in writing, EVOLUTIO will be entitled to recover from the Customer the additional costs or expenses incurred as a result of the Customer's action.

4.2 Except in cases of force majeure, in those cases in which the Customer delays or fails to fulfill its obligations under Clauses 4.1 or 8.1, and EVOLUTIO incurs in expenses or costs due to such delays, EVOLUTIO may, in spite of not being able to give the Ready for Service Date because of the Customer, and after having notified it, begin to invoice the Customer for the amount indicated on the Order Document, or in the event that this does not include any, a minimum of 12.5% of the monthly fees affected per week of delay as compensation for the damages and prejudicial consequences caused.

4.3 In the event that EVOLUTIO, due to incomplete or inexact information provided by the Customer, has to change the design or the functionality or any other relevant parameter of the Product or Service, when the Contract has already been signed, EVOLUTIO will be entitled to recoup the costs that this has caused it.

4.4 The Customer shall comply with the reasonable requirements that EVOLUTIO gives it which are necessary for security, health and hygiene, environmental and sustainability reasons or in order to preserve the quality and/or performance of any Product and/or Service provided to the Customer. The Customer, upon receiving a notice from EVOLUTIO, will permit EVOLUTIO and EVOLUTIO Parties, if necessary, to access the Sites so that EVOLUTIO can comply with the obligations of this Contract, including the installation or maintenance of EVOLUTIO's Equipment or Products and the retrieval or de-installation of any Device.

4.5 The Customer will be responsible for the accuracy of all the data that it gives to EVOLUTIO before as well as during the term of the Contract, this being a material aspect of the Contract, with the customer being liable for the damages caused to EVOLUTIO if it is false. Specifically, the Customer will be responsible for giving EVOLUTIO certain data that allows it to determine its degree of solvency (such as business name, shareholders, management bodies, reporting any changes that occur in them while the Contract is in force) as well as the communications solution to be designed for the customer (such as traffic profiles data, geographic distribution of sites or the volume of communications, for example).

## **5 Fees / Charges**

5.1 As payment in return for the services that EVOLUTIO will provide to the Customer according to the Contract, the Customer agrees to pay EVOLUTIO the Fee(s) established on the Order Document or, as appropriate, in the Specific Service Conditions. The Service's Fees will begin to be invoiced as of each Ready for Service Date. The Fees for use of the Service will be calculated in accordance with the data stored or recorded by EVOLUTIO, in view of the consumption made by the Customer. The Fees do not include the Value Added Tax or any other taxes, special fees or tariffs, customs duties, or surcharges of any sort (hereinafter referred to as "the Surcharges"), regarding the sale, purchase, transfer of ownership, supply, installation, license, use or processing of EVOLUTIO's Equipment or that supplied by EVOLUTIO or regarding the rendering of the Service under the aegis of the Contract herein, which will be paid to EVOLUTIO by the Customer after their notification. The invoice will be issued the first week of each month and in Euros and will be sent either by regular mail or posted on the client's portal on [Myevolutio](http://Myevolutio). Evolutio will issue a single invoice for all services to the Client.

5.2 The Parties agree that during the term of the Contract the Fees for the Services will be modified each year (increasing or reducing them) in view of the variation that has occurred in the Spanish General Consumer Price Index (CPI) during the previous calendar year, according to the indexes set by the National Statistics Institute or the Body replacing it for the whole of the nation. This adjustment will be made annually on February 1 of each year, with that increase or decrease in the CPI being prorated for the Contract's first yearly payment, in view of the time that has elapsed since the signing of the Contract and January 1 of the next year. In the event that, once the date for the possible review has been reached, the definitive indexes have yet to be published, the provisional ones may be applied if they are known or, if not, those of the previous year will be taken into account until the provisional ones are known, proceeding to make the appropriate rectifications when the others are known, paying, all at once in the first monthly payment after the final data is known, the difference, as appropriate, existing between the latter and the provisional one that was applied.

5.3 The Customer shall pay all the Fees for the Service within a period of thirty (30) days as of the invoice issue date without applying any compensation, claim or deduction, except for what is indicated in section 5.6. From the due date, Evolutio will apply the interest rate for late payment established at any given time in article 7.2 of Law 3/2004, of December 29, 2004, on measures to avoid late payment in commercial transactions, or in the provision that may replace it.

5.4 The method of payment will be what has been negotiated in the Order Document from among those commonly used in commercial trade.

5.5 In the event that the payment of any amount of the Fees is subject to any type of withholding, tax or similar payment obligation on the sums due to EVOLUTIO under the aegis of the Contract herein, the Customer shall bear and settle those withholdings in addition to the sums due to EVOLUTIO. The Customer will, at no cost, provide to EVOLUTIO the appropriate certificates issued by the corresponding authorities



confirming that the amount of the withholdings, taxes or similar payments has been borne and settled by the Customer pursuant to the applicable regulations and clause 5.1 above.

5.6 The Customer shall notify Evolutio in writing as far in advance as possible, and in no event later than thirty (30) days from the date of issue, of any claim on the invoice, together with all information relating to such claim, including account numbers, service identification, etc..., if any, as well as an explanation of the amount claimed and the reasons. Customer shall pay, in accordance with the provisions of Clause 5.3, all undisputed and unclaimed amounts. Claims shall be settled by Evolutio as soon as possible and the agreed amount, if any, shall be settled within thirty (30) days after settlement. The interest rate resulting from the provisions of Clause 5.3 shall apply as of the due date of subsequent payments of withheld amounts or credits on overpayments made.

5.7 The conditions that will give the right and the implications of the cancellation of the contract due to non-payment will be those agreed between the parties on the Order Document. In the event that they have not been negotiated, what is provided for regarding contract termination, temporary suspension of the service and final service interruption in articles 19 and 20 of RD 899/2009 will be applied.

## **6 Service Use**

6.1 Except for what is indicated in Clause 15, the obligations that EVOLUTIO takes on by virtue of the Contract herein are only to the Customer and not to any third party. The Service or Product which is the object of the Contract has not been designed for its resale by the Customer to third parties, with EVOLUTIO having other Services for this purpose. The Customer undertakes to use the Services for its own business purposes and to not resell them, and upon doing so: (a) to comply with, and to make sure that any User complies with, the laws, regulations and/or licensees or any other legislation applicable to the Customer in the country where the Service is being rendered; (b) to take on responsibility for: (i) the access and use of the Service by its Users; (ii) the Fees incurred with regard to the Services; and (iii) its adherence and that of the Users to all the terms and conditions of the Contract herein; (c) to ensure that its list of Users is up-to-date and that it will immediately terminate the access of any person at the time he/she is no longer a User; and (d) the fulfillment of the terms and conditions of any Software license provided with or as part of the Service or a Product.

6.2 EVOLUTIO may terminate the Contract in the event of non-fulfillment of clause 6.1 above, and in this case the Customer will hold EVOLUTIO, its Affiliates and EVOLUTIO Parties harmless, including legal expenses, from any claim, loss, cost, or liability that may arise from any grievance by third parties, including the Users, with regard to the use or incorrect use of the Product or Service that violates Clause 6.1.

## **7 Connection of Customer Equipment to the Products and/or Services**

7.1 The Customer is responsible for the supply, installation, configuration, monitoring and maintenance of any Customer Equipment connected to the Service or used in relation to a Product. The Customer shall ensure that any of its Equipment connected to the Product and/or Service has been and is being used in accordance with the instructions and safety procedures applicable to the use of that Customer Equipment. EVOLUTIO will not be responsible for the faults that occur in the Service or for the cases of fraud that arise in components or equipment whose management is the Customer's responsibility.

7.2 The Customer shall ensure that any Equipment or infrastructure owned by it and/or that the Customer connects or dedicates (directly or indirectly) to the Product and/or Service is technically compatible with the Service and approved or homologated for that purpose under the aegis of any applicable legislation or regulation. EVOLUTIO does not acquire any commitment regarding the interoperability between the Product and/or Service and the Customer Equipment other than those specifically indicated in the Contract. In the case of Products sold to be used by the Customer with the Service, the Customer may as of the supply date count on what is stated by EVOLUTIO regarding its compatibility and compliance.

## **8 EVOLUTIO Products and Equipment**

8.1 If EVOLUTIO needs to install EVOLUTIO Equipment or Equipment supplied by EVOLUTIO at a site in order to provide the Service, the Customer shall execute the following tasks first at its own cost:



- (a) obtain all the permits and licenses necessary, including those required to make any modification in the buildings to install and use any EVOLUTIO equipment or the respective Products on the Customer's network or at the Site.
- (b) permit access to the corresponding Site by EVOLUTIO or any EVOLUTIO Party to install EVOLUTIO Products and Equipment;
- (c) provide a suitable and safe work environment, including all the cable connection points, interconnections and conduits, in accordance with the applicable installation regulations;
- (d) provide any electrical and telecommunications connection points that EVOLUTIO needs, as well as the electricity supply necessary (with an uninterrupted power system);
- (e) provide access to buildings as required to connect EVOLUTIO Equipment and Products to the respective telecommunications installations;
- (f) provide the internal wiring between the EVOLUTIO Equipment and any Customer Equipment, as required;
- (g) take out any floor covering, false ceiling and stationary or built-in divider) in order to permit EVOLUTIO to do the necessary installation or maintenance Service and carry out any job required to correct damages caused during the installation and maintenance Services;
- (h) guarantee the safety and health measures of Evolutio's workers in compliance with the Occupational Risk Prevention regulations;
- (i) ensure that the load limits of the building where the installation is going to occur are not exceeded.
- (j) comply with any reasonable requirement that EVOLUTIO might implement for the execution of the Contract herein.

The prior actions shall finish before EVOLUTIO's installation jobs begin; on the contrary, the provisions of Clause 4.2 will be applied.

8.2 The risk of loss of EVOLUTIO Equipment and Products will pass to the Customer at the time of their delivery, whether installed or not. The ownership of the Equipment and Products sold by virtue of the Contract herein is transferred to the Customer at the time of payment of the respective Fees. With regard to the supply of Equipment and Products between countries, the ownership will pass to the Customer at the time of 'FCA' (Free Carrier Alongside) (Incoterms 2010) delivery to a transport company at the place of delivery or point of dispatch specified. Under no circumstance will it be understood that the transport company is a EVOLUTIO agent.

8.3 Independently of the maintenance that EVOLUTIO should carry out on the Equipment as appropriate, the Customer will be responsible for the EVOLUTIO Equipment that is at its facilities and shall not move, add, modify, or interfere in any way with it, nor will it permit third parties who are not authorized by EVOLUTIO to do so. The Customer will be responsible for any loss or damage to EVOLUTIO Equipment, except in the case where the loss or damage is due to normal wear and tear or breakage or it has been caused by EVOLUTIO or by any person acting on its behalf.

8.4 In the event that the customer has acquired the ownership of the telecommunications or electronic equipment linked to the service provided by Evolutio, it will be the customer's responsibility at the end of its useful life to opt for:

- (i) preferably and whenever possible due to the condition of the equipment, to reuse it by giving it to non-profit social entities, establishments dedicated to the secondhand market or any other appropriate means for the reuse and extension of its useful life or
- (ii) if the previous option does not apply because the equipment is unusable due to lack of essential components or structural damage that is difficult to repair, deliver it as waste to the facilities or



collection points of the Local Entities, distributors, or waste managers, under the terms provided in Royal Decree 110/2015, of February 20, on waste electrical and electronic equipment or regulations that replace or complement it in the future.

8.5. At the end of the Contract, in the event that the ownership of the equipment has not been transferred, the Client shall notify Evolutio of the provision of the equipment for collection if Evolutio chooses to do so. In the event that the Client fails to notify Evolutio and disposes of the equipment, the Client shall indemnify Evolutio for any claim, loss, damage, expense or fine that may have been incurred by Evolutio as a result of the breach of this Clause.

8.6 The Parties agree that the UN Convention on the Sale of Goods will not be applicable to this Contract.

8.7 Unless a specific technology has been expressly agreed upon with the Customer, and as long as the level of service and its functionalities are respected, it will be EVOLUTIO's decision to choose the technology to be used at each point in time in order to carry out the provisioning of the service in the most efficient way possible.

## **9 Confidentiality**

9.1 The parties will maintain in the strictest confidentiality all the Confidential Information obtained from the negotiation and execution of the Contract herein, being unable to convey this information, and they will only disclose it confidentially, and whenever it is necessary for compliance of the contract herein, to (a) their employees or the employees of their affiliates or companies of the same group, (b) their professional advisors, (c) in EVOLUTIO's case, to the employees of their subcontractors who need to know that Confidential Information.

9.2 This Clause 9 will not be applicable to the information that has the following characteristics: a) that is of common knowledge through some way other than non-fulfillment of the Contract herein; b) that is in the legitimate possession of the receiving party before it has been revealed to it; c) that has been obtained through a third party that is free to disclose said information; or d) that has been developed by the receiving party independently of and without access to the Confidential Information obtained by virtue of the Contract herein.

9.3 If the Parties receive a request from a duly authorized authority asking for the delivery of Confidential Information of the other Party, it may comply with that request and shall notify the other Party – unless the compliance of mandatory Law prevents it – as soon as possible so that the latter can take the appropriate actions.

9.4 The Parties will comply with the confidentiality obligation that they take on in this clause during the entire term of the Contract and for five years after its termination for whatever reason.

9.5 The receiving Party shall return or destroy any Confidential Information if the disclosing Party so requests.

9.6 The Parties acknowledge that any non-fulfillment of Clause 9 herein could cause significant damage to the other Party, making the defaulting party remedy these damages and independently of this, giving the party abiding by the agreement the right to terminate the Contract.

## **10 Intellectual and Industrial Property**

10.1 All the DPI's of the Parties, pre-existing or created during the execution of this Contract, will continue to be the property of the Party that own them or their licensees.

10.2 Without prejudice to the terms and conditions of any open code software licence that will be applied independently of the licence granted here:

(a) EVOLUTIO grants the Customer, only for the reception or use of the Products or Services, a non-exclusive, non-transferable licence to use in Spain in an object code manner all the Software and related documentation that might be provided by EVOLUTIO, subject to the Customer's fulfillment of the Contract,



the terms and conditions of third parties that are applied to the use of the Software and related documentation. (b) The Customer undertakes to not replicate, modify, or do reverse engineering of any Software or, knowingly, permit any other person to do it, unless EVOLUTIO has specifically authorized it in writing.

10.3 The conditions of any licence granted by EVOLUTIO by virtue of Clause 10.2 are the same as the conditions for the Service with which the Software interacts or in relation to which the Product is supplied.

10.4 Excluding any open code Software that EVOLUTIO might place at the Customer's disposal related to the Services, EVOLUTIO undertakes to defend, indemnify and hold the Customer harmless against any prejudicial consequence, claim or procedure arising from the alleged infringement attributable to EVOLUTIO of DPI from a third party on the occasion of the rendering of the Service, as long as the Customer (a) reports the information regarding such a claim immediately to EVOLUTIO in writing, (b) gives EVOLUTIO total and immediate control over all the negotiations and procedures, (c) the Customer abstains from making public statements related to the claim or from in any way undermining EVOLUTIO's defense against that claim, (d) the Customer gives EVOLUTIO all reasonable assistance regarding the claim. All the expenses incurred or recovered in such negotiations, disputes, conciliations, or transactions will be picked up by EVOLUTIO.

10.5 Clause 10.4 will not be applicable to the claims arising from: (a) use of any EVOLUTIO Equipment, Product, Service or Software jointly or in combination with other equipment or software of services not rendered by EVOLUTIO (b) any unauthorized alteration or modification of the Service, Product or any Software, (c) content, designs or specifications supplied by the Customer or by someone on its behalf and/or representing it or (d) use of the Service, Product or Software that does not comply with what is provided for in this Contract.

10.6 The Customer will indemnify and hold EVOLUTIO harmless in the same cases as those considered in Clause 10.4 attributable to the Customer or to its agents or Users and will immediately stop any activity that has originated the alleged infringement upon receiving notice from EVOLUTIO of such a claim.

10.7 If a Product or Service becomes, or EVOLUTIO considers probable that it will become, the object of a claim due to a DPI violation, as provided for in Clause 10.4, EVOLUTIO, at its choice and taking on the expenses, may: (a) ensure to the Customer the right to continue using it; or (b) modify or replace the Product or Service so that it no longer violates any provision, as long as that modification or replacement does not substantially affect the performance of the Product or Service.

10.8 The Customer will maintain the confidentiality of any software, as well as any other material containing DPI that is owned by EVOLUTIO and it will be ensured that it is not copied, disclosed or used in any way other than what has been authorized in writing by EVOLUTIO. The Customer is responsible for the unauthorized installation, use, making of copies, the access or distribution of Software that might be used by its end users in relation to the service, whether it be EVOLUTIO's property or that of any of its providers. The Customer will indemnify EVOLUTIO for all the damages and prejudicial consequences caused by the breach of this clause.

10.9 What is provided for in Clauses 10.4 and 12 will constitute the maximum responsibility that EVOLUTIO will take on before the Customer for DPI violation claims or suits.

## **11 Contracted Service Period and Contract Resolution**

11.1 The Contract will go into effect at the moment it is signed by the authorized representatives of both Parties and it will have the term and periods of notice for its partial or total resolution that have been agreed upon on the Order Document. In the event that these conditions have not been agreed upon, either Party may terminate any Service at any time by notifying it in writing to the other party two (2) working days in advance, under the terms considered in article 7 of Royal Decree 899/2009, of May 22. When the Customer exercises this right, it shall pay EVOLUTIO any applicable pending Fee and Cancellation Fee as set forth in the Contract in force.



11.2 Notwithstanding clause 11.1 above, either Party may terminate at any time the Service, and claim damages (within the limits of clause 12 below), including, but not limited to Cancellation Fees, upon prior written notice to the other Party, where the other Party is in serious breach of the Agreement in connection with such Service without cure of the breach within thirty (30) days of the notice of breach.

11.3 Either party may terminate the Contract, without the payment of damages, if any of the following circumstances occur (a) one of the events contemplated in Clause 16. 1 prevents the total or partial performance of the obligations of a Party in relation to such Service or Product for a continuous period of thirty (30) days following the date on which they should have been performed; (b) that any public authority with competence and/or jurisdiction over the Parties decides that the provision of the Services, in whole or in part, or any of the particular services, or in any of the countries, contemplated under this Agreement is contrary to the applicable legislation; (c) that any of the required authorizations or regulatory formalities have not been obtained, have been denied or have lost their effectiveness, for any reason; or (d) that the provision or supply of a service or product cannot be carried out, in whole or in part, due to the delay, refusal or impossibility of the provision of a service or product by a third party that Evolutio needs for the provision of the service contracted with Evolutio if there is no alternative available to Evolutio at a reasonable cost.

11.4 The termination of a Service or the return of an individual Product will not affect the rights and obligations of the Parties regarding any other Service or Product provided under the aegis of the Contract if it exists. Otherwise, it will give way to the resolution of the Contract.

11.5 Upon terminating this Contract (a) the rights of the Parties that have arisen up to the date of that expiration or termination will continue to exist; and (b) the Customer shall cooperate to the utmost with EVOLUTIO to retrieve any EVOLUTIO Equipment.

## **12 Limitation of Liability**

12.1 Neither of the Parties excludes or limits its liability with regard to death or injuries resulting from its negligence or from that of its employees or agents who act in order to carry out their tasks as such.

12.2 Without prejudice to what is provided for in Clause 12.1, the Parties will not be liable to each other due to contractual, non-contractual or legal liability caused by: (a) loss of probable profit, loss of business activity, loss of profit or contracts, anticipated savings, loss of business opportunity, business reputation (including pecuniary losses that arise from business reputation loss or appropriation) or loss or reduction of revenues; (c) loss, damage or destruction of information; and (d) any other indirect loss or damage.

12.3 Without prejudice to any other clause in the Contract that contains a limitation of liability, if a Party fails to comply with an obligation by virtue of the Contract herein, or if some liability arises for the parties for any reason, whether intentionally or not, in relation to this Contract, the liability of that Party to the other will be limited by case or series of related events, to the sum of 100,000 Euros during the past twelve (12) months and to 200,000 Euros for all the cases (related or not) during any period of twelve (12) consecutive months. Notwithstanding the above, the amounts paid or discounted from the Contract fees due to breach of the Service Level Agreement which, as appropriate, have been negotiated among the parties, will be the only liability that EVOLUTIO will take on for that failure to perform.

12.4 The Customer undertakes to not ask for contractual or non-contractual liability from EVOLUTIO's personnel, managers and/or administrators and shall direct any liability action that is appropriate to EVOLUTIO itself.

12.5 Any claim shall take place within the peremptory time-limit of one year as of the time the event motivating it has occurred.

12.6 EVOLUTIO will implement reasonable measures to prevent the unauthorized access of third parties to the network that provides Services to the Customer, but it will not be responsible for the losses or prejudicial consequences caused to the Customer in the event of said unauthorized access unless a specific security service for this purpose has been quoted and agreed.

## **13. Resolution of problems in the Service.**

13.1 The Client may file claims, complaints or incidents regarding the provision of the service, at Evolutio's Customer Service Department, located at C/ Isabel de Colbrand 6-8 Madrid (28050), within one month after having knowledge of the event that motivates them, or by calling 901 111 109 (for requests, queries or complaints), 91 270 60 09 (incidents) in both cases for corporate business clients, 901 010 724 (for corporate clients with personalized management) or 900 814 814 (for SMEs) and 611 128 225 (for mobile clients); 901 010 724 (for corporate customers with personalized management) or 900 814 814 (for SMEs) and 611 128 225 (mobile customers). If the Customer makes its claims over the telephone, EVOLUTIO will inform it of its right to request a document that certifies the submittal and content of the complaint, claim or incident. The Customer also has the option to submit its complaints or claims using the web page <https://www.evolutio.com/area-de-cliente/canales-de-atencion-al-cliente/>

13.2 In the event that some material defect was to exist in the Service, understanding as such those that affect the Customer's business, the Customer will notify this to EVOLUTIO and a technical committee will be set up to analyze it. Both parties undertake to set up that committee within a period of 10 calendar days as of that notification. This committee will be made up of at least two technical managers from each of the parties and shall reach an agreement about the existence and solution of the existing technical defects within the period of one month, or within the period agreed upon between both.

## 14 Personal Data Clauses

14.1 In this Agreement, the following terms shall have the following meanings:

- RGPD: Shall mean Regulation (EU) 2016/679 of 27 April 2016 on the protection of individuals regarding the processing of personal data and on the free movement of such data, as well as any regulations that may develop it in the future. References to "Data Protection Legislation" shall refer to the RGPD as well as to any guide or code of practice issued by a Control Authority and which are binding.

- "Controlling Authority", "Data Controller", "Personal Data", "Data Processor" "Data Subject", "Binding Corporate Rules", "Data Processor", "Processing", and "Personal Data Security Violation", shall have the meaning given to them in the RGPD.

- "Personal Data" shall also be considered to be Personal Data that has been encrypted or pseudonymized, but which may be used to re-identify a person.

- "Applicable Legislation" will be in principle the Spanish one, unless the regulations of another country are applicable due to the place where the services are provided.

"Evolutio Privacy Policy" refers to the policy that Evolutio has implemented and may update from time to time, on how it treats Personal Data, which is available at: <https://www.evolutio.com/legal/politica-de-privacidad/>

14.2 Both parties agree that for Evolutio to provide the contracted Service, Evolutio will be authorized to carry out the following activities with the Personal Data:

14.2.1 Use, manage, access, transfer or maintain them in a variety of systems, networks, or facilities (including databases) at an international level in order to maintain and manage the present contractual relationship between the Parties and for the correct execution of this Agreement.

14.2.2. Transfer them internationally, to the extent necessary to allow Evolutio to fulfill its contractual obligations, with the Customer appointing Evolutio as the processor and authorized to make such transfer provided that it is necessary for the provision of the services and is based on appropriate transfer mechanisms permitted by Data Protection Legislation, including agreements that include the relevant standard clauses on data protection adopted by the European Commission. The condition of Evolutio's Data Processor is expressly excluded in those cases in which the service consists solely of the resale and initial parameterization of licenses for products developed by third parties and under their responsibility.

14.2.3 Collect, process, use or share Personal Data with its Sub-Leaders, inside or outside the country of origin, always with an administrative purpose and, in order to comply with the purpose of the contract, by way of example, but not limitation, the following tasks are established

- (a) manage, track and complete the Orders for a Service;
- (b) implement the Service;
- (c) manage and protect the security and resilience of any Evolutio Team, the Evolutio Network and the Services;
- (d) manage, track and resolve Incidents with the Service, as set out in the Attachment(s);
- (e) manage access to online web services related to the Service;
- (f) collect, submit and manage the payment of invoices.
- (g) manage the Agreement and resolve disputes related to the Agreement;
- (h) respond to general inquiries regarding the Service or the Agreement;
- (i) In connection with the provision of products and services, Evolutio may process personal data of its customers' users in its capacity as Data Controller, such as telephone numbers, IP addresses, access credentials and network traffic data.
- (j) comply with applicable law.

14.2.4 Use the contact data provided to contact the Client in relation to everything necessary for the proper development of the contractual relationship and, based on the legitimate interest contained in art. 19 L.O. 3/2018 to provide additional information about the contracted Service or other services similar to those contracted offered by Evolutio.

14.3 The data communicated by the other Party will be processed for the purpose of maintaining and managing the relationship between the Parties, contacting the other Party for the purposes of this Agreement and for the proper execution of the rights and obligations set forth herein. Once the contractual relationship is terminated, these data will be blocked for the necessary time and under the terms provided for in the applicable regulations, after which time they must be destroyed.

14.4 The persons to whom such Personal Data refers may exercise their rights of access, rectification, erasure, limitation of processing, portability and, if applicable, opposition to automated individual decisions before the other Party, by sending a written communication to the respective registered office indicated in the heading of this Agreement.

14.5 The Parties shall process the Personal Data in accordance with the applicable Data Protection Legislation, in particular they undertake to:

- a. process the Personal Data received from the other in accordance with the applicable Data Protection Legislation, as well as any implementing regulations, best practices or certification schemes that may be developed with respect thereto;
- b. provide the employees or collaborators whose personal data are communicated to the other Party with the information required by the GDPR, in such a way that the Party receiving such data is not obliged to provide the information provided for in paragraphs 1 to 4 of Article 14 of the GDPR.
- c. to maintain the confidentiality of the personal data at all times. Accordingly, both Parties undertake to inform their employees and collaborators of the confidential nature of such data and to require such employees and14.6

14.6 When due to the service to be provided by Evolutio to the Client, Evolutio acts as Data Processor of the Client's Personal Data, both parties are obliged to sign an Annex to the contract containing all the necessary covenants in accordance with articles 28 RGPD and 33 L.O. 3/2018.

14.7 Unless otherwise agreed in writing, as required by the nature of the Service to be provided, each party shall act as Data Controller of the Data it obtains from the other party, without acting as Joint Controllers of any Processing under this Agreement.

14.8 In the event that Evolutio proposes changes to the Agreement, regarding Evolutio's security measures, policies and processes, in order for Evolutio to comply with the Data Protection Legislation, the Client shall act reasonably and in good faith in the negotiation of such changes.

14.9. The obligations contained in this clause are essential obligations of this Agreement. Consequently, any breach thereof shall constitute a very serious breach of this Agreement and shall entitle Evolutio to terminate the Agreement immediately and without penalty or cost, without prejudice to its right to take appropriate action to ensure compensation for damages arising from the breach. collaborators to keep such information confidential.

## **15 Assignment/Subcontracting/Local Contract between Affiliates**

15.1 The Parties reserve the right to assign this Contract totally or partially at any time to any Affiliate, as long as said assignment is notified previously in writing to the other Party and the assignee Affiliate has the same level of solvency both technically and economically. Any other assignment will require the prior consent in writing of the other Party.

15.2 This Contract will be binding and will be of benefit to the Parties, their successors and authorized assignees.

15.3 EVOLUTIO may subcontract the rendering of the Services to third parties or to its Affiliates in order to comply with what is agreed in this Contract. Said subcontracting will not release EVOLUTIO from its obligations to the Customer.

15.4 The Parties acknowledge and agree that EVOLUTIO's Affiliates and the Customer's Affiliates may reach an agreement for the provisioning of Products and Service under the terms of the Contract herein in countries outside Spain by signing a Local Contract by means of which they agree to incorporate the terms and conditions set forth in the Contract herein with, as appropriate, the necessary modifications to conform to the local applicable law. In this case, it will be understood that the Affiliates that have signed the Local Contract will be responsible among themselves for the rendering and supply of the Products and Services that are agreed upon in the respective Orders.

## **16 Compliance and dependence of the services offered on the applicable regulations, on the state of the art, on the information provided by the customer and on the provisioning of services by third parties**

16.1 Due to the nature itself of the electronic communications services to be rendered, the Customer understands that they may be subject to legislation that regulates them which both parties agree to comply with by submitting to the changes that might occur to them, that their supply may depend partially upon the renderings of services by third parties who by means of interconnection or access services complement the network, coverage and EVOLUTIO's Services, that the evolution in the state of the art and their quick obsolescence may have an impact on the services as well as that if a service has been tailor-made for the customer, this service is based on the information provided by it regarding aspects such as traffic profile, the volume of its communications or the location of its sites, among other things.

16.2 The Customer understands that the service may undergo some modification due to changes in the regulations, in third-party service provisioning conditions, due to technical obsolescence and the consequential end of the provisioning of certain services or due to the increase in the cost of its rendering. It additionally understands that changes in the data provided by the Customer that have been used for the design and implementation of its technological solution (in the event that it is tailor-made), have an impact on the Service to be offered, on its costs and, therefore, on the offered price. For these reasons, if changes occur in the regulations, the state of the art, in the third-party provisioning of services that are essential to the rendering of the service by EVOLUTIO, or in the quotes under which the Service has been tailor-made for the Customer and this has a significant impact on the possibility or the way in which EVOLUTIO renders



the Contract's services, EVOLUTIO will notify this as soon as possible to the Customer in order to reach an agreement in good faith concerning modifications in the Service, an alternative Service or the migration to another service in order to minimize any effect on the Customer. Nevertheless, in the event that an agreement cannot be reached, both parties will have the power to terminate the Contract without any penalty.

## 17 Miscellaneous provisions

**17.1 Applicable Law:** The Contract herein will be governed and construed under Spanish Law.

**17.2 Force Majeure:** Neither of the parties will be responsible for failing to fulfill its obligations if this failure to perform occurs due to force majeure or, in general, to any of the circumstances considered in article 1.105 of the Civil Code.

**17.3 Publicity:** The Parties may not publish, make advertisements or sales promotions, press releases, or in similar media using the brand, name, logo or other elements belonging to the other Party or to its Affiliates in relation to the Contract or to any of the Services provided under its aegis, without prior authorization in writing from the other Party, who shall not refuse without justified reasons, with the response not being able to undergo unjustifiable delay.

**17.4 Customer Satisfaction Polls:** The Parties agree to cooperate with the reasonable requirements of the other Party with regard to the customer satisfaction polls carried out by that Party or by third parties contracted by the latter.

**17.5 Compliance with the Anti-corruption and Bribery Law:** The Parties shall abstain from carrying out or getting involved in illicit practices or those that violate any applicable law in Spain, as well any other law that prohibits kickbacks, bribery or any other similar activity. Each Party shall ensure that neither it nor its Affiliates, subcontractors, agents and contractors, whether directly or indirectly, look for, receive, accept, give, offer, agree or undertake to give money, handouts or any other thing of value from or to any person (including, as a mere example, and in no way serving as limitation, to public servants or agents of public or private entities) as an incentive or compensation for it to perform a favorable action or to abstain from acting or does not successfully implement the appropriate guarantees to protect itself against such actions. Each of the parties, upon request from the other, shall submit proof of the measures adopted to prevent the prohibited actions, including the setting up of the business policies, practices, and/or controls required to prevent these types of conduct and to comply with the rules referred to in the clause herein. To the extent that is permitted, each Party shall inform the other Party without delay about any investigation regarding alleged violations of the regulations referred to in the clause herein and in the rules that are related to this Contract.

**17.5 Export Control:** The Parties acknowledge that the products, Software and technical information (including, but not limited to, the Service, the technical support and the training) supplied under the aegis of the Contract herein may be subject to export laws and regulations in Spain, the US and in other countries, and that any use or transfer of the products, Software and technical information shall be done pursuant to all the applicable regulations. The Parties will not use, distribute, transfer or transmit the products, Software or technical information (even if they are incorporated into other products) in any way other than what is permitted by the applicable export regulations. If either of the Parties so requests, the other Party undertakes to sign written statements and other documents regarding the export that might be required in order to comply with all the applicable export regulations.

**17.7 Activity of EVOLUTIO as the Customer's Agent for Third-Party Services:** In the event that the Customer obtains the Service or part of it directly from a third-party service provider, in accordance with an independent agreement between the Customer and a third party, EVOLUTIO's responsibility, even when it has handled that agreement, will be limited to the fulfillment of the specific obligations set up in the corresponding agreement, and EVOLUTIO will not take on any responsibility by virtue of that agreement upon EVOLUTIO acting solely as the Customer's intermediary.

**17.8. Non-hiring of Evolutio personnel:** Until twelve (12) months after the termination of the relationship with the Client, the Client undertakes not to solicit, attract, attempt to collaborate or hire, directly or indirectly, any employee of EVOLUTIO, nor to enter into any form of collaboration with them, until at least twelve (12) months after they have left EVOLUTIO as employees of EVOLUTIO. In case of breach of this point, the Client shall indemnify EVOLUTIO with an amount equal to three (3) times the gross annual salary of the employee(s) involved, with a minimum of €150,000 per employee.

**17.9 No Waiver:** Unless otherwise specified in the Contract herein, no fault, neglect or delay in the exercising of any right, power or concession indicated in the Contract herein will be interpreted as a waiver of any right, power or action.

**17.10 Validity of clauses:** In the event that any provision in the Contract were to be invalid or not applicable, it will be excluded from the Contract, and the rest of the provisions will remain fully in force. The Parties will negotiate a replacement of the cancelled provision as soon as possible.

**17.11 Entire agreement:** This Contract replaces any previous document and/or statement, whether oral or written, between the Parties (unless reference is made to it specifically in this Contract) and constitutes the only and entire agreement with regard to its purpose.

**17.12 Language:** The language of the Contract is Spanish. If there is a conflict between the Contract herein and any translation, the version in Spanish will prevail.

**17.13 Notices:** All notices sent under the aegis of the Contract herein shall be made in writing and in Spanish, unless the Parties agree otherwise or the legislation and local regulations provide for something else, and they shall be sent by registered post or delivered to EVOLUTIO's or the Customer's main office, and they shall be addressed to the recipient appearing on the Order Document or to any other address or recipient that each Party has indicated for that purpose.