
EVOLOGIC GENERAL TERMS AND CONDITIONS

Evologic Pty Ltd
Suite 4 – 6 Rutland Street
Geelong Victoria 3220



V1.4

Evologic General Terms and Conditions

Application

This agreement applies to all Services supplied by Evologic and described in a Statement of Work and, unless otherwise stated, applies to any other agreement between Evologic and the Client.

1 Term

- 1.1 This Agreement commences on the Start Date and continues until terminated in accordance with this Agreement or Statement of Work.
- 1.2 In relation to the provision of managed IT Support only, after the initial term as specified in the Statement of Work, the Statement of Work will automatically renew for a 12-month period (**Further Term**) unless either Party provides the other with written notice of its intention not to renew the term at least 60 days prior to the expiration of the initial term, or the then current Further Term, as the case may be.
- 1.3 For the avoidance of doubt at the end of a Further Term the Statement of Work will automatically renew for a further 12-month period unless otherwise terminated or notice is provided in accordance with this Agreement.

2 Services

- 2.1 Evologic agrees to supply the Services to the Client and the Client agrees to acquire the Services from Evologic on the terms set out in this Agreement.
- 2.2 From the Start Date, Evologic must, during the Term, provide the Services.
- 2.3 The Services are comprised of (each individual is a Service):
 - (a) any services provided by Evologic to the Client from time to time;
 - (b) any services described in any schedules to the Agreement from time to time;
 - (c) any services, functions, tasks, and responsibilities which are necessary for or incidental or ancillary to, or customary for, the proper performance and provision of the Services;
 - (d) all Personnel, Products, hardware, software, technology, and other resources needed to provide, or which are incidental to the provision of, any of the above, except to the extent this Agreement expressly requires the Client or a third party to supply them; and
 - (e) at its own cost, proposals for other information technology goods and services as reasonably requested by the Client from time to time.

- 2.4 If Evologic decides to substantially modify or amend a Service, then Evologic may, by giving the Client at least 30 days' notice, migrate the Client to the modified Service or to an alternate service.
- 2.5 If the proposed modified or alternate Service is materially detrimental to the Client, then the Client may cancel the Service without the payment of any early termination charges provided it gives 90 days' notice as is required under clause 14.7.

3 Delivery of Services

- 3.1 At Evologic's discretion, delivery of the Services will take place when the Services are supplied:
- (a) to the Client at Evologic's address;
 - (b) to the Client at the Client's nominated address; or
 - (c) to a third party nominated by the Client.
- 3.2 Evologic may deliver the Service by separate instalments. Each separate instalment shall be separately invoiced.
- 3.3 Evologic will endeavour to provide the Services within the timeframes agreed with the Client and if none, within a reasonable timeframe.

4 Excluded Services

- 4.1 Unless otherwise agreed, the following are Excluded Services:
- (a) any item specified in the Evologic Fixed Price Service Request Catalogue (as updated from time to time);
 - (b) Services outside the Evologic Business Hours;
 - (c) Any recurring issues where appropriate and reasonable recommendations have been made by Evologic to the Client, and where the Client decided to not approve or implement in a reasonable timeframe;
 - (d) the cost of any Product or shipping charges of any kind;
 - (e) the cost of any software, licensing, or software renewal or upgrade fees of any kind;
 - (f) the cost of any third-party supplier or manufacturer support, incident, or installation fees of any kind;
 - (g) professional services for project work (e.g., office relocation, server infrastructure upgrades, fleet refresh etc.);
 - (h) service and repair made necessary by the alteration or modification of equipment other than that authorised by Evologic, including alterations, software installations or modifications of equipment made by Client's employees;

- (i) programming (modification of software code, macros, and formulae); and
- (j) structured training services of any kind.

4.2 Services performed outside Business Hours will be charged as follows:

- (a) at 1.5 times the Agreed Hourly Rate; and
- (b) in the following increments:

Onsite: A Call-out charge will be applied with a minimum site visit of 2 hours and 1-hour increments thereafter; or

Remote: minimum of 1 hour with 0.5-hour increments thereafter.

5 Risk and Title of Products

Risk

- 5.1 Irrespective of whether Evologic retains ownership of any Product all risk for such items shall pass to the Client as soon as such items are delivered to the Client and shall remain with the Client until such time as Evologic may repossess the Product as a result of a failure by the Client to pay all amounts owing for the Services and Product and met all their obligations of the Agreement at the time of the purchase.
- 5.2 It is the responsibility of the Client to take out adequate and appropriate insurance for all Products on or before delivery.
- 5.3 Evologic reserves its right to seek compensation or damages for any damage, destruction or loss suffered in relation to the Product as a result of the Client's failure to insure in accordance with clause 5.2.

Title

- 5.4 Evologic and the Client agree that where it is intended that the ownership of a Product is to pass to the Client that such ownership shall not pass until:
 - (a) the Client has paid Evologic all amounts owing for the Services and/or Product as applicable and according to the payment terms agreed by both parties; and
 - (b) the Client has met all other obligations due by the Client to Evologic at the time of the purchase, in respect of all contracts between Evologic and the Client.
- 5.5 Receipt by Evologic of any form of payment other than cash shall not be deemed to be payment until that form of payment has been honoured, cleared, or recognised and until then Evologic's ownership or rights in respect of the Product shall continue.
- 5.6 It is further agreed that before title has passed in accordance with clause 6.3:
 - (a) the Client is only a bailee of the Product and must return the Product to Evologic immediately upon request by Evologic;

- (b) the Client holds the benefit of the Client's insurance of the Product on trust for Evologic and must pay to Evologic the proceeds of any insurance in the event of the Product being lost, damaged or destroyed;
- (c) the Client must not sell, dispose, or otherwise part with possession of the Product. If the Client sells, disposes or parts with possession of the Product before title has passed then the Client must hold the proceeds of sale of the Product on trust for Evologic and must pay or deliver the proceeds to Evologic on demand;
- (d) the Client shall not charge or grant an encumbrance over the Product nor grant nor otherwise give away any interest in the Product while they remain the property of Evologic.

6 Fees

Payment of Fees

- 6.1 In consideration for Evologic providing the Services or Product the Client will pay the Fee in accordance with the Agreement.
- 6.2 Unless otherwise stated, the Fee is exclusive of GST and Evologic is entitled to add on GST.
- 6.3 The Fee for the Services or Product shall, at Evologic's discretion, be:
 - (a) as indicated in any Statement of Work;
 - (b) as indicated on any invoice provided by Evologic to the Client; or
 - (c) as indicated on any quote provided by Evologic to the Client and remains valid for the period stated in the quote or otherwise will be valid for 14 days.
- 6.4 Despite any other provision, the Parties agree that Evologic may, without notice, increase rates by the most current Melbourne All Groups Consumer Price Index (**CPI**) percentage as published by the Australian Bureau of Statistics, on July 1 each year.

Variation of Fees

- 6.5 Despite any other provision, Evologic reserves the right to vary or change the Fee if there is a variation in the scope or number of Services or Products requested by the Client.

Third Party Providers and Licencing

- 6.6 In these General Terms and Conditions **Third Party Provider** means any individual, company, or entity that is not Evologic or the Client that provides a service or supplies a product to Evologic under an agreement with Evologic (**Third Party Agreement**), which Evologic in turn provides to the Client (**Third Party Product**).
- 6.7 The Third-Party Product can be provided on an annual, quarterly, monthly, or other term licence basis pursuant to the Third-Party Agreement (**Licence Term**).
- 6.8 Where the Third-Party Product is provided on a licence basis, the Client is liable to Evologic for all fees and charges due under the Third-Party Agreement for the entire Licence Term (**Licence Term Fee**)
- 6.9 If the Client elects to terminate its agreement with Evologic, the Client will still be liable for the entire Licence Term Fee irrespective of when the agreement with Evologic is terminated. Upon termination, the entire Licence Term Fee falls due and payable
- 6.10 If the Client sends a written request to Evologic to increase the number of licenses for a Third Party Provider, then all additional licenses are provided on the same terms as the original licenses pursuant to the applicable Third Party Agreement and the Client will be liable for any additional fees or increase in the Licence Term Fee by the Third Party Provider.
- 6.11 Any additional services provided by Evologic that are subject to a Third-Party Agreement to the Client at the Client's request will be subject to these General Terms and Conditions.

Fee Terms

- 6.12 Evologic, may at its sole discretion, determine the Fee is payable:
- (a) before the delivery of Services, a Service, a Product or Products;
 - (b) partly by way of a non-refundable deposit;
 - (c) by way of instalments or progress payments as agreed with Evologic;
 - (d) the date specified on any Tax Invoice or other form provided by Evologic as a date for payment; or
 - (e) otherwise, if no other provision is applicable, 14 days following the date of any invoice provided by Evologic to the Client.

Costs and disbursements

- 6.13 Evologic is permitted to charge for all costs and expenses reasonably incurred in performing the Services including without limitation travelling, photocopying, courier services and postage.

Invoicing

- 6.14 Evologic will provide the Client with a Tax Invoice for the Fee and any other applicable charges which will be calculated based on the number of Seats registered in the Evologic billing system, and to be reconciled on the last business day of the month. Any Device that has not checked in to Evologic's management system within the prior 30 days, or User that has been disabled, will be removed from the system, be unsupported, and the Seat cost removed from the Fee in the following billing period. Any additional devices or Users added to the network will be enrolled into the management system and added to the number of support Seats to be invoiced in the following billing period.
- 6.15 Payment of the Tax Invoice must be made by the Client within 14 days after receiving the Tax Invoice.

Payment method

- 6.16 Payment of the Fee may be made by electronic funds transfer, credit card (including any surcharge of up to 2% of the Fee) or by any other method as agreed in writing between Evologic and the Client.
- 6.17 If appropriate, the Client will be invoiced in advance on the first business day of each month and withdrawn via direct debit from the nominated bank account on the first business day following the 14th day of that month.

GST and other taxes and duties

- 6.18 In addition to the Fee, the Client must:
- (a) pay to Evologic an amount equal to the GST payable for any Service provided;
 - (b) pay the GST payable without any deduction or set off of any other amounts;
 - (c) pay the GST payable at the same time and on the same basis as the Client pays the Fee; and
 - (d) pay any other taxes and duties payable in addition to the Fee except where they are specifically included in the Fee.

Failure to pay

- 6.19 If the Client does not pay the Tax Invoice by the stated due date or otherwise provided under this Agreement, Evologic is entitled to do any one or more of the following, after reasonable attempts at providing warning notification have been made:
- (a) charge to the Client default interest on the outstanding amount at the rate of 10% per annum;

- (b) charge to the Client all legal fees for the enforcement of the Agreement (on a solicitor client basis);
- (c) require the Client to pay, in advance, any of the Services (or any part of the Services) which have not yet been performed;
- (d) suspend, cancel, or remove any Intellectual Property owned by Evologic; and
- (e) if the Tax Invoice remains unpaid for more than 30 days, then Evologic may, with 14 days' written notice to the Client, suspend, limit, or cancel the performance of any further Services (or any part of the Services) by termination of the Agreement.

7 Obligation of Client relating to the provision of Services

7.1 The Client:

- (a) must ensure that all equipment connected to the Services by, or on behalf of the Client is technically compatible with the relevant Service/s and that both its Premises and equipment comply with and are used in accordance with all reasonable procedures and all applicable laws and regulations;
- (b) must implement and maintain appropriate technical and organisational security measures to protect its computers, applications, and networks from Malicious Code.
- (c) must provide all information and assistance, in sufficient detail, as is reasonably required by Evologic in order to enable Evologic to meet its obligations under this Agreement and comply with all reasonable directions and instructions of Evologic in relation to the use of the Services;
- (d) must ensure that Evologic or its subcontractors are provided with sufficient and timely access to the Client's or its User's Premises to enable Evologic to provide the Services in accordance with this Agreement;
- (e) must not:
 - (i) alter, tamper, reverse engineer, repair or attempt to repair the Services or cause, or allow a third party to do any of these acts;
 - (ii) use in any way, or rely on, the third-party software supplied by Evologic or the Intellectual Property, for any purpose other than what it was designed or is suitable for;
 - (iii) copy, reproduce, translate, adapt, vary, merge, modify, or create any derivative work based on the third-party software supplied by Evologic or the Intellectual Property;
 - (iv) sell, market, network, transfer, lease, licence, sub-licence, rent, lend, or otherwise dispose of, distribute, or part with possession of, the Intellectual Property or any third-party software supplied by Evologic, in any way whatsoever; and/or

- (v) use the third-party software supplied by Evologic or the Intellectual Property to commit a crime (including, but not limited to, sending spam).
- (f) is solely responsible for selecting, supplying, and maintaining its own facilities and equipment and the purposes for which it or its Users acquire and use the Services;
- (g) is solely responsible for the content and security of any data or information which it or its Users send or receive using the Services and must take every reasonable precaution in the use of the Services to prevent contamination of any software or hardware or diffusion of any software or hardware contamination, including computer viruses, worms or trojan horses;
- (h) is solely responsible for any use of the Services or any Facility connected to the Services on its Premises, by it or any third party, whether authorised or not, and indemnifies Evologic against all direct or indirect loss, damage, liability, costs or expenses (including reasonable legal fees) incurred by Evologic (including to a third party) relating to the acts or omissions including fraudulent, negligent, illegal or unauthorised use (including attempted use) by any person (including the Client) of a Service or a Facility connected to a Service;
- (i) warrants that it, and its Users will comply with all laws and guidelines concerning the use of the Services and will not use the Services for any unauthorised purpose or in any manner that violates any applicable law or this Agreement; and
- (j) give Evologic not less than 14 days prior written notice of any proposed material change of ownership of the Client and/or any change in the Client's contact details.

8 Confidentiality

8.1 Each Party agrees that it will:

- (a) hold the other Party's Confidential Information in confidence using the same standard of care it uses to protect its own Confidential Information of a similar nature, but in no event less than reasonable care;
- (b) not disclose the Confidential Information of the other to any third party without the other's prior written consent, except as expressly permitted under this Agreement;
- (c) limit access to the other's Confidential Information to those of its employees or agents having a need to know who are bound by confidentiality obligations; and
- (d) use the other Party's Confidential Information solely to perform its obligations or receive its benefits under the Agreement.

- 8.2 Following termination of the Agreement and upon request of the disclosing Party, Confidential Information, and any copies thereof in the custody and control of the receiving Party will be deleted, destroyed, or returned
- 8.3 The restrictions on the use and disclosure of Confidential Information will not apply to any Confidential Information, or portion thereof, which:
- (a) is or becomes publicly known through no act or omission of the receiving Party;
 - (b) is lawfully received from a third party without restriction on disclosure;
 - (c) is already known by the receiving Party without a duty of confidentiality at the time it is disclosed by the disclosing Party, as shown by the receiving Party's written records; or
 - (d) is independently developed by the receiving Party without reference to the disclosing Party's Confidential Information, as shown by the receiving Party's written records.
- 8.4 Notwithstanding the foregoing, either Party may make disclosures as required or requested by a court of law or any governmental entity or agency, provided that, to the extent permitted under the laws of Australia, such Party provides the other with reasonable prior notice to enable such Party to seek confidential treatment of such information.

9 Intellectual Property

- 9.1 The Client acknowledges that all Intellectual Property supplied by Evologic pursuant to this Agreement is the sole property of Evologic.
- 9.2 During the Term, Evologic grants to the Client a non-exclusive, royalty-free, and non-transferable licence to use the Intellectual Property to the extent necessary, and for the sole purpose of, the performance of the Services.
- 9.3 The risk of any Intellectual Property used for the Services will pass to the Client irrespective of whether Evologic retains ownership.
- 9.4 The Client agrees:
- (a) the Client is only a bailee of the Intellectual Property and must return the Intellectual Property to Evologic immediately on request by Evologic;
 - (b) the Client holds the benefit of the Client's insurance of the Intellectual Property on trust for the Evologic and must pay to Evologic the proceeds of any insurance in the event of the Intellectual Property being lost, damaged or destroyed;
 - (c) the Client must not sell, dispose, or otherwise part with possession of the Intellectual Property. If the Client sells, disposes or parts with possession of the Intellectual Property then the Client must hold the proceeds of sale of the

- Intellectual Property on trust for Evologic and must pay or deliver the proceeds to Evologic on demand;
- (d) the Client should not convert or process the Intellectual Property or intermix them with other goods, but if the Client does so then the Client holds the resulting product on trust for the benefit of Evologic and must dispose of or return the resulting product to Evologic as it so directs;
 - (e) the Client shall not charge or grant an encumbrance over the Intellectual Property nor grant nor otherwise give away any interest in the Intellectual Property while they remain the property of Evologic.
- 9.5 Evologic and the Client agree where Intellectual Property is to be owned by the Client such ownership shall not pass until the Client has paid Evologic all amounts owing for the applicable Intellectual Property.
- 9.6 The Client agrees to use any third-party software supplied by Evologic, and identified as such, strictly in compliance with the terms of the licence under which it is supplied.
- 9.7 Client Confidential Information and all Client data is owned by the Client. Evologic may use Client Confidential Information and Client data only as is reasonably necessary for Evologic to perform the Services.
- 9.8 The Client agrees to acknowledge Evologic ownership of the Intellectual Property to any third party including in the event that images of the Intellectual Property is used in advertising or marketing material by the Client. Further, subject to compliance with clause 9 regarding confidentiality, the Client agrees Evologic may utilise images of any Intellectual Property so designed for the purposes of advertising, marketing, or entry into any competition.
- 9.9 Evologic must not use the name, trademarks, or logos of the Client for any advertising or publicity purposes without the prior written consent of the Client for each usage.
- 9.10 Evologic will indemnify, defend, and hold the Client harmless, at its expense, a third-party action, suit, or proceeding (**Claim**) against the Client, its subsidiaries, and its and their directors, officers, employees, and agents (**Client Indemnified Parties**) to the extent such Claim alleges that any Evologic proprietary software provided to the Client in the performance of the Services infringes the Intellectual Property rights of any third party.
- 9.11 Evologic will indemnify the Client Indemnified Parties for all losses, liabilities, damages, and expenses (including reasonable legal fees) finally awarded to a third party by a court of competent jurisdiction or agreed to by Evologic in a settlement that are directly attributable to a Claim.
- 9.12 Evologic will have no defence or payment obligation or other liability for any Claim arising from:

- (a) use of the Evologic software by the Client in a manner contrary to the terms of the Agreement;
- (b) modification of the Evologic software by anyone other than Evologic or a party authorised in writing by Evologic;
- (c) the combination of the Evologic software with any other products, services, hardware, software, or other materials not authorised by Evologic.

10 Personal Property Securities Act 2009

- 10.1 In this clause financing statement, financing change statement, security agreement, and security interest has the meaning given to it by the PPSA.
- 10.2 Upon assenting to these terms and conditions in writing the Client acknowledges and agrees that these terms and conditions constitute a security agreement for the purposes of the PPSA and creates a Purchase Money Security Interest (**PMSI**) in all Intellectual Property that have previously been supplied and that will be supplied in the future by Evologic to the Client.
- 10.3 The Client undertakes to:
- (a) promptly sign any further documents and/or provide any further information (such information to be complete, accurate and up to date in all respects) which Evologic may reasonably require to:
 - (i) register a financing statement or financing change statement in relation to a PMSI on the Personal Property Securities Register (**PPSR**);
 - (ii) register any other document required to be registered by the PPSA; or
 - (iii) correct a defect in a statement referred to in clause 10.3(a)(i) or 10.3(a)(ii);
 - (b) indemnify, and upon demand, reimburse Evologic for all expenses incurred in registering a financing statement or financing change statement on the PPSR established by the PPSA or releasing any Products charged thereby;
 - (c) not register a financing change statement in respect of a security interest without the prior written consent of Evologic;
 - (d) not register, or permit to be registered, a financing statement or a financing change statement in relation to the Intellectual Property in favour of a third party without the prior written consent of Evologic.
- 10.4 Evologic and the Client agree that sections 96, 115 and 125 of the PPSA do not apply to the security agreement created by these terms and conditions.
- 10.5 The Client waives their rights to receive notices under sections 95, 118, 121(4), 130, 132(3)(d) and 132(4) of the PPSA.

- 10.6 The Client waives their rights as a grantor and/or a debtor under sections 142 and 143 of the PPSA.
- 10.7 Unless otherwise agreed to in writing by Evologic, the Client waives their right to receive a verification statement in accordance with section 157 of the PPSA.
- 10.8 The Client must unconditionally ratify any actions taken by Evologic under clauses 10.3 to 10.6.
- 10.9 Subject to any express provisions to the contrary nothing in these terms and conditions is intended to have the effect of contracting out of any of the provisions of the PPSA.
- 10.10 Evologic will discharge any Security Interest within fourteen (14) days following the end of the Agreement. The Client will Reimburse Evologic for the reasonable costs for the discharge.

11 Limitation of Liability

- 11.1 As far as the law permits, and unless otherwise specified in this clause, Evologic excludes all liability in tort (including negligence), contract, statute or otherwise for any direct or indirect loss, damage, cost or expense (including loss of profits, loss of anticipated savings, cost of purchasing replacement services, economic loss or any special, indirect, punitive or consequential damage), whether or not such losses were foreseeable, incurred by the Client or a third party in connection with any of the services or any act or omission by Evologic under or in relation to the Agreement. For the avoidance of doubt this extends to any employees, contractors, agents, representatives, licensees or permitted assigns of Evologic.
- 11.2 Notwithstanding the generality of clause 11.1, Evologic expressly excludes liability for consequential loss or damage which may arise in relation to the Services or for loss of data, loss of, or claim for, revenue, profits, actual or potential business opportunities or anticipated savings or profit, whether direct, indirect, economic, consequential howsoever arising by way of act or omission in contract or in tort. The Client hereby agrees to release and indemnify Evologic to that extent.
- 11.3 Where Evologic cannot by law exclude such liability, its liability to the Client will be limited, at Evologic's choice, to:
- (a) if the breach relates to goods – the replacement or repair the goods; or
 - (b) if the breach relates to services – the supply of those services or the payment of the cost of those services to be supplied again by a third party as agreed in writing by the Parties.

This clause applies despite anything else in the Agreement and to the fullest extent permitted by law.

- 11.4 To the fullest extent permitted by law, Evologic excludes all warranties implied by law except as expressly set out in the Agreement.
- 11.5 Any unreasonable and material interference by the Client or its agents, servants, employees, subcontractors or other third party with the consent of the Client with equipment, network or configuration relevant to or of and incidental to the Agreement will void any guaranteed response time or quality of service commitments, remove any liability to the Client for the quality of the Service the subject of such interference and may also incur fees to cover costs of rectification as the rectification will be considered as an excluded item of the Agreement.

12 Indemnity

- 12.1 Unless otherwise specified in this Agreement, the Client expressly indemnifies and keeps indemnified Evologic its officers, employees, and contractors, against all Claims that may be brought against Evologic or which Evologic may pay, sustain, or incur as a direct or indirect result of any one or more of the following:
- (a) any breach or non-performance of the Client's obligations in the Agreement;
 - (b) any wrongful, wilful, or negligent act or omission of the Client or any of its employees, agents, or contractors; and
 - (c) any representation or warranty made or repeated by the Client under this Agreement being untrue or misleading in any material respect (including by omission) when made or repeated.

13 Privacy

- 13.1 The Client agrees to Evologic obtaining from a credit reporting agency a credit report containing personal credit information about the Client in relation to credit provided by Evologic.
- 13.2 The Client agrees that Evologic may exchange information about the Client with those credit providers either named as trade referees by the Client or named in a consumer credit report issued by a credit reporting agency for the following purposes:
- (a) to assess an application by the Client;
 - (b) to notify other credit providers of a default by the Client;
 - (c) to exchange information with other credit providers as to the status of this credit account, where the Client is in default with other credit providers; and/or
 - (d) to assess the creditworthiness of the Client.

- 13.3 The Client understands that the information exchanged can include anything about the Client's creditworthiness, credit standing, credit history or credit capacity that credit providers are permitted to exchange under the *Privacy Act 1988 (Cth)*.
- 13.4 The Client consents to Evologic being given a consumer credit report to collect overdue payment on commercial credit (section 18K(1)(h) *Privacy Act 1988 (Cth)*).
- 13.5 The Client agrees that personal credit information provided may be used and retained by Evologic for the following purposes (and for other purposes as shall be agreed between the Client and Evologic or required by law from time to time):
- (a) the provision of Services;
 - (b) the marketing of Services by Evologic, its agents or distributors;
 - (c) analysing, verifying and/or checking the Client's credit, payment and/or status in relation to the provision of Services;
 - (d) processing of any payment instructions, direct debit facilities and/or credit facilities requested by the Client; and/or
 - (e) enabling the daily operation of Client's account and/or the collection of amounts outstanding in the Client's account in relation to the Services.
- 13.6 Evologic may give information about the Client to a credit reporting agency for the following purposes:
- (a) to obtain a consumer credit report about the Client;
 - (b) allow the credit reporting agency to create or maintain a credit information file containing information about the Client.
- 13.7 The information given to the credit reporting agency may include:
- (a) personal particulars (the Client's name, sex, address, previous addresses, date of birth, name of employer and driver's licence number);
 - (b) details concerning the Client's application for credit or commercial credit and the amount requested;
 - (c) advice that Evologic is a current credit provider to the Client;
 - (d) advice of any overdue accounts, loan repayments, and/or any outstanding monies owing which are overdue by more than sixty (60) days, and for which debt collection action has been started;
 - (e) that the Client's overdue accounts, loan repayments and/or any outstanding monies are no longer overdue in respect of any default that has been listed;
 - (f) information that, in the opinion of Evologic, the Client has committed a serious credit infringement (that is, fraudulently or shown an intention not to comply with the Client's credit obligations);
 - (g) advice that cheques drawn by the Client for one hundred dollars (\$100) or more, have been dishonoured more than once;

- (h) that credit provided to the Client by Evologic has been paid or otherwise discharged.

14 Suspension and Termination

Suspension

- 14.1 Evologic may, at its discretion, suspend the supply of Services with reasonable notice (which may be written or verbal) to the Client if:
- (a) it is an Emergency;
 - (b) Evologic is directed to, or required to, under the law; or
 - (c) the Client fails to pay an amount due and payable that is 14 days past the due date, despite reasonable attempts at providing warning notification, which is not the subject of a good faith dispute, and for which a valid Tax Invoice has been issued.

Default

- 14.2 For the purpose of this clause an **Event of Default** means:
- (a) An Insolvency Event occurs with respect to a Party;
 - (b) notice of deregistration of Evologic or the Client is given under sections 601AA (5) or 601AB (5) of the *Corporations Act 2001 (Cth)*.
 - (c) A Tax Invoice provided by Evologic to the Client remains unpaid for a period of more than 14 days;
 - (d) there is, in the absolute opinion of Evologic, a material change in the ownership of the Client without any notice to Evologic; or
 - (e) A Party fails to remedy a default of its obligation in this Agreement within 10 Business Days of receiving written notice from the other Party of the details of the default and how to remedy the default.

Consequences of default

- 14.3 Without prejudice to any of the non-defaulting Party's rights, if an Event of Default occurs in relation to a Party to this Agreement, the non-defaulting Party may, at its election, terminate this Agreement with 10 Business Days' notice to the defaulting Party.

Complaints and termination

- 14.4 In the event the Client is dissatisfied with the Services provided by Evologic it must provide written notice to Evologic outlining the dissatisfaction and the expected outcome (**Complaint**). Evologic must respond to the Complaint within 5 Business Days of receipt proposing a resolution to the Complaint (**Response**).

- 14.5 In the event the Parties do not agree to a resolution, acting reasonably, within 5 Business Days of receipt of the Response then the Client may engage a third party to resolve the Complaint at Evologic's expense, excluding costs for any hardware, software, or subscriptions.
- 14.6 If the Parties come to a resolution under clause 15.4 then Evologic must resolve the Complaint 60 days from the date the Parties agree to a resolution.
- 14.7 If Evologic cannot resolve the Complaint within 60 days, then the Client may cancel the Services by giving 90 days' notice to Evologic. In that event Evologic shall repay to the Client any money paid by the Client for the Services for which the Services will not be provided as a result of the cancellation. Any Product supplied as part of the Services will remain the property of Evologic and, at the option of the Client, can be purchased by the Client at fair market value.
- 14.8 Neither party shall be liable for any loss or damage whatsoever arising from such cancellation.
- 14.9 Upon termination the Client shall immediately uninstall and cease to use any Intellectual Property and, upon Evologic's written request, return to it all Intellectual Property, together with the related documentation and copies thereof.

Termination and end of term fees

- 14.10 If this Agreement is terminated, cancelled, or ended in accordance with this agreement (including but not limited to clause 1.2, 14.3 or 14.7), the Client must pay to Evologic any termination, cancellation or any other fees incurred by Evologic for ending any licence, agreement or contract previously granted for any programming, software, documentation, reports, and any other Intellectual Property provided as part of the Service.
- 14.11 Evologic must provide to the Client notice, no later than 5 Business Days prior to the end date or cancellation or termination date, as applicable (**End Date**) of this Agreement, details of such fees mentioned in clause 14.10 and their due date for payment. If a due date for payment of a fee exceeds the End Date, the fee will be due and payable to Evologic on the End Date and the Client must make payment in full.

15 Dispute Resolution

Negotiation

- 15.1 A Party to this Agreement may not commence legal proceedings, except proceedings seeking urgent interlocutory relief, in relation to any disputes concerning this Agreement, without first complying with the dispute resolution procedures in this clause.

15.2 If a dispute arises between the Parties with respect to this Agreement, the Parties will, in good faith, use all reasonable endeavours to settle the dispute by negotiation.

Mediation

15.3 If a dispute is not settled by the Parties by negotiation within 10 Business Days of notification of the dispute by either Party, the Parties will endeavour to settle the dispute by mediation.

15.4 The Parties agree to select a mediator within 10 Business Days of the date of notice of intention to mediate and if no mediator can be agreed, the Parties agree that the matter will be referred to the Victorian Small Business Commissioner for a mediation between the Parties.

15.5 The Parties will share the cost of the mediation equally but will each be responsible for their own legal and other costs associated with the mediation.

Legal action

15.6 If the dispute cannot be resolved by mediation, either Party may commence legal proceedings.

16 General

Waiver

16.1 The waiver by either Party of any breach of the Agreement does not licence the other Party to repeat or continue any such breach. Such a waiver will not operate as a waiver of any subsequent breach.

16.2 The failure of either Party to exercise any right is not deemed to be an abandonment or waiver of any right for damages injunction or otherwise.

Notice

16.3 A notice or other communication connected with this Agreement has no legal effect unless it is in writing. In addition to any other method of service provided by law, the notice may be sent by prepaid post to the address of the addressee as set out in this Agreement or sent by email to the email address of the addressee.

Entire Agreement

16.4 This Agreement constitutes the entire agreement of the Parties in respect of the matters dealt with in this Agreement and supersedes all prior agreements, understandings, undertakings, and negotiations in respect of the matters dealt with in this Agreement.

Force Majeure

- 16.5 The non-performance or delay in performance by a Party of any obligation under the Agreement is excused during the time and to the extent that such performance is prevented by a circumstance or event beyond its reasonable control (**Force Majeure Event**), provided that the Party affected by the Force Majeure Event uses its best endeavours to perform as soon as possible its obligations under the Agreement (including by the use of reasonable workarounds and interim measures).
- 16.6 If a Force Majeure Event continues for more than 14 days, either Party may terminate the Agreement immediately by notice in writing to the other Party.

Assignment

- 16.7 A party cannot assign or otherwise transfer the benefit of this Agreement without the prior written consent of each of other party, which consent may be withheld by a party in its absolute discretion.

Inconsistency

- 16.8 If any clause in this Agreement is inconsistent with any Service Schedule or Statement of Work then the Service Schedule or Statement of Work, as applicable, will supersede this Agreement.

Governing Law

- 16.9 This Agreement is governed by and is to be construed and take effect in accordance with, the laws of Victoria.

Severability

- 16.10 Evologic and the Client consider the covenants, obligations and restrictions contained within this Agreement to be reasonable in all the circumstances of the Agreement.
- 16.11 Unenforceability of a provision of this Agreement does not affect the enforceability of any other provision.
- 16.12 If any provision is void, voidable or unenforceable, it is taken to be severed from the Agreement.

Non merger

- 16.13 All obligations of the Parties which expressly or by their nature survive the expiration or termination of the Agreement will continue in full force and effect notwithstanding such expiration or termination.

Non solicitation

- 16.14 The Parties must not solicit or attempt directly or indirectly to solicit any of the other Parties' employees, either directly as an employee, as a contractor or as a subcontractor for employment or separate engagement as a contractor during the term of the Agreement and for 6 months after the date of expiration of the Agreement.

Dedicated Onsite Technical Resource

- 16.15 Where dedicated onsite resource/s are provided, Evologic agrees to provide the Client the opportunity to participate in the interview process where recruitment is involved or meet with and approve the resource being allocated.

Variation

- 16.16 This Agreement may not be changed or modified in any way except in writing signed by or on behalf of all the Parties.

Counterparts

- 16.17 This Agreement may consist of a number of counterparts and, if so, the counterparts taken together constitute one agreement.

17 Definitions

All terms used in this Agreement have the following meaning:

Affiliate means any entity that controls, is controlled by or is under common control in relation to another Party.

Agreed Hourly Rate has the same meaning given to it in the Statement of Work.

Agreement means these general terms and conditions and the Statement of Work.

Business Day means a day on which banks are open for general banking business in Victoria

Business Hours means 8.30am to 5.30pm Monday to Friday excluding Victorian public holidays, except for LI helpdesk support with hours from 7am to 7pm Monday to Friday excluding Victorian public holidays.

Claim means any and all actions, claims, proceedings, demands, liabilities, losses, damages, expenses, and costs (including legal costs on a full indemnity basis)

Client means the client as defined in the Statement of Work including its successors and permitted assigns.

Client Data means any information, data, materials, works, expressions, or other content provided to Evologic.

Confidential Information means this Agreement, all data bases, source codes, methodologies, manuals, artwork, advertising manuals, trade secrets and all financial, accounting, marketing and technical information, customer and supplier lists, know-how, technology, operating procedures, and other information, used by or relating to the Client or Evologic or the business of the Client or Evologic and its transactions and affairs.

Device means a Workstation, Notebook or other electronic device enrolled in the Evologic Remote Monitoring and Management System.

Emergency means anything that is considered to be of an extreme or catastrophic nature touching or impinging upon human life, property (including intellectual property), goods, anything material or intangible deemed necessary to give effect to the Agreement.

Event of default means the events described in clause 14.2.

Evologic means the Evologic Pty Ltd including its successors and permitted assigns.

Evologic Service Catalogue and Price List means the price list available at Evologic's website or as distributed by Evologic from time to time.

Excluded Services means the services described in section 4.

Fee means the price for the Services as agreed in writing between Evologic and the Client in accordance with any Statement of Work or this Agreement as applicable.

GST means the tax imposed by the A New Tax System (Goods and Services Tax) Act 1999 (Cth).

Insolvency Event means any one or more of the following events or circumstances:

- (a) a winding up, dissolution, liquidation, provisional liquidation, administration, or bankruptcy, or having a controller or analogous person appointed to a Party or any of its property;
- (b) being unable to pay any of its debts as and when due and payable or being deemed to be insolvent under any provision of the *Corporations Act 2001 (Cth)* or any other law; or
- (c) entering into a compromise, moratorium, assignment, composition, or arrangement with, or for the benefit of, any of its members or creditors.

Intellectual Property means any goods, documents, designs, drawings, or materials supplied, drawn, developed, created, or deposited incidentally (and includes a new concept, product or process which is capable of being patented) by Evologic in the course of Evologic conducting, or supplying to the Client, the Services.

Malicious Code means computer instructions or software code whose purpose is to disrupt, damage or interfere with the Services or any Party's computer or communications systems, networks, facilities, or equipment, or to provide unauthorised access to such systems, networks, facilities, or equipment. Examples of Malicious Code include, without limitation, any code containing viruses, Trojan horses, worms, traps, spyware, back doors, disabling devices or similar destructive code or code that self-replicates.

Order Form means any written order submitted by the Client to Evologic and accepted by Evologic in accordance with this Agreement.

Party or Parties means Evologic and the Client.

Personnel means any employee, sub-contractor or agent engaged by Evologic.

PPSA means the Personal Property Securities Act 2009 (Cth).

PPSR means the Personal Property Securities Register.

Premises means the Client's business premises, for delivery of the Services, from time to time.

Product includes but is not limited to any parts, equipment, software, or hardware.

Seats means a supported entity, reconciled either per User or Device.

Start Date has the meaning given to it in the Statement of Work.

Statement of Work means a statement of work executed in writing between the Parties from time to time.

Service and **Services** means the service or services provided by Evologic to the Client and described in clause 2.3.

Tax Invoice is an invoice:

- (a) by Evologic that complies with the requirements of the *A New Tax System (Goods and Services Tax) Act 1999 (Cth)*; and/or
- (b) of a third-party provider incurred by Evologic in connection with the Services.

Term has the same meaning given to it in the Statement of Work.

User means anyone, including Client Affiliates, who uses or accesses any Service purchased by the Client under this Agreement, except that "**User**" shall not include any unauthorised party who accesses any Service without the knowledge of the Client and after the Client has taken all commercially reasonable safeguards to prevent such unauthorised access. For billing purposes, user means an Enabled Active Directory User Account.