EVALUAGENT Terms & Conditions

These terms and conditions constitute a written contact ("Agreement") between You and SocialRel8 Limited trading as EvaluAgent ("Supplier").

By using the Service, it will be deemed that You have accepted the terms and conditions and as such, You have entered into an Agreement with the Supplier.

If You use the Services for the benefit of a company, organisation or another legal entity ("Client"), You are accepting these terms and conditions on behalf of the Client and You represent to the Supplier that you have the authority to bind the Client to the Agreement.

This Agreement governs the use of the Services by You and any Users irrespective of whether that use is by virtue of a paid subscription plan or a free plan.

It is agreed that

1.   Interpretation

   1.1   The definitions and rules of interpretation in this clause apply to the Agreement.

Adequate Jurisdiction	A jurisdiction outside the European Economic Area that has been determined to have in place adequate data protection laws, pursuant to a valid decision notice issued by the European Commission;
Client Data	the data inputted by the Client or Users, including Personal Data;
Data Protection Laws	the Data Protection Act 1998, the EU Data Protection Directive 95/46/EC (and all applicable Laws which replace the above, including the GDPR), the Regulation of Investigatory Powers Act 2000, the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699), the Electronic Communications Data Protection Directive 2002/58/EC, the Privacy and Electronic Communications (EC Directive) Regulations 2003 (and all applicable laws which replace it, including the e–Privacy Regulation) and all applicable Laws and regulations relating to processing of personal data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner (or the data protection authority which replaces it);
Personal Data	Client Data (as defined under the definition of "Data Protection Laws") processed by the Supplier;
Regulator	the Financial Conduct Authority, the Prudential Regulation Authority, the Bank of England, the Information Commissioner Office and/or such other governmental, regulatory or self-regulatory bodies as the Supplier or the Client may be subject;
Services	the provision of, access to, and use of the Software on a subscription basis by the Supplier to the Client under this Agreement;
Software	The EvaluAgent web-based platform;

Standard Contractual Clauses	means the EU standard contractual clauses for Data Processors established in third countries pursuant to European Commission Decision (2010/87/EU) of 5 February 2010 under the EU Directive (95/46/EC);
User	Anyone who is provided with a username and password to access the Software.

2. Obligations

2.1. Subject to the terms and conditions of this Agreement, the Supplier shall provide a limited, non-exclusive, non-transferable right to use (and permit Users to use) the Services during the continuance of this Agreement.

2.2 The Supplier undertakes that the Services will be performed with reasonable skill and care.

2.3 The Supplier shall not be liable for the Client's inability to access or use the Services or the Software (in whole or in part) caused by use of the Services or the Software contrary to the Supplier's instructions.

2.4 The Supplier does not warrant that the Client's use of the Services will be uninterrupted or error-free.

2.5 The Client shall ensure that the Users use the Services in accordance with this Agreement and shall be responsible for any User's breach of this Agreement;

2.6 The Client shall ensure that its network, systems and other equipment comply with the relevant specifications provided by the Supplier from time to time; and,

2.7 The Client shall be solely responsible for procuring and maintaining its network connection to the internet and ensuring that the Services are accessed via supported browser software; (a) Internet Explorer (IE) 11; or, (b) the latest stable version of Edge; Chrome; or Firefox. In line with Microsoft's support policy (www.microsoft.com/en-us/WindowsForBusiness/End-of-IE-support) EvaluAgent no longer supports IE10 or earlier versions of Internet Explorer.

2.8 The Client shall not:

2.8.1. attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software in any form or media or by any means; or

2.8.2. attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

2.8.3. access or use all or any part of the Services or the Software in order to build a product or service which competes with the Services or the Software; or

2.8.4. license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make the Services available to any third party except the Users; or

2.8.5. upload to the Software, any files, call-recordings, or screen recordings that contain payment card details. In the event that this sub-clause 2.8.5 is breached by the Client, the Client will indemnify the Supplier fully and effectually from and against any breach, non-observance, or non-compliance with this sub-clause and all actions, costs, claims and demands in respect of;

2.9. The Client shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the

Services and, in the event of any such unauthorised access or use, promptly notify the Supplier.

3. Data Protection

3.1 The Client shall own all rights, title and interest in and to all Client Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Client Data.

3.2 The General Data Protection Regulation (EU) 2016/679 ("GDPR") introduces enhanced obligations that apply to the processing of Personal Data by the Client and the Supplier, including the requirement that specific provisions be included within a written contract between them. The purpose of this clause is to ensure that the processing of Personal Data is compliant with the GDPR.

3.3 For the purposes of providing the Services, the Client authorises the Supplier to process the Personal Data on its behalf and the parties agree that the Client is the data controller and the Supplier shall be the data processor in relation to the Personal Data. Furthermore, the Supplier shall at all times, process Personal Data in accordance with its obligations under the Data Protection Laws and:

3.3.1 process Personal Data only to the extent necessary to provide the Services and only in accordance with documented instructions from the Client (including with regard to transfers to a third country or an international organisation). This section shall apply unless the Supplier is required to process Personal Data otherwise than as instructed, in accordance with European Union or Member State law to which the Supplier is subject; in such a case, the Supplier shall inform the Client of that legal requirement before processing, unless that law also prohibits such information on important grounds of public interest;

3.3.2 immediately inform the Client if, in its reasonable opinion, an instruction received in connection with this clause 3.3 infringes any Data Protection Laws;

3.3.3 ensure that persons authorised to process the Personal Data access such Personal Data strictly on a need to know basis as necessary to perform their roles in the provision of the Services, have received training in relation to their obligations regarding the handling of Personal Data, pursuant to this Agreement and the Data Protection Laws, and have either committed themselves to confidentiality obligations no less stringent than the confidentiality obligations imposed on the Processor under the Agreement or are under an appropriate statutory obligation of confidentiality;

3.3.4 subject to clauses 3.3.5 and 3.3.6, not use subcontractors or any other third party to process Personal Data ("Sub-processors") unless it has obtained the prior, written consent from the Client to do so and provided at all times that in the case of all Sub-processors, the Supplier has entered into a written contract with them, which imposes the same obligations on the Sub-processor as are imposed on the Supplier by the Client under this clause 3, prior to any processing of Personal Data by the Sub-processor, taking place;

3.3.5 subject to clauses 3.3.4 and 3.3.6, not process Personal Data (and shall ensure that no third-party processes Personal Data) outside of the European Economic Area ("EEA") without having first obtained the Client's prior written consent, which may be given at the discretion of the Client and only provided that either:

a) Standard Contractual Clauses have already been entered into between the relevant parties pursuant to the Agreement, which apply to the transfer of Personal Data; or

b) where Standard Contractual Clauses do not already apply to the transfer of Personal Data pursuant to the Agreement, Standard Contractual Clauses are entered into between the Client as 'data exporter' and the relevant recipient of the Personal Data as 'data importer', prior to such transfer taking place; or

c) the transfer is to a recipient located within an Adequate Jurisdiction (subject to any applicable restrictions); or

d) such other valid and adequate transfer mechanisms as approved by the European Commission, have been or will be put in place, as agreed between the Client and the Supplier, prior to the transfer taking place, and

in the event that any of the above transfer mechanisms should be held to be invalid by the European Commission or applicable Regulator, the Supplier shall (at the discretion of the Client), either put in place, within the transition period prescribed by the relevant Regulator, such alternative valid adequate transfer mechanisms as approved by the Client or if unable to do so, cease the transfer of affected Personal Data at the end of the aforementioned transition period;

3.3.6 where permitted to use Sub-processors and/or (respectively) transfer Personal Data outside the EEA under the preceding clauses 3.3.4 and/or 3.3.5, the Supplier will maintain a record (as set out in clause 3.3.7) of the relevant Sub-processors and/or (respectively) countries and entities to which Personal data has been transferred and it shall remain fully liable for any act(s) and/or omission(s) of any Sub-processors engaged pursuant to this Agreement that constitute breach of the data protection requirements imposed on the Supplier under this Agreement as if these acts and/or omissions were the Supplier's own acts and/or omissions;

3.3.7 implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk presented by processing the Personal Data, specifically from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to Personal Data transmitted, stored or otherwise processed in accordance with the Data Protection Laws, and, as appropriate:

a) the pseudonymisation and encryption of Personal Data;

b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;

c) the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident; and

d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of processing;

3.3.8 notify the Client without undue delay (and in any event, not later than 8 hours) after becoming aware of a reasonably suspected, "near miss" or actual breach of security leading to accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise processed by the Supplier (or any Sub-processor) under this Agreement (a "Data Security Incident"), including the nature of the Data Security Incident, the categories and approximate number of data subjects and Personal Data records concerned and any measure proposed to be taken to address the Data Security Incident and to mitigate its possible adverse effects, and where, and in so far as, it is not possible to provide all the relevant information at the same time, the information may be provided in phases without undue further delay, but the Supplier (and Sub-processor, as applicable) may not delay notification under this clause 3.3.8 on the basis that an investigation is incomplete or ongoing;

3.3.9 will not, and will procure that Sub-processors will not, make or permit any announcement, public disclosure or regulator notification in respect of the Data Security Incident to any person without the Client's prior written consent, which may be given, withheld or made subject to conditions at the Client's sole discretion;

3.3.10 provide, upon request from the Client or a supervisory authority, all reasonable cooperation and assistance to the Client in order to facilitate the Client in complying with its obligations

under Data Protection Laws and/or for the purposes of cooperating and/or liaising with the supervisory authorities;

3.3.11   provide reasonable assistance to the Client in:

a)   responding to requests for exercising data subjects' rights under the Data Protection Laws, including by notifying the Client without delay of any such request the Supplier may receive from a data subject in respect of the processing of their Personal Data;

b)   responding to communications received from regulators or supervisory authorities (including the Information Commissioner's Office) in respect of the processing of Personal Data under this Agreement, including by notifying the Client without delay of any such communication the Supplier may receive from a Regulator, unless the Supplier is prohibited from notifying the Client pursuant to applicable laws;

c)   documenting any Data Security Incidents and reporting any Data Security Incidents to any Regulator or supervisory authority and/or data subjects;

d)   taking measures to address Data Security Incidents, including, where appropriate, measures to mitigate their possible adverse effects;

e)   conducting data privacy impact assessments of any new processing operations in relation to the Personal Data, and consulting with any applicable regulator or supervisory authority or appropriate persons, accordingly; and

f)   promptly upon request of the Client, transferring Personal Data to a third party in compliance with a request from a data subject to exercise their right to data portability; and

3.4   Subject to clause 3.5, following termination of this Agreement, delete all Client Data held by the Supplier (or Sub-Processor) within 30 days of Agreement termination.

3.5   Where the Supplier (or Sub-Processor) is required to retain Personal Data in order to comply with applicable laws, the Supplier must notify the Client and shall retain such Personal Data only in its capacity as a data controller and shall comply with its obligations as a data controller pursuant to the Data Protection Laws.

4.   Proprietary Rights

4.1   The Client acknowledges and agrees that the Supplier and/or its licensors own all intellectual property rights in the Services and the Software. Except as expressly stated herein, this Agreement does not grant the Client any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services, the Software or any modifications.

5.   Confidentiality

5.1   Each party may be given access to confidential information from the other party in order to perform its obligations under this Agreement. A party's confidential information shall not be deemed to include information that:

5.1.1   is or becomes publicly known other than through any act or omission of the receiving party;

5.1.2   was in the other party's lawful possession before the disclosure;

5.1.3   is lawfully disclosed to the receiving party by a third party without restriction on disclosure;

5.1.4   is independently developed by the receiving party, which independent development can be shown by written evidence; or

5.1.5   is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

5.2   Each party shall hold the other's confidential information in confidence and, unless required by law, not make the other's confidential information available to any third party, or use the other's confidential information for any purpose other than the implementation of this Agreement.

5.3   Each party shall take all reasonable steps to ensure that the other's confidential information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Agreement.

5.4   Neither party shall be responsible for any loss, destruction, alteration or disclosure of confidential information caused by any third party.

5.5   The Supplier acknowledges that the Client Data is the confidential information of the Client.

5.6   This clause 5 shall survive termination of this Agreement, however arising, for two years following termination.

6.   Indemnities & Limitation of Liability

6.1   The Client shall defend, indemnify and hold harmless the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with the Client's use of the Services.

6.2   The Supplier does not accept any liability for any loss or damage of any nature, including but not limited to loss of profits, goodwill, or any other type of financial or other pecuniary or direct or special indirect or consequential loss howsoever arising whether in negligence or for breach of contract or other duty as a result of using the Services.

7.   Communication

7.1   Email communications may be sent from the Supplier to the Client in connection with the Services.

8.   Support

8.1   Customers will receive proactive notification of system availability, production issues, scheduled downtime and pending updates through timely notifications posted at: https://support.evaluagent.com/hc/en-us/community/topics

8.2   Manned support hours are: 9am to 5:30pm GMT / BST, any day which is not a Saturday, Sunday or a public holiday in the UK;

8.3   Support requests outside of these hours will be dealt with on a best endeavours basis.

8.4   Support can be accessed at: https://support.evaluagent.com/hc/en-us

9. Term & Termination

9.1 At its sole discretion, and without prejudice to any other rights or remedies to which the parties may be entitled, the Supplier reserves the right to deny a potential Client's access to the Services provided.

9.2 Without prejudice to any other rights or remedies to which the parties may be entitled, the Client may terminate this Agreement without notice at any time by emailing support@evaluagent.com

9.1 Without prejudice to any other rights or remedies to which the parties may be entitled, the Supplier may terminate this Agreement at any time for any reason.

9.2 On termination of this Agreement for any reason:

9.2.1 all licences granted under this Agreement shall immediately terminate;

9.2.2 The Supplier will delete all Client Data;

9.2.3 the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

10. Entire Agreement

10.1 This Agreement constitutes the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.

10.2 Each of the parties acknowledges and agrees that in entering into this Agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this Agreement or not) relating to the subject matter of this Agreement, other than as expressly set out in this Agreement.

10.3 The Supplier may amend the terms of this Agreement from time to time, in which case any changes will supersede prior versions.

10.4 The Supplier will notify the Client not less than ten (10) days prior to the effective date of any such amendment and the Client's continued use of the Services following the effective date of any such amendment may be relied upon by the Supplier as the Client's consent to any such amendment.

10.5 The Supplier's failure to enforce at any time any provision of this Agreement does not constitute a waiver of that provision or of any other provision of the Agreement.

11. Assignment

11.1 The Client shall not, without the prior written consent of the Supplier, license, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement.

11.2 The Supplier may not at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this Agreement without notifying the Client in advance.

12. Governing Law & Jurisdiction

12.1 This Agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

12.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).