

These General Conditions of Contract (together with our [Privacy Policy and the Website Use Policy](#)) provide you with information about us and the legal terms and conditions on which we sell and deliver any of the HR Pulse service plans listed on your order.

NOTICE FROM OUR INSURANCE BROKERS: THE CLIENT IS ADVISED TO SATISFY ITSELF AS TO THE ADEQUACY OF ITS OWN INSURANCE COVER IN ANY AREAS IN WHICH LIABILITY AND FAULT ARE NOT CLEARLY ACCEPTED BY EVERGREEN HR LIMITED BEFORE PROCEEDING TO OFFER TO PURCHASE ANY OF THE SERVICES. PLEASE NOTE, BY THESE GENERAL CONDITIONS, EVERGREEN HR LIMITED AND ITS SERVANTS OR AGENTS, HAVE LIMITED LIABILITY AS SET OUT IN CLAUSE 23 FOR CERTAIN LOSSES AND DAMAGE.

If you are entering into the Contract as herein defined on behalf of a company or other legal entity, you represent that you have the authority to bind such entity to these terms and conditions, in which case the terms "client", "its" "you" or "your" shall refer to such entity. If you do not have such authority, you must not use the service and if you currently use the service please contact Evergreen HR Limited to terminate your contract.

The General Conditions will apply to any contract or agreement between us for the sale of Services to you (**Contract**). Please make sure that you understand these Conditions before ordering any Services.

INFORMATION ABOUT EVERGREEN HR

Evergreen HR operate the websites www.hrpulse.co.uk and www.evergreenhr.co.uk. Evergreen HR Limited ("Evergreen HR"; "we"; "us"; "our") is incorporated and registered in England with company number 09731260, and whose registered office and trading address is Gibson House, Hurricane Court, Hurricane Close, Stafford, ST16 1GZ.

1) **DEFINITIONS**

Business Day – a day (other than a Saturday, Sunday or public holiday) when banks in London are open for business.

Charges – means the fees and charges payable to Evergreen HR by the Client in accordance with these Conditions.

Client – means the organisation or person or employed staff, agents, or subcontractors thereof who has placed an order to purchase the Services.

Client Data – means any data (including Personal Data), information, or other materials of any nature whatsoever, provided to Evergreen HR or loaded onto the Server by the Client in the course of implementing and/or using the Services.

Confidential Information - means confidential commercial, financial, marketing, technical, electronic or other information of whatever nature, including, know-how and trade secrets and all other information in any form or medium whether disclosed orally, in writing, in the form of machine readable code or embodied in hardware or any other physical medium, which is disclosed before or after the date of Service which is produced from such information, provided that the Confidential Information is not in or has not entered the public domain and is not generally available to the public.

Contract – means the contract entered into between you and Evergreen HR for the delivery of the Service you ordered in accordance with clause 2.

Data Instruction - means a written instruction setting out the types of personal data which may be processed by Evergreen HR in the performance of the Services, the subject matter of the processing, and the duration of the processing, which has been agreed by the parties in accordance with clause 2.

Data Protection Legislation - means (i) the retained EU law version of the General Data Protection Regulations (2016/679) (ii) the Data Protection Act 2018 (iii) any laws which implement any such laws; and (iv) any successor legislation to the GDPR.

Decision-Making Tools – means the interactive people management processes available through HR Pulse.

Downtime - means any Service interruption in the availability to the Client of the Hosted Website.

General Conditions – these terms and conditions as amended from time to time.

Hosted Service – means any Service provided to the Client that resides on Servers and equipment that is solely and exclusively controlled by Evergreen HR or its agents including the HR Pulse Service.

Hosted Website – means the website through which the Client will access the Services that is solely and exclusively controlled by Evergreen HR or its agents.

HR Documents - means the templates and guidance notes relating to employment and human resources law and best practice which are accessible to the Client via the Service.

HR Telephone Support (for Professional Plus clients only) – means telephone guidance provided relating to employment law and human resources law and best practice which are accessible to the Client via the Service.

HR Pulse – the cloud based human resource management application operated by Evergreen HR through which the Services are provided.

HR Pulse Service Plan(s) – means the service subscription Plan(s) offered by Evergreen HR including the Trial, Professional and Professional Plus Plans and available for download or on-line use by the Client as described on the Website.

HR Pulse System – means the Hosted Website, HR Pulse, the Licensed Software, the Server operated by third party host providers engaged by Evergreen HR and/or the Services; for the avoidance of doubt the HR Pulse System strictly excludes any Third-Party Applications.

HR Pulse Service Plan Specification – means the description and specification of the Service as set out in the Order Confirmation. The description and specification will differ dependent upon which HR Pulse Service Plan you choose: Professional or Professional Plus.

Integration Connection – means any link, connection, data pipeline, or interaction bridge established between the HR Pulse System and a Third-Party Application.

Intellectual Property Rights – means intellectual property rights including but not limited to patents, trademarks, design rights, rights to inventions, domain names, right in get-up, goodwill, applications for any of the foregoing, copyright, topography rights, database rights, rights in know-how, trade or business names and other similar rights, protections or obligations, whether registered or not in any part of the world now or in the future.

ISP – means internet service provider.

Licensed Software – means any program or application (including all updates, upgrades, releases and versions thereof) described in the Order Confirmation and licensed to the Client by Evergreen HR under the Contract

Order – means the Client's order for the Service identified by the Order No.

Order No. – means the number allocated by Evergreen HR to the Client's Order.

Personal Data Breach – means a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed.

Self-Hosted Service – means any Service provided to the Client that resides on servers and equipment that is within the primary control of the Client .

Server - means the computer server equipment operated either by (i) third party host providers engaged by Evergreen HR in connection with the provision of the Services; or (ii) the Client.

Service(s) – means the applicable HR Pulse Service Plan(s) ordered by the Client and provided by Evergreen HR under the Contract as set out in the Order Confirmation.

Sub-processor(s) – means the sub-processors identified in Schedule 1 appointed by Evergreen HR to process the Client Data for the purposes of providing the Services and such replacement sub-processors from time to time under the Contract in accordance with these General Conditions.

Term – means the fixed term period of the Service under the Contract as set out in the Order Confirmation which may be extended in accordance with clause 26.

Third-Party Application – means any software, platform, system, software-as-a-service (SaaS), or database operated by an independent entity external to Evergreen HR (including but not limited to payroll providers, accounting software, and time-tracking systems) which connects to, imports data from, or exports data to the HR Pulse System via an Application Programming Interface (API), data sync, or manual file upload.

Trial Subscription – means a trial of the applicable HR Pulse Service Plan in accordance with clause 3.

Virus - means anything or device (including any software, code, file or program) which may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by rearranging, altering or erasing the program or data in whole or part or otherwise); or (iii) adversely affect the user experience or security, including but not limited to worms, Trojan horses, viruses and other similar things or devices.

Website - means www.hrpulse.co.uk or any other on-line address that Evergreen HR may advise the Client of from time to time.

Words denoting the singular shall include the plural and vice versa and words denoting any gender shall include all genders.

The headings of the paragraphs of these General Conditions are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of the Contract.

2) HOW THE CONTRACT IS FORMED BETWEEN YOU AND EVERGREEN HR

a. Instructions at www.hrpulse.co.uk will guide you through the steps you need to take to place an order with us. This may be by sending us a message via the Website or by email.

b. After you place the Order, you will receive an e-mail from us acknowledging that we have received the Order. However, please note that this does not mean that the Order has been accepted. Our acceptance of the Order will take place as described in Clause 2 d.

c. We may allocate an Order No. to the Order and if we do so we shall kindly remind you to please use this on all correspondence in relation to the Order.

d. We will confirm our acceptance to you by sending you an e-mail that confirms that the Order has been accepted by us (Order Confirmation). The Contract for the delivery of the Services as set out in the Order Confirmation will only be formed when we send you the Order Confirmation.

e. If we are unable to supply you with the Order, for example because the Service is no longer available or because of an error in the price on our Website, we will inform you of this by e-mail and we will not process the Order. In such circumstances if you have already paid for the Order, we will refund you the full amount as soon as possible.

f. the Order Confirmation confirms in consideration of the Charges payable under the Contract Evergreen HR shall provide you with the Services set out in your selected HR Pulse Service Plan and detailed in the Order Confirmation.

3) TRIAL SUBSCRIPTION

a. You may select to trial our HR Pulse Service and we will permit you limited access in accordance with our Trial Subscription as set out in the Order Confirmation.

b. Any trial of any of the applicable HR Pulse Service Plan shall expire 14 days from the date of the Order Confirmation;

c. Unless within the 14 day trial period the Client upgrades to one of the HR Pulse Plans all Client Data shall be removed from the Service and will be unavailable to the Client upon termination of the applicable Trial Subscription. Upon upgrading the Client Data entered during the Trial Subscription shall continue to be available under the selected HR Pulse Service Plan upgrade and the Conditions including the Data Protection Legislation, shall continue to govern the Contract.

4) ALTERATIONS TO YOUR CONFIRMED ORDER

a. If either party wishes to change the scope of the Services as set out in the Order Confirmation, it shall submit details of the requested change to the other by email.

b. The parties may at any time mutually agree to amend the specification of any Services under the Contract. Any agreed amendment shall be confirmed in writing by Evergreen HR.

c. Any alterations in the scope of Services to be provided shall be set out in the revised Order, which shall reflect the changed Services and Charges and any other terms agreed between the parties.

d. The Client may at any time request alterations to the Service by notice in writing to Evergreen HR. On receipt of the request for alterations Evergreen HR shall within a reasonable time advise the Client by email of:

- i) the effect of such alterations, if any, on the Charges;
- ii) the likely time required to implement such change; and
- iii) the likely impact on other terms already agreed between the parties.

e. Where Evergreen HR gives written notice to the Client agreeing to perform any alterations in accordance with clause 4 (d) on terms and conditions different to those already set out in the Contract, the Client shall, within 5 working days of receipt of such notice or such other period as may be agreed between the parties, advise Evergreen HR by email whether or not it wishes the alteration to the Service

to commence. If Evergreen HR do not receive a response within such notice period, the Client is deemed to have rejected any alteration to Service and the Service will continue as unaltered.

5) MODIFICATION TO OR DISCONTINUATION OF THE SERVICE BY EVERGREEN HR

- a. Evergreen HR reserves the right at any time and from time to time to modify, temporarily or permanently, the Services (or any part thereof).
- b. In the event that Evergreen HR modifies the Service in a manner which removes or disables a feature or functionality on which Client materially relies, Evergreen HR, at the Client's request, shall use commercially reasonable efforts to substantially restore such functionality.
- c. In the event that Evergreen HR is unable to substantially restore such functionality, within thirty (30) days the Client shall have the right to terminate the Contract and receive a pro-rata refund of the license or Service fees paid under the Contract for use of the Service which was paid for by the Client but not yet furnished by Evergreen HR as of the date of such termination.
- d. The Client acknowledges that Evergreen HR reserves the right to discontinue offering the Service at the conclusion of the Client's then current term. The Client agrees that Evergreen HR shall not be liable to the Client or to any third party for any modification of the Service as described in the Contract subject to the provision of 90 days' prior written notice.

6) CANCELLATION BY THE CLIENT

- a. Without prejudice to any other rights to which Evergreen HR may be entitled:
 - i) in the event that the Client terminates or cancels the Services agreed to in the Order Confirmation, the Client shall be required to pay to Evergreen HR as agreed costs (and not as a penalty) the full amount of any third party costs to which Evergreen HR has committed; and
 - ii) in the event of a cancellation on less than 5 Business Days' written notice the Client shall be required to pay to Evergreen HR as agreed costs (and not as a penalty) the full amount of the Services contracted for as set out in the Order Confirmation

and in each case the Client agrees this is a genuine pre-estimate of Evergreen HR's losses in such a case.

- b. For the avoidance of doubt, the Client's failure to comply with any obligations under this clause 6) shall be deemed to be a cancellation of the Services and subject to the payment of the costs set out in this clause 6).

7) STORAGE LIMITS.

- a. Evergreen HR currently does not limit the amount of storage available to Clients for HR documentation, providing the Client operates within the boundaries of our Fair Usage Policy, which is set out in the Website Use Policy.
- b. Evergreen HR shall reserve the right to review the storage usage of each client and to inspect the amount and types of content uploaded by each client to ensure conformance with our Fair Usage Policy.
- c. Evergreen HR shall routinely monitor Clients aggregate storage usage and shall baseline client storage usage against services costs. Clients operating outside of this baseline may be approached to review their storage usage.

- d. In the event, in Evergreen HR's opinion a Client is uploading content outside of the defined Fair Usage Policy, including our Acceptable Usage Policy and/or outside of the storage baseline, we reserve the right to:
 - i) Increase your hosting charges to cover increased storage costs.
 - ii) Switch you to a more appropriate package or plan.
 - iii) Restrict your ability to upload further content or implement a storage quota.

8) HOSTING SERVICE LEVELS

- a. Where Evergreen HR hosts the Services it shall use its reasonable endeavours to make the Services available to the Client on a 24 hour basis, 365 days per year.
- b. Due to the nature of the Services being provided by means of computer and telecommunications systems, Evergreen HR makes no guarantees, warranties or representations that the Services will be uninterrupted or error-free.
- c. Evergreen HR shall not, in any event, be liable to the Client for interruptions of Service or Downtime of the Server.
- d. Evergreen HR provides Integration Connections on an "as-is" and "as-available" basis. Evergreen HR makes no guarantees, representations, or warranties that access to any Third-Party Application will be uninterrupted, error-free, or secure. Any downtime, service latency, or complete unavailability resulting from API rate-limiting, system updates, protocol alterations, or service outages originating within a Third-Party Application shall be explicitly excluded from Evergreen HR's service availability calculations and shall not constitute a breach of this Contract. Evergreen HR reserves the right to modify, suspend, or terminate any native Integration Connection at any time without liability if the external provider alters or restricts API access.

9) EVERGREEN HR SERVER HARDWARE

In the event of a failure of a Server (other than one controlled or operated by the Client) Evergreen HR shall use reasonable endeavours to respond within 12 hours during working days and re-connect to an alternative server within 18 hours. This may not be possible in circumstances outside of Evergreen HR's control in particular the accessibility of third-party servers. Clients must satisfy themselves as to the suitability of the response times as applicable to their own organisation, business continuity and contractual or legal obligations and make whatever arrangements they feel may be necessary.

10) SUPPORT SERVICE LEVELS AND RESPONSE TIME

Evergreen HR shall use reasonable endeavours to rectify any problems and provide support for your usage of the HR Pulse System. In the first instance users should consult the Help section of HR Pulse. If this does not resolve the query then this can be resolved via your HR Pulse contact.

Please note that your HR Pulse contact will be available between 9am and 5pm, Monday to Friday, UK time.

11) ALTERATIONS AND UPDATES

Any alterations and updates to the Licensed Software shall be made only by the Evergreen HR support team.

12) WEBSITE USE POLICY

- a. Both Evergreen HR's HR Pulse and Services related to HR Pulse are shared resources amongst Evergreen HR's client base. As a result unreasonable and/or excessive usage by one Client

may adversely affect another client's use. Evergreen HR therefore operates the following acceptable and Fair Usage Policy and reserves the right to increase its Charges related to the Client's use: -

- i) The Website and use of the Services may be used for lawful purposes only and the Client may not submit, publish or display any content that breaches any law, statute or regulation. In particular the Client agrees not to use the Services or the Website in any way to send unsolicited commercial email or "spam", or any similar abuse of the Services, send email or any type of electronic message with the intention or result of affecting the performance of any computer facilities, publish, post, distribute or disseminate defamatory, obscene, indecent or other unlawful material or information, or any material or information which infringes any Intellectual Property Rights, via the Services or on the Website, threaten, abuse, disrupt or otherwise violate the rights (including rights of privacy and publicity) of others, engage in illegal or unlawful activities through the Services or via the Website, make available or upload files to the Website or to the Services that the Client knows contain a Virus, worm, trojan or corrupt data, or obtain or attempt to obtain access, through whatever means, to areas of HR Pulse System or the Services which are identified as restricted or confidential.
- ii) The Client has full responsibility for the content of the data stored on the Website or as part of the Service. For the avoidance of doubt, Evergreen HR is not obliged to monitor, and will have no liability whatsoever for, the content of any communications transmitted by the Client by virtue of the Services.
- iii) *Excessive Use* - excessive use will be use that adversely affects the HR Pulse System or other Evergreen HR clients' use of or access to the Evergreen HR Service or the HR Pulse System.
- iv) *Unreasonable Use* It is unreasonable use of the Services where the Client's use of the HR Pulse System is reasonably considered by Evergreen HR to be fraudulent or to adversely affect the HR Pulse System or other Evergreen HR clients' use of or access to an Evergreen HR service or the HR Pulse System.
- v) *Fraudulent Use* - This includes but is not limited to resupplying one or more of the Services without Evergreen HR's consent so that third party may access or use the Services or the HR Pulse System.

b. Where the Client is in the reasonable opinion of Evergreen HR in breach of this Website Use Policy, Evergreen HR may contact the Client to discuss changing the Client's usage so that it conforms to this Website Use Policy.

c. If, after Evergreen HR has contacted the Client, and the Client's excessive or unreasonable use continues, Evergreen HR may, without further notice to the Client:

- i) Suspend or limit the Services (or any feature of it) for any period Evergreen HR thinks is reasonably necessary; and/or
- ii) Increase its Charges; or
- iii) Terminate the Contract.

Please refer to the Website Use Policy for further details which can be found at the Website Use Policy.

13) STANDARD CHARGES AND PAYMENT TERMS

a. Services shall be charged by Evergreen HR on the following basis:

- i) All fees and charges are charged and payable at the standard rate published by Evergreen HR from time to time as set out in the applicable Order Confirmation;
- ii) all HR Pulse Service Plans are payable in advance with the Order;
- iii) all travel and other expenses and mileage charges, where appropriate, incurred by Evergreen HR are billed monthly in arrears;
- iv) all charges are payable without any deductions or withholding of any kind;
- v) any other charges are payable in full and in cleared funds within 30 days of receipt of invoice unless otherwise agreed by Evergreen HR;
- vi) Evergreen HR reserves the right to increase charges;
- vii) The Client hereby agrees to pay the Charges specified above and in the manner set out in these General Conditions;
- viii) All charges are excluding VAT unless advised otherwise;
- ix) Where a monthly Charge applies an initial purchase invoice will be issued and will be payable prior to the Service being activated. The Charges for Services thereafter will be invoiced monthly and payment will be due within 7 days of the date of such invoice; and
- x) Evergreen HR may increase the Charges during the Initial Term and/or Extended Term where reasonably necessary to reflect changes in the cost of providing the Services, changes to the Services or functionality provided, increases in third-party or technology costs, or other significant changes affecting the provision of the Services. Evergreen HR shall give the Client not less than 30 days' prior written notice of any such increase, setting out the revised Charges and the date on which they will take effect.

b. Without prejudice to any other right or remedy that Evergreen HR may have, if the Client fails to pay Evergreen HR on the due date Evergreen HR may:

- i) charge interest on such sum from the due date for payment at the annual rate of 3% above the base lending rate from time to time of Barclays Bank plc accruing on a daily basis and being compounded quarterly until payment is made, whether before or after any judgment; and
- ii) suspend all or any part of the Services with immediate effect where accounts are overdue. This may include, but not necessarily limited to, denial of access to on-line systems, suspension of active monitoring or complete service and support suspension until payment has been made in full.

c. Time for payment shall be of the essence.

d. All payments payable to Evergreen HR under the Contract shall become due immediately on termination of the Contract, despite any other provision. This condition is without prejudice to any right for Evergreen HR to claim for interest under the law, or any such right under the Contract.

e. Evergreen HR may, without prejudice to any other rights it may have, set off any liability of the Client to Evergreen HR against any liability of Evergreen HR to the Client.

14) INTELLECTUAL PROPERTY RIGHTS

All Intellectual Property Rights forming part of the HR Pulse System shall remain the property of Evergreen HR and/or its licensors. No rights to the Intellectual Property Rights forming part of the HR

Pulse System shall be assigned or licensed to the Client and/or third-parties except as specified in this Agreement and/or in the Contract.

All Intellectual Property Rights produced from or arising as a result of the performance of the Contract by Evergreen HR shall, so far as not already vested, become the absolute property of Evergreen HR, and the Client shall do all that is necessary to ensure that such rights vest in Evergreen HR by the execution of appropriate instruments or the making of agreements with the Client and/or any applicable third parties. This does not apply to the Client Data.

15) SOFTWARE SERVICE AND RIGHTS

a. Subject to payment of all Charges the Client may use the Licensed Software and HR Documents pursuant to the Contract and the licence provided herein. All rights to use, copy and/or distribute the Licensed Software and HR Documents shall cease upon termination or expiry of the Term.

b. The Client's use of the Licensed Software shall be restricted to use in object code form only for the purpose of processing the Client Data for the normal business purposes of the Client and, in accordance with these General Conditions (which shall not include allowing the use of any Licensed Software by, or for the benefit of, any person other than an employee of the Client and as applicable).

c. For the avoidance of doubt, any terms and conditions that apply do not transfer or grant to the Client any right, title, interest or Intellectual Property Rights in any Licensed Software.

d. The Client have no right (and shall not permit any third party) to copy, adapt, reverse engineer, decompile, disassemble, modify, adapt or make error corrections to the Licensed Software in whole or in part except to the extent that any reduction of the Licensed Software to human readable form (whether by reverse engineering, de-compilation or disassembly) is necessary for the purposes of integrating the operation of the Licensed Software with the operation of other software or systems used by the Client for the purpose of enabling the Client to use the Service, unless Evergreen HR is prepared to carry out such action at a reasonable commercial fee or has provided the information necessary to achieve such integration within a reasonable period, and the Client shall request Evergreen HR to carry out such action or to provide such information (and shall meet Evergreen HR's reasonable costs in providing that information) before undertaking any such reduction. Notwithstanding any provision to the contrary, the Client shall not attempt to integrate, scrape, or connect external systems to the Licensed Software or the HR Pulse System except through authorised, native Integration Connections or official APIs explicitly provided by Evergreen HR. Any unauthorised data connection attempt constitutes a material breach under Clause 25.

e. The Client undertakes that it will not and shall not permit its employees, agents or affiliates to sell, lease, license or sublicense the Licensed Software or Services, whether through a third party or not, without prior written agreement from Evergreen HR. For the avoidance of doubt use of the Licensed Software or Services for the monitoring of a third party's employees or assignments without Evergreen HR's consent would be considered a material breach of Contract.

f. The Client shall indemnify and hold Evergreen HR harmless against any loss or damage which it may suffer or incur as a result of the Client's 's breach of this clause.

16) CLIENT'S OBLIGATIONS

a. To enable Evergreen HR to perform its obligations the Client shall:

- i) co-operate with Evergreen HR in all matters relating to the Services;
- ii) provide Evergreen HR in a timely manner with any information reasonably required by Evergreen HR and ensure such information is accurate;

- iii) obtain all necessary permissions and consents which may be required before the commencement of the Services;
- iv) provide in a timely manner such access to the Client's premises and data and other facilities as is reasonably requested by Evergreen HR;
- v) ensure (at its own cost) that it has a suitable and sufficient internet access and bandwidth as reasonably required by Evergreen HR;
- vi) comply with (at its own cost) such other requirements as may be set out in the Service Specification or otherwise agreed between the parties.

b. It is a fundamental condition of the Contract that in circumstances where the Client is using Self Hosted Services the Client's Servers are connected (in accordance with 16 a (v)) to the internet and have an uninterrupted connection to Evergreen HR's verification servers. Where such connection is not provided applications will cease to function as intended in accordance with the Contract.

c. The Client shall be liable to indemnify Evergreen HR for any expenses incurred by Evergreen HR as a result of the Client's failure to comply with this clause 16.

d. In the event that the Client and/or any third party, not being a sub-contractor of Evergreen HR, shall omit or commit anything which prevents or delays Evergreen HR from undertaking or complying with any of its obligations, then Evergreen HR shall notify the Client as soon as possible and the Client shall in all circumstances be liable to pay to Evergreen HR on demand all reasonable costs, charges or losses sustained or incurred by it (including, without limitation, any direct or indirect consequential losses, loss of profit and loss of reputation, loss or damage to property, injury to or death of any person and loss of opportunity to deploy resources elsewhere), subject to Evergreen HR confirming such costs, charges and losses to the Client in writing. Evergreen HR shall have no liability in respect of any delay to the completion of any project, and if applicable, the timetable for the project will be modified accordingly.

e. Where the Client accesses the Service from locations outside the United Kingdom, the Client does so on their own initiative and are responsible for compliance with local laws.

17) DATA PROCESSING CLAUSES

- a. Both parties will comply with all applicable requirements of the Data Protection Legislation. This clause 17 is in addition to, and does not relieve, remove or replace, a party's obligations under the Data Protection Legislation.
- b. The parties acknowledge that for the purposes of the Data Protection Legislation, the Client is the data controller and Evergreen HR is the data processor (where **Data Controller** and **Data Processor** have the meanings as defined in the Data Protection Legislation). Schedule 1 sets out the scope, nature and purpose of processing by Evergreen HR, the duration of the processing and the types of personal data (**Personal Data**) and categories of data subject (**Data Subject**) as defined in the Data Protection Legislation and the technical and organisational measures it has adopted.
- c. Without prejudice to the generality of clause 17a, the Client remains responsible for its compliance obligations under the applicable Data Protection Legislation and for the Data Instructions it gives to Evergreen HR and will ensure that it has all necessary appropriate consents and notices in place to enable lawful transfer of the Personal Data to and processing of such Personal Data by Evergreen HR for the duration and purposes of this Agreement.
- d. Without prejudice to the generality of clause 17a, Evergreen HR shall, in relation to any Personal Data processed in connection with the performance by Evergreen HR of its obligations under the Contract:
 - i) process that Personal Data to the extent, and in such a manner, as is necessary for the specific purpose of delivering the Services in accordance with the Data Instructions unless Evergreen HR is required by the laws of the UK applicable to Evergreen HR to process the Personal Data differently (**Applicable Laws**);

- ii) promptly comply with any Client request or instruction requiring Evergreen HR to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing provided the same is lawful.
 - iii) ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - iv) maintain the confidentiality of all Personal Data within Evergreen HR and the Sub-processors and will not disclose Personal Data to third parties unless the Client or the Contract specifically authorises the disclosure, or as required by law. If a law, court, regulator or supervisory authority requires Evergreen HR to process or disclose Personal Data, Evergreen HR must first inform the Client of the legal or regulatory requirement and give the Client an opportunity to object or challenge the requirement, unless the law prohibits such notice.
 - v) assess the appropriate level of security by taking account in particular of the risks that are presented by the processing of the Personal Data, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure or, or access to personal data transmitted, stored or otherwise processed by Evergreen HR;
 - vi) not transfer any Personal Data outside of the UK other than in accordance with the Contract and the General Conditions subject to the following conditions:
 - (1) Evergreen HR complies with its obligations under the Data Protection Legislation by ensuring the Data Subject has enforceable rights and effective legal remedies and shall ensure an adequate level of protection to any Personal Data that is transferred; and
 - (2) Evergreen HR complies with the reasonable instructions notified to it in advance by the Client with respect to such processing;
 - vii) assist the Client, taking into account the nature of the processing and the information available to Evergreen HR (and where lawful to do so at the Client's cost), in responding to any request from a Data Subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators;
 - viii) notify the Client without undue delay on becoming aware of a Personal Data breach;
 - ix) on termination of the agreement and provided the Client is not in default of the Contract provide the Client with access to the HR Pulse System for the Client itself to delete the Client's Personal Data unless Evergreen HR is required by Applicable Laws to continue storing the Personal Data; and
 - x) maintain complete and accurate records and information to demonstrate its compliance with this clause 17d. and allow for audits by the Client or the Client's designated auditor upon reasonable notice.
- e. The Client consents to Evergreen HR appointing Sub-processors as third-party processors of Personal Data under the Contract. Evergreen HR confirms that it has entered or (as the case may be) will enter with the third-party processor into a written agreement incorporating terms which are substantially similar to those set out in this clause 17. As between the Client and Evergreen HR, Evergreen HR shall remain fully liable for all acts or omissions of any Sub- processor appointed by it pursuant to this clause 17e.
- f. Either party may, at any time on not less than 30 days' notice, agree to revise this clause 17 by replacing it with any applicable controller to processor standard clauses or similar terms forming part of an applicable certification scheme (which shall apply when replaced by attachment to this agreement).
- g. Where the Client instructs Evergreen HR to configure or activate an Integration Connection to transmit Client Data to a Third-Party Application, the Client acknowledges that Evergreen HR acts

solely as a data transmitter. Once Client Data is successfully transmitted out of the HR Pulse System to the endpoint of the Third-Party Application, that third-party software provider acts as an independent data processor or data controller governed under its own standalone privacy framework and terms of service. Such Third-Party Applications are not Sub-processors of Evergreen HR under this Contract, and Evergreen HR disclaims all data protection tracking, compliance, and auditing liabilities for data residing in external platforms.

18) DATA PROTECTION WARRANTIES BY THE CLIENT

- a. The Client warrants that all requirements of the Data Protection Legislation and any similar legislation that may apply in the Client's territory of business operation are complied with by its staff, employees, agents and/or subcontractors.
- b. The Client acknowledges that all personal and or commercial information recorded using the Service on the HR Pulse System has been entered and recorded by the Client, their respective employees or agents acting on their behalf; and that the Client is also responsible that all Client Data contained within the HR Pulse System is accurate, relevant for purpose and up to date.
- c. The Client warrants Evergreen HR and Sub-processors appointed by Evergreen HR are permitted in accordance with the Data Protection Legislation to process all personal data supplied by the Client for the purposes of carrying out the Services;
- d. The Client warrants that all Data Subjects relating to the Client Data shall have been notified of the use of their Personal Data prior to the use of such Personal Data by the Client and Evergreen HR (and its Sub-processors) prior to commencing the provision of any Services under the Contract with any Client and warrants that it shall comply with the Data Protection Legislation and any similar legislation that may apply in the Client's territory of business operation in relation to the collection and processing of any Client Data. For the purposes of processing as set out in the Contract this may include the processing of the Client Data by Evergreen HR and/or its Sub-processors outside of the UK in accordance with clause 17.
- e. The Client is responsible for dealing with all of its Client Data (including but not limited to its own 's employees' data subject requests) and acknowledges Evergreen HR has no access to the Personal Data of the Client's and/'s employees unless for the purposes of compliance with Data Protection Legislation and in accordance with the purposes set out in Schedule 1 in accordance with Evergreen HR's contractual requirements and legitimate interests to maintain functionality in accordance with this agreement.
- f. The Client shall (and shall procure that any of its staff, employees, agents or subcontractors involved in the use of the Service) comply with any notification requirements under the Data Protection legislation.
- g. The Client warrants the use of the Client Data or other content in accordance with the Contract, will not infringe the rights of any third party and that the Client has the authority to use the Client Data or other content for the purpose of using the Services.
- h. The Client acknowledges that Evergreen HR is reliant on the Client for direction through the issue of Data Instructions as to the extent to which Evergreen HR is entitled to use and process the Client Data. Consequently, Evergreen HR will not be liable for any claim brought by a Data Subject arising from any action or omission by Evergreen HR, to the extent that such action or omission resulted directly from the Data Instruction given by the Client or any third party on behalf of the Client. Evergreen HR shall not be liable to the Client in circumstances where Evergreen HR consider an instruction from the Client is in relation to any Personal Data held on the HR Pulse System unlawful. Evergreen HR shall if permitted by law notify the Client of its reasons for refusal to follow such an instruction and the parties shall act in good faith to resolve the issue by escalating the matter in accordance with this Agreement.

i. Evergreen HR may make such copies of the Client Data as may be necessary to perform its obligations, including backup copies of the data. The Client owns the Client Data, as entered by themselves via the application interface, and upon termination or expiration of Service and the timely settlement of any and all outstanding debts owed by the Client to Evergreen HR, shall destroy or subject to sub-clauses 18.j and 18.k make reporting functions available to the Client as applicable for a period sufficient to allow all such copies of the data and other materials provided to be preserved and retained by the Client as they see fit.

j. A decision by the Client to terminate individual or all Services, or termination of the Contract for any other reason, shall be considered an instruction for Evergreen HR to securely delete or destroy the applicable Client Data and it is the responsibility of the Client to download the Client Data prior to such cancellation or termination if it wishes to retain it. The Client should not terminate the Contract or any or all Services if the Client does not want the applicable Client Data to be deleted. Evergreen HR disclaims any liability for loss suffered by the Client or any third party resulting from deletion of the Client Data in accordance with this clause 18.j.

k. Evergreen HR shall notwithstanding any other provisions herein and provided no other agreement has been entered into by the Parties have the right to delete all Client Data 14 days after the termination or expiration of the Contract and/or Services. Evergreen HR disclaims any liability for loss suffered by the Client or any third party resulting from deletion of the Client Data in accordance with this clause 18.k.

l. If any law, regulation, or government or regulatory body requires Evergreen HR to retain any documents or materials that Evergreen HR would otherwise be required to return or destroy, it will make reasonable efforts to notify the Client in writing of that retention requirement.

19) CLIENT IT WARRANTIES

The Client warrants and represents to Evergreen HR that it shall not introduce or cause any Viruses to interrupt or corrupt the HR Pulse System.

20) WARRANTY OF FUNCTIONALITY

a. Evergreen HR warrants that the Services shall be performed using reasonable skill and care, and of a quality conforming to generally accepted industry standards and practices.

b. Evergreen HR warrants to Client for the Term that the Service will achieve in all material respects the functionality described in the user guides and in other related documentation (as stated in the Order Confirmation) and that such functionality will be maintained in all material respects in subsequent upgrades to the Service.

c. Evergreen HR does not warrant that the Service will:

- i) be error-free, secure, or uninterrupted and that Client Data may not be lost;
- ii) free from Viruses;
- iii) operate correctly if accessed from outside of the United Kingdom;
- iv) meet all of the Client's 's requirements at all times; and/or
- v) that Evergreen HR will be able to address all errors in the HR Pulse System.

d. Subject to clause 23, the Client's sole and exclusive remedy for Evergreen HR's breach of this clause 20 shall be that Evergreen HR shall be required to use commercially reasonable efforts to modify the Service to achieve in all material respects the functionality described in the user guides and other related documentation.

e. If Evergreen HR is unable to restore such functionality within thirty (30) days the Client shall be entitled to terminate the Contract and shall be entitled to receive a pro-rata refund of the Charges paid under the Contract in advance for its use of the Service but which use has not yet been furnished by Evergreen HR as of the date of such termination.

f. Evergreen HR shall have no obligation with respect to a warranty claim unless notified of such claim within thirty (30) days of the first instance of any material functionality problem by email and such email is acknowledged as having been read and received.

21) SECURITY, DATA MAINTENANCE AND BACKUP WARRANTY.

a. Subject to clause 20 b) and d) and clauses 21 b) and c) Evergreen HR warrants for the duration of the Contract that Evergreen HR will use commercially reasonable efforts to ensure that Client Data will be safeguarded and maintained accurately and in accordance with Applicable Laws.

b. The Client acknowledges that notwithstanding sub-clause 21 a) Client Data may be lost and that personal data may be backed-up in countries outside of the UK.

c. In the event of a failure or breach of this provision, Evergreen HR will use commercially reasonable efforts to correct the Client's Data or restore the Client's Data within ten (10) Business Days.

d. Subject to clauses 20 d) and 23 in the event Evergreen HR is unable to correct or restore Client Data the Client's sole and exclusive remedy shall be to terminate the Contract and in Evergreen HR's sole discretion receive a pro-rata refund of the Charges paid under the Contract for its use of the Service but which use has not yet been furnished by Evergreen HR as of the date of such termination.

e. Evergreen HR uses all industry standard techniques to safeguard against Viruses being introduced into the HR Pulse System and relies on its third party host providers and/or Sub-processors to ensure appropriate safeguards are in place. Evergreen HR cannot guarantee that the Client s may not be affected by a Virus and excludes all liability associated with any damage, loss or costs associated with the same.

22) DISCLAIMER OF WARRANTIES.

a. The express warranties set out in these General Conditions are the sole and exclusive warranties offered by Evergreen HR.

b. All warranties (including without limitation, those of merchantability or fitness for a particular purpose), conditions and other terms implied by statute or common law are, to the fullest extent permitted by law, excluded from the Contract.

c. Except as stated in above, the Service is provided to the Client on an "as is" and "as available" basis and is for commercial use only. The Services may be subject to limitations, delays, and other problems inherent in the use of the internet and electronic communications. Evergreen HR is not responsible for any delays, delivery failures, or other damage resulting from such problems.

d. The HR Documents and HR Telephone Support (for Professional Plus clients only) provided to the Client as part of the Service are not intended to constitute legal advice. The Decision-Making Tools, HR Documents and HR Telephone Support are to provide guidance and assistance only, and may not always be appropriate for a Client's specific circumstances. Evergreen HR does not warrant or guarantee any particular outcome from the use of the Decision-Making Tools, HR Telephone Support and/or the HR Documents. If the Client has any concerns or doubts as to applicability to their particular circumstances, the Client should seek specific advice from one of our highly experienced HR Professionals or independent legal counsel.

e. The Client assumes and accepts all responsibility for determining whether the Service and or Licensed Software or the information generated thereby is accurate or sufficient for the Client's purposes.

f. Evergreen HR is not responsible for the accuracy, completeness, or timing of data maintained in any Third-Party Application, nor for any downtime or errors originating from Third-Party Application's systems. The Client remains responsible for ensuring their use of the Service and any Third-Party Applications complies with applicable data protection laws.

g. Evergreen HR explicitly disclaims all responsibility for the programmatic data mapping, structural formatting, data validation, mathematical compatibility, and synchronisation accuracy of data transferred via an Integration Connection. The Client retains absolute, sole responsibility for verifying that data successfully pulled into or pushed out of the HR Pulse System maps accurately to the corresponding record fields within the Third-Party Application.

23) LIMITATION OF LIABILITY

a. The following provisions set out the entire financial liability of Evergreen HR (including without limitation any liability for the acts or omissions of its employees, agents and sub-contractors) to the Client in respect of:

- i) any breach of the Contract howsoever arising;
- ii) any use made by the Client of the Services; and
- iii) any representation, misrepresentation (whether innocent or negligent), statement or tortious act or omission (including without limitation negligence) arising under or in connection with the Contract.

b. Subject to this clause 23, the entire liability of Evergreen HR to the Client and in contract, tort, misrepresentation (whether innocent or negligent), restitution in respect of any claim whatsoever or breach of the Contract or any agreement, whether or not arising out of negligence or breach of statutory duty, shall be limited to the Charges paid by the Client for the Services to which the claim relates.

c. In no event shall Evergreen HR be liable whether in tort (including without limitation for negligence or breach of statutory duty however so arising) contract, misrepresentation (innocent or negligent) to the Client and/ for:

- i) Any loss as set out in clause 18 h
- ii) any loss of business;
- iii) loss of opportunity;
- iv) loss of profits;
- v) for any other special indirect or consequential or pure economic loss or damage whatsoever;
- vi) loss of anticipated savings;
- vii) loss of goods;
- viii) loss of contract;
- ix) loss of use; or

- x) any loss, corruption, duplication, formatting error, or unauthorised access of data or information (including but not limited to Client Data) that occurs during transmission across an Integration Connection, or while such data is stored inside a Third-Party Application.
- d. The limitations of this clause 23 shall apply even where such a loss was reasonably foreseeable or Evergreen HR had been made aware of the possibility of the Client incurring such a loss.
- e. Nothing in these General Conditions or otherwise shall exclude or limit Evergreen HR's liability for:
 - i) death or personal injury resulting from Evergreen HR's negligence or that of its employees, agents or sub-contractors; or
 - ii) for fraud or fraudulent misrepresentation.

24) INDEMNIFICATION

- a. The Client shall indemnify Evergreen HR against all liabilities, claims, costs, damages, losses including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) and expenses which Evergreen HR may incur and which arise, directly or indirectly, from or in connection with:
 - i) the Client's breach of any of their obligations under the Contract or in connection with the use of the Service;
 - ii) any claims brought against Evergreen HR alleging that any Service provided by Evergreen HR actually or allegedly infringes any Intellectual Property Rights or other similar right of a third party due to any actions or omissions of the Client;
 - iii) any breach of warranty contained in these General Conditions of Contract;
 - iv) the enforcement of the Contract;
 - v) any claim made against Evergreen HR by a third party arising out of or in connection with the provision of the Services, to the extent that such claim arises out of the breach, negligent performance or failure or delay in performance of the Contract by the Client, its employees, agents or subcontractors; and
 - vi) any claim made against Evergreen HR or time incurred by Evergreen HR in connection with any requests for information made by data subjects who are affected by the Client and its use of the Service.
 - vii) any claim made against Evergreen HR or time incurred by Evergreen HR in connection with any claims brought against Evergreen HR as a consequence of a claim brought by a third-party processor including but not limited to Sub-processors contracted by Evergreen HR in the performance of the Service as a consequence of a data subject's claim against such third party.
 - viii) due to any failure by the Client or its employees or agents or contractors to comply with any of the obligations under clause 16, 18 and 19.
 - ix) any third-party claims, legal disputes, operational fines, or commercial fees levied against Evergreen HR arising directly or indirectly from the Client's breach of the terms of use, developer platform agreements, or privacy rules established by any connected Third-Party Application.

25) TERMINATION

a. If the Client fails to make any payment when it becomes due and remains in default not less than 14 days after such due date then Evergreen HR shall have the right to:

- i) terminate the Contract with immediate effect by notice in writing to the Client; or
- ii) at its sole discretion suspend the Services until the Client has paid the balance of the Term as if either party had given termination notice to expire at the end of the first or any subsequent period, and any such fees or charges will become immediately due and payable. In such an event and where the Client makes payment following such termination Evergreen HR reserves the right to apply a reconnection fee of £250.00.

b. Either party may terminate the Service forthwith by notice in writing to the other if:

- i) the other party commits a material breach of any terms and conditions and, in the case of a breach capable of being remedied, fails to remedy it within 14 days of being given written notice from the other party to do so; or
- ii) the other party commits a material breach of any terms and conditions which cannot be remedied under any circumstances; or
- iii) the other party passes a resolution for winding up (other than for the purpose of solvent amalgamation or reconstruction); or
- iv) a court of competent jurisdiction makes an order to that effect; or
- v) the other party ceases to carry on its business or substantially the whole of its business; or
- vi) the other party is declared insolvent, or convenes a meeting of or makes or proposes to make any arrangement or composition with its creditors; or
- vii) a liquidator, receiver, administrative receiver, manager, trustee or similar officer is appointed over any of its assets; or
- viii) any event occur, or proceeding is taken, with respect to the other party in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in condition 25)b.i) to condition 25(b)vii (inclusive).

c. The Client may terminate the Contract prior to the expiry of the Initial Term or any Extended Term by giving Evergreen HR not less than 3 months' notice, provided the Client pays Evergreen HR the Charges outstanding for the remainder of the Initial Term and/or Extended Term;

d. Any rights to terminate Service shall be without prejudice to any other accrued rights and liabilities of the parties arising in any way out of any agreement or any terms and conditions as at the date of termination.

26) THE TERM

a. The Term shall commence from the date of the Order Confirmation. Unless terminated earlier in accordance with Clause 25, the Contract shall continue for a period of 12 months ("Initial Term") and shall automatically extend for 12 months ("Extended Term") at the end of the Initial Term and at the end of each Extended Term (the Initial Term and all Extended Terms constituting the "Term"). Either party may give written notice to the other party, not later than 3 months before the end of the Initial Term or the relevant Extended Term, to terminate the Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

b. The Client can upgrade (but not downgrade) the HR Pulse Service Plan Specification at any time during the Term. The Client can downgrade the HR Pulse Service Plan Specification at the end of the Initial Term or any Extended Term but can only do so by serving not less than 3 months' notice before the end of the Initial Term or the relevant Extended Term.

c. Evergreen HR shall operate and maintain the Services for the Term.

d. Charges will continue to be incurred during the notice period, even if the Services are terminated or suspended by either party, based on an average of the previous 3 months' charges.

e. For Professional Plus clients, services included in the HR Telephone Support will only be provided for the Term that they have been purchased for and cannot be carried over into a new Term.

27) CLIENT COMPLAINTS

a. In the event that the Client is not satisfied with the standard of any aspect of any Service the Client will:

- i) notify Evergreen HR immediately by e-mail or in writing at its registered office; and
- ii) state clearly their reasons or issues.

b. Evergreen HR will respond in a timely manner and use its reasonable endeavours to satisfactorily resolve any issues with the Client.

c. Evergreen HR will use its reasonable endeavours to prevent such issues from happening in the future and take action as may be required and or agreed with the Client.

28) CONFIDENTIALITY

a. Both parties will not at any time, without the prior written consent of the other party, disclose or reveal any Confidential Information to any person or third party whatsoever, except to such of its employees, consultants, agents and advisors (being its bankers, lawyers, accountants and technical advisors) and as far as Evergreen HR is concerned also for its Sub-processors who at the time of access have a reasonable need to see and use the Confidential Information and shall ensure that such employees, consultants, agents and advisors are subject to obligations of confidentiality corresponding to those contained herein. Each Party shall notify the other Party of the confidential nature of the Confidential Information and that obligations in respect thereof.

b. This clause 28 shall survive termination of the Contract.

29) SET-OFF

All amounts due under the Contract shall be paid by the Client to Evergreen HR in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

30) ASSIGNMENT

Subject to compliance with its data processing obligations under clause 17, Evergreen HR may assign, subcontract or otherwise transfer any of its rights and/or obligations under the Contract at any time. The Client may not assign or otherwise transfer any of its rights or obligations under the Contract or any part of it without Evergreen HR giving prior written consent.

31) FORCE MAJEURE

Neither party shall be in breach of the Contract nor liable for delay in performing, or failure to perform, any of its obligations under the Contract if such delay or failure results from events, circumstances or causes beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network or the internet, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of ISPs, suppliers or sub-contractors. In such circumstances the affected party shall be entitled to a reasonable extension of the time for performing such obligations, provided that if the period of delay or non-performance continues for 6 months, the party not affected may terminate the Contract by giving 30 days' written notice to the other party.

32) SEVERABILITY

- a. If any provision or part-provision of the General Conditions of Contract or where other specific terms and conditions apply is held invalid, illegal or unenforceable for any reason such provision shall be modified to the minimum extent necessary to make it valid, legal and enforceable and the remainder of the provisions hereof shall continue in full force and effect as if these General Conditions of Contract had been agreed with the invalid illegal or unenforceable provision eliminated.
- b. If any provision or part-provision of the Contract is invalid, illegal or unenforceable, the parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

33) NOTICES

- a. Any notice to be given by either party to the other should be served **by email**, except if we instruct you to serve notice by personal Service or by post. Notice by personal Service or by post should be sent to the address of the other party or such other address as such party may from time to time have communicated to the other in writing. If sent by email notices shall unless the contrary is proved be deemed to be received on the day it was sent, if given by letter shall be deemed to have been served at the time at which the letter was delivered personally or if sent by post shall be deemed to have been delivered at 9am on the second Business Day after posting.
- b. This clause 33 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution. For the purposes of this clause, "writing" shall not include email.

34) WAIVER

- a. The failure by either party to enforce at any time or for any period any one or more of these General Conditions shall not be a waiver of them or of the right at any time subsequently to enforce all General Conditions.
- b. No failure or delay by a party to exercise any right or remedy provided under the Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

35) INDEPENDENT CONTRACTORS

Evergreen HR and the Client are contractors independent of each other, and neither has the authority to bind the other to any third party or act in any way as the representative of the other, unless otherwise expressly agreed to in writing by both parties. Evergreen HR may, in addition to its own employees, engage sub-contractors to provide all or part of the Services being provided to the Client and such engagement shall not relieve Evergreen HR of its obligations.

36) NO THIRD PARTIES

Nothing in these General Conditions of Contract is intended to, nor shall it confer any rights on a third party whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

37) ENTIRE AGREEMENT

- a. The Contract (including the General Conditions) supersedes any previous correspondence, assurances, promises, agreements, warranties, representations, undertakings, proposals and understandings between the parties hereto whether written or oral and constitutes the entire agreement between them.
- b. Evergreen HR reserves the right to modify, amend, or update the General Conditions, or any policies governing the HR Pulse System and/or the Services, at any time in its sole discretion.
- c. Evergreen HR shall provide client with at least thirty (30) days' prior written notice of any material changes to the General Conditions (the "Notice Period"). Notice may be delivered via email, through a prominent notification on HR Pulse, or by posting the updated terms on the Website with a revised "Last Updated" date.
- d. Any amendments shall become effective automatically upon the expiration of the thirty (30) day Notice Period (the "Effective Date"). Client's continued access to or use of the HR Pulse System and/or the Services on or after the Effective Date shall constitute client's affirmative and binding acceptance of the updated General Conditions.
- e. Each party acknowledges that in entering into the Contract it does not rely on, and shall have no remedies in respect of any statement, representation, assurance or warranty (whether made innocently or negligently) that is not set out in the Contract.

38) GOVERNING LAW AND JURISDICTION

Any dispute or claim arising out of or in connection with the Contract or its subject matter or formation shall be governed by and construed in accordance with the law of England and the parties hereby submit to the exclusive jurisdiction of the English courts to settle such matters.

SCHEDULE 1

DATA PROCESSING

This Data Processing Schedule (**Schedule**) sets out the basis on which Evergreen HR processes Personal Data in the provision of the Services.

The definitions provided in the General Conditions shall apply in this schedule.

Most of the provisions of this Schedule relate to Client Data including but not limited to Personal Data which may be obtained or derived via any features of or as a result of the Services and which Evergreen HR processes on the Client's behalf.

In addition to the Client Data which Evergreen HR processes on the Client's behalf, Evergreen HR may also process Personal Data in connection with the Contract in its own capacity as a Data Controller. For example Evergreen HR will be the Data Controller of the contact details of the Client's representatives. Except where this Schedule refers generally to Personal Data, the provisions of this Schedule will not apply to such processing where Evergreen HR is the Data Controller but Evergreen HR will undertake such processing in accordance with its legal obligations to Data Subjects under the Data Protection Legislation in accordance with the Evergreen HR Privacy Policy.

Note on User-Directed Third-Party Applications: For the avoidance of doubt, where the Client explicitly configure, authorise, or activate a data integration link (including but not limited to payroll platforms, accounting tools, or third-party HR systems) to export or import Data, such third-party software providers are **not** sub-processors engaged by Evergreen HR.

The transmission of Data to such platforms is executed solely as an automated instruction by the Client as the Data Controller. Once Data passes outside the perimeter of the HR Pulse System into a Third-Party Application, that third-party provider operates as an independent processor or controller under its own standalone terms of service and privacy policy. Evergreen HR disclaims all data protection, security, and auditing liabilities for any Data residing within or processed by such external Third-Party Applications.

1. Nature and purpose of processing Personal Data by Evergreen HR

- 1.1 Evergreen HR provides a secure portal through the HR Pulse System to enable the Client to operate their HR and if applicable Payroll services for their own businesses and their clients. This requires the Client to upload personal data onto to the HR Pulse System. This enables the Client to process the personal data for the purposes of their own businesses.
- 1.2 Evergreen HR operates the HR Pulse System to process the personal data loaded onto the HR Pulse System strictly as is necessary to make the personal data accessible to the Client through secure protocols. Evergreen HR can only access the personal data for system maintenance purposes or in order to comply with requests from the Client (as the applicable Data Controller) in response to data subject access requests.
- 1.3 Evergreen HR takes the protection of personal data very seriously. Evergreen HR shall use a range of techniques for de-identifying and hashing some of the data which is stored (as described in brief detail below), with a view to minimising the extent of personal data which Evergreen HR and its Sub-processors can view.

2. Types of Personal Data

- 2.1 Evergreen HR offers a range of human resource services which offer the Client and its clients a service to manage their respective employee requirements in accordance with the HR Pulse

Service selected under their respective contracts. The types of Personal Data which Evergreen HR may process in the provision of the Services will include data such as all employee personal and special category data that the Client upload to the HR Pulse System for the purposes of operating the HR Pulse Service the Client has purchased.

- 2.2 The HR Services consist of certain features through which the Client could send or provide data direct to Evergreen HR. The Client acknowledges that these features are not intended to be used to submit or provide Client Data to Evergreen HR, and accordingly the Client shall not send Client Data direct to Evergreen HR which incorporates any personal data to Evergreen HR via, or in connection with its use of, the Services, unless expressly agreed in writing by Evergreen HR and the parties have agreed the terms of such transfer.

Additional features may be added to the Services by Evergreen HR from time to time in respect of which additional data instructions will be need to be signed off by the parties.

3. Categories of Data Subjects

The categories of Data Subjects are likely to be dictated by the Client and dependent upon which HR Pulse Service they select. However, the majority of Data subjects will be employees, workers and subcontractors of the Client whose Personal data can be uploaded onto the HR Pulse System by the Client.

4. Duration of processing

- 4.1 The duration of the processing of the Client Data by Evergreen HR shall be for no longer than is required for the purposes of providing the Services.
- 4.2 Following termination or expiration of the Contract, Evergreen HR shall, except to the extent that it needs to retain Client Data for record keeping or legal reasons, delete all Client Data held on the HR Pulse System on behalf of the Client which is held by Evergreen HR as at termination of the Contract and shall not be liable to the Client for such deletion of the Client Data.

5 Technical and Organisational Measures

- 5.1 Evergreen HR has in place such measures to include, but are not limited to, physical access control, logical access control (i.e. non-physical access control measures such as passwords), data access control, data transfer control, input control, availability measures, and data separation.
- 5.2 Evergreen HR shall provide the Client and/ (in each case the applicable Data Controller), upon request, with adequate proof of compliance (e.g. the relevant parts of the Evergreen HR subprocessor agreements).
- 5.3 For more detailed information on the latest measures adopted by our Sub-processors please refer to the links below.

6. Sub-processors

- 6.1 Hosting for HR Pulse is provided by Microsoft Azure, at UK facilities. Microsoft's UK Office address is Microsoft Campus, Thames Valley Park, Reading, Berkshire, RG6 1WG. Further information about Microsoft Azure security can be found at: <https://docs.microsoft.com/en-us/azure/security/fundamentals/overview>

- 6.2 Kbase-Connect Limited are software developers who provide support in making modifications to the software and addressing any issues if they occur. Their address is: Bristol & Bath Science Park, 1 Dirac Crescent, Emerson's Green, Bristol, BS16 7FR.
- 6.3 Deans Accountants provide all our accountancy and billing support. Their office address is: Gibson House, Hurricane Court, Hurricane Court, Stafford, ST16 1GZ.
<https://www.kashflow.com/about/security/>
- 6.4 Google provides an email service for us to communicate with clients. They also provide Google Analytics and Google Calendar. Further details relating to Google Analytics can be found in the Cookie Policy. Their office address is Google Cloud EMEA Limited Velasco Clanwilliam Place Dublin 2 Ireland. https://privacy.google.com/intl/en-GB/your-security.html?categories_activeEl=sign-in.
- 6.5 MailChimp provide our resources for us to produce newsletters and updates to our clients and other contacts, with their consent. Their office address is MailChimp, The Rocket Science Group, LLC 675 Ponce de Leon Ave NE Suite 5000. Atlanta, GA 30308 USA.
<https://mailchimp.com/about/security/>.