

EVOCON TERMS OF SERVICE

adopted and effective from 03. September 2018

These terms of service govern the access to and use of the services provided by Evocon OÜ. The terms of service are applicable and binding to all users of the services provided by Evocon OÜ as of the moment of gaining access to these services or permitting any user to gain access to these services. Please consider the below text carefully for it is only if you fully agree with all terms and conditions contained herein that you may use the applications referred to. If you find anything in this document that you do not understand or agree with, please refrain from using Evocon's applications. Any use or access of the same or any attempt to do so shall be deemed to constitute your consent to be bound by these terms of service.

1 DEFINITIONS

1.1 The following terms, when capitalised, shall have the meanings assigned to them below:

"Content" – the information (including text, images, audio and video material), functionality and technical resources provided by Evocon as a part of, through or in conjunction with the Platform;

"Customer Account" – an Evocon-hosted or -administered account provided to Customer through the Service for the purpose of enabling Customer to use the Service;

"Customer Content" – all data, files, including hypertext markup language files, documents, audio and visual information, graphics, scripts, programs, applets or servlets that Customer creates, installs, uploads to or transfers in or through the Service or provides in the course of using the Service, excluding Customer Details;

"Customer Details" – all Personal Data about Customer that Customer provides to Evocon in connection with the Service. Customer Details may, for example, include such information as Customer's name, address, email address, picture, time zone, tax registration number, the method by which Customer pays for their Subscription Plan and information about which third-party services Customer uses for accessing or otherwise in conjunction with the Service;

"Customer Trademarks" – any trademarks that Customer provides Evocon for the purpose of including them in Customer's user interface of the Service;

"Customer" – any person or entity that has a valid Customer Account;

"End User" – any person whom the Customer permits or causes to have access to the Service or any part thereof, whether through the Customer Account or otherwise;

"Evocon" – Evocon OÜ, a private limited company incorporated under Estonian law, commercial register no. 12977378, having its principal place of business at Vana-Lõuna 39/1, 10134, Tallinn, Estonia (this address should also be used for all physical correspondence that Customer wishes to send to Evocon, including all requests, inquiries and complaints in paper form);

"Intellectual Property" – all existing and future trademarks, service marks, domain names and business names, rights pertaining to inventions, designs, databases and proprietary information (including, without limitation, trade secrets and know-how), patents, copyrights, moral rights and all other assets and benefits commonly regarded as intellectual property, whether registered or not;

"Measuring Point" – each stand-alone production line or a machine;

"Party" – each of Customer and Evocon;

"Personal Data" – any information about a natural person that comes under the legal definition of "personal data" as provided under applicable law;

"Subscription Plan" – number of Measuring Points on which the Service is requested to be used by the Customer;

“Service” – depending on the context, either (i) the Platform, infrastructure and Content in a hosted environment made available by Evocon as an online service via the Website or other websites designated by Evocon (all of which are made available “as a service”), or (ii) the Platform, infrastructure and Content collectively or in any combination;

“Platform” – Evocon’s platform enabling to monitor and analyse production lines’ real processing cycles and delay reasons and such other Evocon-developed platform applications as Evocon may make available in conjunction therewith, including such modifications and replacements thereof as Evocon may from time to time provide;

“Storage Period” means a period of four years from the end of Terms of Service;

“Terms of Service” – these terms of service (as amended from time to time), Evocon’s privacy policy (available at www.evocon.com) and such other terms provided by Evocon;

“Website” - www.evocon.com.

“Workspace Data” – any information that Customer, any End User or any other user of the Platform, Content or any other part of the Service possesses or enters, records, stores, modifies, discloses, makes available, transmits, uses, deletes or otherwise processes in, through or by means of any Workspace;

“Workspace” – any part of the user environment provided via the Service, except Customer’s personal profile page.

2 SUBSCRIPTION TO SERVICE AND APPLICABILITY OF TERMS OF SERVICE

2.1 Customer needs Customer Account to access the Service. Customer is allowed to give access to End User for the usage of Service under sub-accounts. Customer can choose and subscribe to Subscription Plan through Customer Account. Customer can change the Subscription Plan through Customer Account.

2.2 In acquiring a subscription to the Subscription Plan, Customer acknowledges and agrees that Evocon shall have the right to enforce these Terms of Service against Customer. By accepting these Terms of Service, either by accessing or using the Service, or authorizing or permitting any End User to access or use the Service, Customer agrees to be bound by these Terms of Service.

3 USE OF SERVICES BY CUSTOMER

3.1 Subject to the terms of Terms of Service, Evocon grants to Customer and the latter accepts a limited, non-exclusive and non-transferable right to access and use the Service that Customer has subscribed to.

3.2 Service may only be used in such manner as necessary for utilising the Service for its intended purpose and only during the time Terms of Service remains in force between the Parties or Subscription Plan is effective.

3.3 The Service may only be accessed through the interfaces Evocon has provided.

3.4 Customer shall not, without the prior explicit consent of Evocon, license, sub-license, sell, resell, rent, lease, assign, distribute, encumber or otherwise dispose of the Service or any right, benefit or obligation hereunder to any third party, other than expressly permitted by Terms of Service, except that Customer may assign and encumber their monetary claims without requiring Evocon’s consent.

3.5 Evocon is not obliged to verify Customer Details and may rely on these details without verification.

3.6 Customer must comply and shall cause End Users to comply with all laws, rules and regulations applicable to their use of the Service and their acquisition, possession and processing of Workspace Data. Evocon reserves the right to monitor, periodically audit and temporarily suspend Customer’s and End Users’ use of the Service to ensure that Customer’s use complies with Terms of Service.

- 3.7** With respect to the information (including all text, images, audio-visual material, Personal Data and other content) that Customer or any End User acquires, possesses or enters, records, stores, modifies, discloses, makes available, transmits, uses, deletes or otherwise processes via the Service, Customer represents and warrants to Evocon that Customer or, respectively, the relevant End User, has the right to acquire, possess and process the same. Customer shall be solely responsible for the properties of the said information and the acquisition, possession and processing of such information under, through or by means of Customer Account.
- 3.8** Customer shall not, and shall cause End Users not to, use the Service (i) in any unlawful manner, including, but not limited to, violation of any person's privacy rights; (ii) to store or transmit files, materials, data, text, audio, video, images or other content that infringes on any person's intellectual property rights (iii) for sending unsolicited communications or for uploading, transmitting, delivering, running, possessing or storing harmful code, malware or illegal content.
- 3.9** Any Customer Content that conflicts with the provisions of Terms of Service may be removed, disabled and/or destroyed by Evocon at its sole discretion without any warning or notice.
- 3.10** Without excluding or limiting any of Customer's statutory obligations, Customer shall not, and will not allow any End User to: (i) use any device, software or routine to interfere or attempt to interfere with the proper functioning of the Service; (ii) impose an unreasonable or disproportionately heavy load on the Service or its infrastructure; (iii) copy, modify, reproduce or create derivative works from, or decompile, reverse engineer or otherwise attempt to derive source code from the Platform or any other part of the Service; (iv) remove, alter, hide or obscure any copyright notice, trademark or other proprietary rights notice embedded in, appearing on or otherwise pertaining to the Service; (v) create or attempt to create any product or service that is substantially similar to or otherwise competes with the Service or purports to be created, provided or approved by Evocon.
- 3.11** Customer shall acknowledge that: (i) the Service has not been designed to meet Customer's individual requirements; (ii) the operation of the Service may from time to time encounter technical or other problems and may not continue uninterrupted or without errors; (iii) the Service is not fault-tolerant and has not been designed for use in inherently dangerous circumstances, such as, e.g., the operation of "major sources of danger", traffic control or life support systems, handling hazardous substances and other activities where the failure of the Service could lead to death, personal injury or environmental damage.

4 CUSTOMER ACCOUNT

- 4.1** Customer is fully responsible for maintaining the confidentiality of usernames and passwords associated with any Customer Account and End User accounts used to access the Platform. Customer is responsible for all activities that occur under Customer Account and End User accounts, regardless of whether the activities are undertaken by Customer, Customer employees or a third party (including Customer's contractors or agents) and Evocon is not responsible for unauthorized access to Customer Account and End User accounts. Customer shall notify Evocon immediately of any unauthorized use or other security breach of its Customer Account or End User accounts.
- 4.2** Evocon shall not be responsible for any loss, damage or other consequences that may result from any unauthorised use of Customer Account, username or password.
- 4.3** Evocon may (in its sole discretion) close or restrict access to any Customer Account that is used to infringe on anyone's Intellectual Property or proprietary or personal rights.

5 TECHNICAL SUPPORT

- 5.1** Technical support is provided through the Service feedback feature and only in English or other languages as supported by Evocon from time to time as indicated on the Website.
- 5.2** Evocon aims to answer most support issues within 24 business hours but is under no obligation to do so and makes no guarantee on how quickly support is provided or issues will be resolved.

6 REPRESENTATIVE'S UNDERTAKING

- 6.1** Any person that subscribes Customer to the Service or otherwise represents Customer upon the latter's entry into the Agreement shall by so doing be deemed to have personally represented and undertaken to Evocon that s/he has the authority to act on Customer's behalf and that the Agreement is binding on Customer. Each such representative hereby further undertakes to Evocon, and the latter agrees, that if this Agreement proves to be void due to the representative's lack or excess of authority or if it emerges that the representative has concluded this Agreement on behalf of a non-existent Customer then such representative shall be deemed to have entered into the Agreement on their own behalf and the Agreement shall be effective (ab initio) between Evocon and the aforesaid representative.

7 CUSTOMER CONTENT

- 7.1** Evocon shall not disclose or distribute the Customer Content to any third party, except as provided in Terms of Service or as with Customer's separate permission. Notwithstanding any separate nondisclosure agreement that may have been executed between the Parties, Evocon may allow the Customer Content to be stored and processed by Evocon's service providers (e.g. hosting and storage providers) who act on the Evocon's behalf in providing the Service, as long as such service providers are bound to protect the Customer Content by reasonable contractual confidentiality obligations, and disclose the Customer Content to the extent required by law. Evocon shall implement all the reasonable measures to avoid third parties accessing the Customer's Content.
- 7.2** Subject to Terms of Service, Customer grants to Evocon and its third party vendors royalty-free perpetual non-exclusive, sub-licensable worldwide right to copy, store, record, transmit, display, view, print or otherwise use (a) Customer Data solely to the extent necessary to provide the Service and Content to Customer, and (b) Customer Trademarks. Customer shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness and copyright of all Customer Data and information regarding Customer and End Users. The license to the Customer Data shall survive termination of validity period of Terms of Service solely for the purpose of storing backup Customer Data in accordance with the terms of Terms of Service.
- 7.3** Evocon shall store a back-up of the Customer Content during the Storage Period. After the end of the Storage Period Evocon may permanently delete the Customer Content from the Service at any time. After termination or expiration of Terms of Service, Evocon shall not use the Customer Content for any other purpose than storing the Customer Data and making the collected data available to Customer. Customer may prolong the Storage Period by paying then applicable fees for storing.
- 7.1** ANY CUSTOMER CONTENT THE CUSTOMER OR END USER ENTER INTO A SERVICE, AND ANY CONFIGURATIONS OR CUSTOMIZATIONS MADE TO A SERVICE BY OR FOR CUSTOMER OR END USER, DURING CUSTOMER FREE TRIAL WILL BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASE A SUBSCRIPTION TO THE SAME SERVICE AS COVERED BY THE TRIAL, PURCHASE THE APPLICABLE SERVICE, OR EXPORT SUCH CUSTOMER CONTENT, BEFORE THE END OF THE TRIAL PERIOD.

8 INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

- 8.1** Any and all Intellectual Property related to the Service belongs to Evocon. Customer shall not acquire any right or title thereto or interest therein or otherwise in connection with the Service. All rights not expressly granted herein shall be deemed withheld.
- 8.2** Nothing in Terms of Service constitutes, or shall be construed to constitute, a transfer of title or ownership with respect to the Service, including without limitation transfer of any copyrights, patents, or other intellectual property right therein, now or hereafter existing. Title to the Platform, including any copyrights, moral or proprietary, and other intellectual property rights therein shall remain with Evocon. Customer shall not acquire any proprietary right, security interest, pawn or any other right of security with respect to any item or asset belonging to Evocon.

- 8.3** Customer may not (and Customer may not permit anyone else to) reproduce, copy, modify, create a derivative work of the Platform, or reverse engineer, decompile or otherwise attempt to extract the source code of the Platform or any part thereof or reproduce, distribute, adapt, or transform the Platform for any purpose.

9 TRIAL PERIOD

- 9.1** Evocon may provide to Customer up to 30-day free trial access to the Service. The trial period starts from the moment the Customer starts using the Service (signal received). Evocon shall provide trial access to the Service only if the Customer is a first-time user of the Service and if the ordered Service Plan includes not more than two Measuring Points.
- 9.2** After the trial period Evocon may suspend, restrict or terminate Customer's access to the Service without notice. The Customer shall notify Evocon if Customer wish to continue using the Service after the trial period. In such case the Customer will be charged for the respective Service Plan after the end of such trial period.

10 PAYMENTS

- 10.1** The fees, rate and charges for the Service depend on the Service Plan ordered by Customer. Customer shall be deemed to have accepted and shall pay the respective fees, rates and charges as quoted on the Website except if separately quoted to Customer by Evocon for the ordered Service Plan upon subscribing for the Service Plan or changes thereto.
- 10.2** Customer is charged for the Service on a monthly basis unless other billing cycle is agreed between the Parties, first cycle starting on the day immediately following the moment Customer starts using the Services (signal received).
- 10.3** Customer is charged for the Service in advance of each billing cycle. The payment for the service is due after 21 days from the start of each billing cycle.
- 10.4** Evocon may suspend the Services or terminate the Agreement if Customer fails to make payment to Evocon in due time.
- 10.5** Evocon may change the fees, rates and the billing cycle applicable to Customer's Service Plan upon a six months' notice. If Customer does not agree with the respective changes, Customer may unsubscribe from the Service Plan in question. This is Customer's sole and exclusive remedy for the respective changes. Customer shall be considered consented to the respective changes if the Customer continues using the respective Service Plan after any such changes.
- 10.6** No refund will be given to Customer for any payment relating to the ongoing billing cycle if Customer changes or terminates its Service Plan before the end of such billing cycle.
- 10.7** Evocon shall pay no interest on prepayments made for the Services.
- 10.8** All fees and other payments under this Agreement are exclusive of any taxes and shall be paid in cleared funds, without any deduction or set-off and free and clear of and without deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings of any nature now or hereafter imposed by any governmental, fiscal or other authority. If Customer is compelled to make any such deduction, it will pay to Evocon such additional amounts as are necessary to ensure receipt by Evocon of the full fees and other payments under this Agreement, which Evocon would have received but for the deduction. Customer is responsible for all taxes, levies, imports, duties, charges, fees and withholdings and, if relevant, will be added to the fees and other payments under this Agreement and paid in addition to the fees or other payments under this Agreement. Customer shall immediately notify Evocon if any payment of or deduction for or on account of any taxes, levies, imports, duties, charges, fees and withholdings needs to be made.

11 MODIFICATIONS AND SUSPENSION

- 11.1** Evocon has no obligation to enhance, modify or replace any part of the Service or to continue developing or releasing new versions thereof. Certain technical difficulties or maintenance may, from time to time, result in temporary interruptions.
- 11.2** Notwithstanding anything herein to the contrary, Evocon reserves the right to modify the Service at any time for any reason, with or without notice. Unless explicitly stated otherwise, the use of any new features, versions, releases, updates or other modifications that Evocon may make available in connection with the Service shall be subject to Terms of Service. Customer's continued use of the Service after any such modifications shall constitute Customer's consent to the respective modifications.
- 11.3** Evocon may suspend performance under Terms of Service in whole or in part with immediate effect if it is required by law or by a competent court, tribunal or regulatory body to temporarily or permanently refrain from continuing to perform its obligations hereunder.
- 11.4** Evocon may discontinue providing the Service or any part thereof upon a two months' notice and may, without notice, suspend or restrict access to the Service for any Customer whose use of the Service conflicts with the provisions of Terms of Service.

12 AMENDMENT TO THE TERMS OF SERVICE

- 12.1** Evocon may amend Terms of Service by posting a revised version of it on Platform and the revised version will take effect after one month after it is posted and notified to the Customer by posting a notice on the Service, through the Customer Account or via e-mail associated with such Customer Account.
- 12.2** In case Customer does not agree with the changes, or any particular change, that Evocon has made to Terms of Service or the Service, Customer's sole and exclusive remedy shall be to terminate their use of the Service. Customer shall be considered consented to the respective changes if the Customer continues using the Service after any such changes take effect.

13 DATA PROCESSING

- 13.1** Customer acknowledges that Customer Details and certain other information about Customer and End Users is collected and processed through the Service. Evocon's use of this information is subject to its [privacy statement and data processing agreement](#).
- 13.2** Customer acknowledges that by accepting these Terms of Service it is subsequently bound by the data processing agreement, which can be accessed via the hyperlink indicated in Section 13.1 above.

14 TERM AND TERMINATION

- 14.1** Terms of Service shall be effective between the Parties as of the moment when Customer obtains access to the Service. Anyone who visits Website or uses, accesses or attempts to access any part of the Service shall by doing so be deemed to have agreed to the terms hereof.
- 14.2** The Service can be terminated by Customer only by sending respective application to Evocon.
- 14.3** Evocon is entitled to suspend or terminate Customer's subscription to the Service, Customer's rights to access and use the Service and discard any Customer Data if Customer fails to pay any amounts due to Evocon pursuant to the Terms of Service with respect to Customer's subscription to a Service.
- 14.4** Either Party may terminate the Service at any time upon a two months' notice.
- 14.5** Upon a Party's material breach of its obligations hereunder, the other Party may terminate the subscription to Service forthwith, i.e. without warning or advance notice ("extraordinary" termination). A material breach shall, inter alia, be deemed to have occurred if: (i) a Party is in breach of any of its obligations hereunder and fails to discontinue or remedy such breach within

two weeks after notice from the other Party specifying the breach and requiring it to be discontinued or remedied; (ii) a Party is in persistent breach of any of its obligations hereunder and the respective breach cannot be remedied; (iii) a breach by one Party deprives the other of the whole benefit, or substantially all of the benefit, the latter was entitled to hereunder. Other provisions of Terms of Service and those of applicable law may provide additional grounds for extraordinary termination.

14.6 Any termination of the subscription to Service shall be without prejudice to the Parties' rights and remedies that have accrued prior to the termination.

14.7 Upon any termination of the subscription to Service: (i) all rights that Customer has been granted hereunder will terminate; (ii) Customer shall cease all activities authorised by the Terms of Service; (iii) they shall immediately disburse to Evocon all sums that are due to the latter hereunder; (iv) all Customer content and other data associated with Customer's Customer Account will be deleted or otherwise made unavailable to Customer, unless expressly set out herein; (v) Customer will receive no refund, exchange or other compensation for any unused time on a subscription, for any licence or subscription fee, any content or other data associated with Customer Account, or for anything else.

15 DISCLAIMER OF WARRANTIES

15.1 CUSTOMER'S USE OF THE SERVICE IS AT CUSTOMER'S OWN RISK, AND SO ARE CUSTOMER'S AND END USERS' EXPOSURE TO, DOWN- AND UPLOAD OF, AS WELL AS TRANSMISSION, OTHER PROCESSING AND POSSESSION OF INFORMATION, PROGRAMS AND OTHER OBJECTS THROUGH OR DUE TO THE SERVICE.

15.2 EXCEPT AS EXPRESSLY SET FORTH IN THIS TERMS OF SERVICE, EVOCON DOES NOT MAKE ANY ADDITIONAL PROMISES, EITHER EXPRESS OR IMPLIED, REGARDING EVOCON'S PERFORMANCE UNDER THIS TERMS OF SERVICE. THE SERVICES ARE PROVIDED ON AN "AS-IS" AND "AS AVAILABLE" BASIS, AND EVOCON DOES NOT GUARANTEE THAT THE SERVICES WILL BE FREE OF ANY MATERIAL FUALTS, INTERRUPTION OR UNAVAILABILITY. TO THE MAXIMUM EXTENT NOT PROHIBITED BY LAW, EVOCON HEREBY DISCLAIMS ALL WARRANTIES, BOTH EXPRESSED AND IMPLIED, INCLUDING, WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. CUSTOMER ACKNOWLEDGE THAT WE DO NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, TIMELY, SECURE, ERROR-FREE OR FREE FROM VIRUSES OR OTHER MALICIOUS PLATFORM, AND NO INFORMATION OR ADVICE OBTAINED FROM US OR THROUGH THE SERVICES SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TERMS OF SERVICE.

15.3 THE SOLE AND EXCLUSIVE REMEDY FOR ANY PROBLEMS OR DISSATISFACTION WITH THE SERVICE SHALL BE TO TERMINATE THE USE OF THE SERVICE.

16 LIABILITY

16.1 CUSTOMER AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY FOR ANY PROBLEMS OR DISSATISFACTION WITH SERVICE IS TO STOP USING SERVICE. WHILE EVOCON ACCEPTS NO RESPONSIBILITY FOR THIRD PARTY APPLICATIONS OR THE CONTENT THEREOF, AND WHILE CUSTOMER'S RELATIONSHIP WITH SUCH THIRD PARTY APPLICATIONS MAY BE GOVERNED BY SEPARATE AGREEMENTS WITH SUCH THIRD PARTIES, TO THE EXTENT PERMITTED BY APPLICABLE LAW, CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AS WITH RESPECT TO EVOCON, FOR ANY PROBLEMS OR DISSATISFACTION WITH THIRD PARTY APPLICATIONS OR THE CONTENT THEREOF, IS TO UNINSTALL AND/OR STOP USING ANY SUCH THIRD PARTY APPLICATIONS.

16.2 UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY (WHETHER IN CONTRACT, TORT, NEGLIGENCE OR OTHERWISE) WILL EITHER PARTY TO THIS TERMS OF SERVICE, OR THEIR AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, SERVICE PROVIDERS OR SUPPLIERS OR LICENSORS BE LIABLE TO THE

OTHER PARTY OR ANY AFFILIATE FOR ANY LOST PROFITS, LOST SALES OR BUSINESS, LOST DATA, BUSINESS INTERRUPTION, LOSS OF GOODWILL, OR FOR ANY TYPE OF INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, CONSEQUENTIAL OR PUNITIVE LOSS OR DAMAGES, OR ANY OTHER LOSS OR DAMAGES INCURRED BY THE OTHER PARTY OR ANY AFFILIATE IN CONNECTION WITH THIS TERMS OF SERVICES, THE SERVICES OR CONSULTING SERVICES REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF OR COULD HAVE FORESEEN SUCH DAMAGES.

- 16.3** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS TERMS OF SERVICE, EVOCON'S AGGREGATE LIABILITY FOR ALL CLAIMS OF ANY DURING EACH CALENDAR YEAR SHALL NOT EXCEED THE LESSER OF: (A) SERVICE FEES ACTUALLY RECEIVED BY EVOCON FOR TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM; (B) SERVICE FEES ACTUALLY RECEIVED BY EVOCON FOR TWELVE MONTHS PRECEDING THE EVENT GIVING RISE TO THE CLAIM FOR SPECIFIC SUBSCRIPTION PLAN, IF CLAIM IS RELATED TO SPECIFIC CUSTOMER OR SUBSCRIPTION PLAN; (C) EUR 70 000. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ESSENTIAL PURPOSE OF THIS SECTION 16.3 IS TO ALLOCATE THE RISKS UNDER THIS TERMS OF SERVICE BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION CHARGES AND CONSULTING FEES FOR CUSTOMER'S SUBSCRIPTION, WHICH WOULD HAVE BEEN SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. WE HAVE RELIED ON THESE LIMITATIONS IN DETERMINING WHETHER TO PROVIDE CUSTOMER WITH THE RIGHTS TO ACCESS AND USE THE SERVICES PROVIDED FOR IN THIS TERMS OF SERVICE. THE LIMITATION OF LIABILITY PROVIDED FOR HEREIN WILL APPLY IN AGGREGATE TO SUBSCRIBER AND ITS AFFILIATES AND SHALL NOT BE CUMULATIVE.
- 16.4** NO PARTY IS NOT ENTITLED TO PRESENT ANY CLAIM FOR LOSS OR DAMAGES AFTER 12 MONTHS FROM THE RESPECTIVE BREACH (AT WHICH TIME THE OBLIGATION OF A PARTY TO COMPENSATE OTHER PARTY FOR ANY REASON WHATSOEVER SHALL EXPIRE AND SUCH PARTY SHALL HAVE NO LIABILITY UNDER THIS TERMS OF SERVICE FOR THE RESPECTIVE LOSS OR DAMAGES). THE LIMITATION PERIOD STARTS RUNNING FROM THE MOMENT THE RESPECTIVE PARTY KNEW OR SHOULD HAVE KNOWN OF THE FACTS GIVING RISE TO ITS CLAIM.
- 16.5** THE SOLE REMEDY AGAINST A PARTY FOR A BREACH BY A PARTY OF AN OBLIGATION DERIVING FROM THE AGREEMENT THE OTHER PARTY SHALL AN ACTION FOR DAMAGES AND/OR ACTION TO CLAIM DUE PERFORMANCE OF THE RESPECTIVE OBLIGATION, UNLESS EXPLICITLY OTHERWISE SPECIFIED IN THE AGREEMENT.
- 16.6** Some jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental or consequential damages or personal injury or death, which means that some of the above limitations may not apply to Customer. IN THESE JURISDICTIONS, THE EVOCON GROUP'S LIABILITY WILL BE LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.
- 16.7** Nothing in this Terms of Service will: (a) limit or exclude any liability for death or personal injury resulting from negligence; (b) limit or exclude any liability for fraud or fraudulent misrepresentation; (c) limit any liabilities in any way that is not permitted under applicable law; (d) exclude any liabilities that may not be excluded under applicable law; (e) limit or exclude any liability for intentional breach of this Terms of Service.

17 GOVERNING LAW AND DISPUTE RESOLUTION

- 17.1** Terms of Service is governed by the laws of the Republic of Estonia (without precluding the application of any relevant international treaty or convention or enactment of any international organisation that Estonia has acceded or accedes to; for the purposes of this section, the European Union shall be regarded as an international organisation).
- 17.2** Any dispute that may arise in connection with Terms of Service, whether with respect to its existence, validity, interpretation, performance, breach, termination or otherwise, and any dispute concerning the Service or any part thereof, shall, if not settled by negotiation, be subject to the exclusive jurisdiction of Estonian courts.

18 NOTICES

18.1 All notices and other communication, which will all be in the English language, will be deemed to have been duly given or made when delivered to the e-mail address of Evocon or to your e-mail address associated with Customer Account. Evocon contact details are made available on the Website.

19 MISCELLANEOUS

19.1 This Terms of Service (as amended from time to time) constitutes the entire agreement between the Parties relating to the subject matter hereof and supersedes and replaces all prior agreements and understandings between the Parties with respect to that subject matter.

19.2 Terms of Service shall prevail in case of conflict or ambiguity between any provision contained herein and any statement, representation or other information published on the Website.

19.3 No delay in performing an obligation or in exercising a right under Terms of Service will mean exemption of such obligation or waiver of such right, nor will separate or partial exercise of any right exclude further exercise of such right or any other right, unless the provisions or the context of Terms of Service requires otherwise.

19.4 Invalidity or nullity of a single provision of Terms of Service will not cause invalidity or nullity of the entire Terms of Service or of other provisions of Terms of Service.