

# Master Subscription Agreement

entered into between

**Evolutio, LLC**

of 330 N Wabash Ave. | 23rd Floor Chicago, IL 60611

and

**Subscriber**

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# Master Subscription Agreement

## 1. PARTIES

*The parties to this Agreement are:*

- 1.1 Evolutio, LLC (“Evolutio”); and
- 1.2 **Subscriber** (“Client”)

## 2. INTRODUCTION

- 2.1 Evolutio has the rights to license and provide services as set out in Addendum B (“Professional Services”) for the Evolutio within a defined territory;
- 2.2 Client wishes to subscribe to services to use the Evolutio Products on its computer systems and receive Professional Services; and
- 2.3 Evolutio wishes to grant Client a subscription to use the Evolutio Products on Client’s computer systems and will perform Professional Services subject to the terms set out in this Agreement, which supersedes and prevails over all other arrangements between the parties as to its terms and conditions and subject matter.

## 3. DEFINITIONS AND INTERPRETATION

- 3.1 In this Agreement, unless the context clearly indicates a contrary intention, the following expressions have the following meanings and cognate expressions shall have corresponding meanings:
  - 3.1.1 “Agreement” means this agreement and all its Addendums.
  - 3.1.2 “Services” means collectively the subscription service to use the Evolutio Products and any professional services, under this Agreement.
  - 3.1.3 “Distinguishing Marks” means, in respect of each party, the trade marks, trade names, symbols, logos or similar identifying marks belonging to that party and, in the case of Evolutio, used by them in connection with the Evolutio Products and Documentation;

- 3.1.4 “Documentation” means the most current accompanying explanations for the Evolutio Products that are provided to Client in machine-readable format; The Documentation shall be sufficient to reasonably enable Client personnel to use, operate and understand the use and operation of the Evolutio Products;
- 3.1.5 “Intellectual Property Rights” means all rights arising by virtue of, or in relation to, copyright, trade marks (registered or unregistered), patents, know-how, methodologies, confidential information, trade and business secrets, and any other similar rights howsoever arising in the execution of, or pursuant to, this Agreement;
- 3.1.6 “Use of Evolutio Products” means installing the software, using the software in day-to-day operations, and upgrading the software on the Client’s computer system;
- 3.1.7 “Enhancement” means the addition or enhancement to the Evolutio Products that does not require changes to the ready-to-execute, “basis” or “kernel” source code of the Evolutio Products;
- 3.1.8 “Modification” means a change to the Evolutio Products that, of necessity, changes the ready-to-execute “basis” or “kernel” source code of the Evolutio Products;
- 3.1.9 “Works” mean all ideas, know-how, processes, information, drawings, documents, designs, models, inventions, copyrightable material, and other tangible and intangible materials authored, prepared, created, made, delivered, conceived or reduced to practice, in whole or in part, by Client in the course of using the Evolutio Products and/or Documentation, including without limitation computer programs, computer systems, data, and documentation;
- 3.1.10 “Effective Date” means the latter of the dates beneath the parties’ signatures below.

3.2 In this Agreement:

- 3.2.1 the singular includes the plural and vice versa and words importing one gender includes every other gender. Any reference to a juristic person includes a natural person and vice versa;
- 3.2.2 the clause headings are for ease of reference only and shall not affect the interpretation or construction of this Agreement; and
- 3.2.3 if any definition contains a substantive provision conferring rights and/or obligations upon a party, then effect shall be given thereto as if it were contained in the body of this Agreement.

#### **4. SERVICES & PERMITTED USE OF EVOLUTIO PRODUCTS**

- 4.1 Evolutio, hereby grants Client a non-exclusive, non-transferable license to use the Evolutio Products listed in Addendum B during the Subscription Term indicated in Addendum B, unless terminated in accordance with this Agreement.
- 4.2 Client shall not make the Services or Evolutio Products available to anyone other than employees or agents and Client shall not sell, resell, rent or lease the Services or Evolutio Products to any third party.
- 4.3 Except as permitted by applicable law and this Agreement, the Evolutio Products may not be reverse-engineered, disassembled, modified, or the like and/or used to create derivative Works. Client's rights under this Agreement shall terminate if the Client fails to remedy such breach within fifteen (15) days of written notice from Evolutio to do so.
- 4.4 Evolutio shall provide all Documentation for the Evolutio Products and shall update the Documentation as needed from time to time. Client shall have the right to reproduce and distribute the Documentation for purposes of its operations.

#### **5. EVOLUTIO OBLIGATIONS**

- 5.1 Evolutio shall ensure that all registration, permits, licenses, approvals and other government approvals have been secured in relation to Client's utilization of the Evolutio Products.

5.2 The Client will permit Evolutio to audit each installation of the Evolutio Products maximum once every calendar year. The goal of the audit will be to compare the current usage with the usage granted according to the Agreement. If the database size and/or active employee master records have increased, Client will need to acquire licenses for the additional capacity.

## **6. ENTITLEMENT TO PRODUCT SUPPORT AND MAINTENANCE**

6.1 Client shall be entitled to product support and maintenance as outlined in Addendum A as long as all Subscription Fees are paid.

## **7. FEES AND PAYMENT**

7.1 Client shall pay Evolutio fees in advance to use the Evolutio Products (“Subscription Fee”) or to receive Professional Services (“Professional Service Fee”). The Subscription Fees are based on monthly periods that begin on the subscription start date and repeat on the same date each month thereafter, until the subscription end date.

7.2 Fees will be invoiced in advance and otherwise in accordance with Addendum B. Fees are due net thirty (30) days from the invoice date and time is of the essence in the prompt payment of these fees. Client is responsible for maintaining complete and accurate billing and contact information for the Services.

7.3 Upon execution of this Agreement Evolutio shall provide a product activation key for the duration of the Subscription Term.

7.4 If any charge owing by Client is 30 days or more overdue, Evolutio may, without limiting its other rights and remedies, suspend Services until such amounts are paid in full.

- 7.5 The fee provided for in this clause 7 excludes value-added or sales tax or any other tax (“Taxes”), which is levied on sales of this nature. If such tax is payable, it shall be paid by Client in addition to the fees. Client will provide Evolutio with any information reasonably requested to determine whether Evolutio are obligated to collect Taxes from Client, including Client’s tax or VAT identification number. If Client is legally entitled to an exemption from any sales, use, or similar transaction tax, Client is responsible for providing Evolutio with legally-sufficient tax exemption certificates for each taxing jurisdiction. Evolutio will apply the tax exemption certificates to charges under Client’s account occurring after the date Evolutio receives the tax exemption certificates. If any deduction or withholding is required by law, Evolutio will notify Client and Client will pay Evolutio any additional amounts necessary to ensure that the net amount that Evolutio receive, after any deduction and withholding, equals the amount Evolutio would have received if no deduction or withholding had been required. Additionally, Client will provide Evolutio with documentation showing that the withheld and deducted amounts have been paid to the relevant taxing authority.
- 7.6 Client is liable for interest at the rate of 1.5% per month on all late payments.

## **8. INTELLECTUAL PROPERTY RIGHTS**

- 8.1 No copyrights, trademark rights, or any other Intellectual Property Rights in and to the Evolutio Products, any copies that are authorized by this license, the Documentation and the Distinguishing Marks are hereby granted to Client, including those relating to Modifications and Enhancements. Client acknowledges that it has no right, title or interest therein except as expressly granted in this Agreement.
- 8.2 Client shall not alter, remove, cover or otherwise interfere with copyright notices or other proprietary legends that appear on programs, data media, written documents, promotional packaging, materials in relation to the Evolutio Products and documentation supplied by Evolutio.
- 8.3 All information and data relating to Client or any entity or individual associated with Client or their operations and all material developed by Client or its contractors remain the exclusive property of Client.

- 8.4 All Intellectual Property Rights in all Works conceived, developed and/or produced by Client, shall remain vested in Client but subject always to the inherent rights of Evolutio in and to the Evolutio Products and Documentation.
- 8.5 This Agreement excludes Intellectual Property Rights, software licensing terms, copyrights and/or trademark rights pertaining or related to other 3rd party products such as those provided by SAP, Splunk and/or AppDynamics/Cisco.

## 9. WARRANTY

- 9.1 Evolutio hereby warrants that:
- 9.1.1 It has full authority to enter into this Agreement and to consummate the transactions contemplated hereby and that this Agreement is not in conflict with any other Agreement to which Evolutio is a party or by which it may be bound;
- 9.1.2 Evolutio has the right to grant the Services hereunder, and Client will have the license to use the Evolutio Products and Documentation, free and clear of any liens, claims, encumbrances and other restrictions, in accordance with the provisions of this Agreement, and Client's use and possession of same will not be interrupted or otherwise disturbed by Evolutio, any person, firm or entity asserting a lawful claim under or through Evolutio;
- 9.1.3 For the duration of the Subscription Term the Evolutio Products will perform in all material respects in compliance with the specifications, functionality, and descriptions ascribed to the Evolutio Products in the Documentation;
- 9.1.4 All Evolutio Products and Documentation shall be free of any disabling codes other than the product activation code;
- 9.1.5 All Professional Services performed by Evolutio shall be performed in a professional manner, conforming to generally accepted industry standards, by well-trained and properly equipped personnel and in compliance with all applicable laws.
- 9.2 **Warranty Limitation.** Notwithstanding the foregoing, the warranty in Section 9.1 and Evolutio's obligations set forth in Section 9.35 will not apply:



- 9.2.1 to the extent that an Error is due to causes that are external to the Software or otherwise beyond Evolutio' reasonable control, including, without limitation, natural disasters, fire, smoke, water, earthquakes, lightening, electrical power fluctuations or failures, or hardware or software not provided by Evolutio;
  - 9.2.2 if the Software has been neglected, misused, or otherwise used in a manner not in compliance with the Documentation or this Agreement;
  - 9.2.3 if the Software has been improperly installed (other than by Evolutio);
  - 9.2.4 if there has been a modification or attempted modification of the Software (other than by Evolutio); or
  - 9.2.5 if Client has refused or otherwise failed to implement corrections, updates, enhancements, new releases, or other modifications that Evolutio has provided.
- 9.3 **Warranty Exclusion.** Except as specifically agreed under this Agreement, Evolutio disclaims all other warranties, express or implied, including any warranty of satisfactory quality, merchantability or fitness for a particular purpose. Evolutio does not represent that the Evolutio Products and Documentation are error free or operate without interruption.
- 9.4 Client's sole and exclusive remedies for any damages or losses of whatever nature and however arising and irrespective of the number of events or causes giving rise to any liability in any way connected with this shall, at Evolutio's option, be:
- 9.4.1 Replacement or Modifications of the Services; or
  - 9.4.2 Performance of Professional Services to remedy the damage or loss; or
  - 9.4.3 Termination of this Agreement.
- 9.5 Subject to receipt by Evolutio of written notice of alleged breach of warranty within the period referred to in clause 9.1.3 if Evolutio is in breach of the warranty contained in clause 9.1, Evolutio shall repair or replace the Evolutio Products as soon as reasonably possible.

## 10. INDEMNIFICATION AND INFRINGEMENT

- 10.1 **Indemnification.** Evolutio shall, in its sole discretion, either defend or settle, at its own cost, any legal claim that is brought or threatened against Evolutio or Client on the basis of the alleged infringement of any patent, copyright, trademark, trade secret or other Intellectual Property Right of a third party as a consequence of the use of the Services. Evolutio will also reimburse Client for all costs and damages that are finally and bindingly awarded against Client in connection with any such legal dispute provided that:
- 10.1.1 the infringement is attributable to Evolutio' intentional or negligent behavior; and
  - 10.1.2 Client notifies Evolutio in writing of any such alleged claim without undue delay; and
  - 10.1.3 Client authorizes Evolutio to defend, settle or otherwise manage the defense of any such claim; and
  - 10.1.4 Client provides Evolutio with all relevant information and reasonable support.
- 10.2 **Infringement.** If an infringement of proprietary rights of a third party is alleged or, in the reasonable opinion of Evolutio, likely to occur, Evolutio may, in its own reasonable discretion, either:
- 10.2.1 procure for Client the continued right to use the Services at no extra cost to Client; or
  - 10.2.2 replace the Services in such manner that no proprietary rights of third parties are infringed provided the Services continues to essentially fulfill the functional characteristics; or
  - 10.2.3 if none of the foregoing alternatives can be achieved at reasonable costs, Evolutio may terminate this Agreement.

## 11. LIMITATION OF LIABILITY

- 11.1 EXCEPT TO THE LIMITED EXTENT SET FORTH IN SECTION 11.3 BELOW, IN NO OTHER EVENT OR CIRCUMSTANCE SHALL EVOLUTIO'S TOTAL LIABILITY TO CLIENT WHETHER ARISING OUT OF OR RELATING TO THIS AGREEMENT FOR ANY CAUSE OR CLAIM WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), OR OTHERWISE, EXCEED LICENSE FEES SET FORTH IN THE APPLICABLE ADDENDUM.
- 11.2 IN NO EVENT OR CIRCUMSTANCE SHALL either party be liable to the other PARTY for any amounts representing loss of profit, loss of business, special, incidental, indirect, consequential, exemplary, or punitive damages of the other party, including costs or damages related to system or software downtime, loss of data, or development, production or work stoppages or delays.
- 11.3 The limitation of liability set forth in Section 11.1 above shall not limit the indemnification, defense and hold harmless obligations of Evolutio set forth in Section 10.1 or Client's breach of Intellectual Property Rights obligations in Section 8 of this Agreement.
- 11.4 Unless the Client has obtained the prior written approval of Evolutio , Evolutio will not be responsible for:
- 11.4.1 Any Modification or improvement to the Evolutio Products by Client to fit the particular requirements of Client;
  - 11.4.2 The correction of any data errors resulting from Modifications or Enhancements by Client; or
  - 11.4.3 The correction of any data errors as a result of misuse of the Evolutio Products by Client where such Modifications or Enhancements were not approved by Evolutio.
  - 11.4.4 Any breach or outage detected by the Evolutio Products. For avoidance of doubt, the Evolutio Products are for monitoring and detection purposes only and in no way does Evolutio warrant that the use of the Evolutio Products will avoid a breach or outage.

11.5 Any action by Client for an alleged breach of this Agreement by Evolutio shall be instituted against Evolutio within one (1) year after the cause of action had accrued failing which, Client shall be deemed to have waived its rights to bring any such claim.

## **12. TERM AND TERMINATION**

12.1 This Agreement commences on the Effective Date and continues until all subscriptions granted in accordance with this Agreement have expired or been terminated.

12.2 Subscriptions commence on the start date specified in the applicable Addendum and continue for the subscription term specified therein. Except as otherwise specified in the applicable Addendum, all subscriptions shall automatically renew for additional periods equal to the expiring subscription term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least ninety (90) days before the end of the relevant subscription term.

12.3 The pricing during any automatic renewal term will be based upon the then current information of the computing systems where the Evolutio Products are used and the then current list price of of the Services. Evolutio shall give Client written notice of a pricing increase at least 30 days before the end of such prior term, in which case the pricing increase shall be effective upon renewal and thereafter.

12.4 Either party may terminate this Agreement in the event of the occurrence of any of the following termination events or if such termination is provided for elsewhere in the Agreement. The right to terminate is not exclusive and will not detract from any other rights that an aggrieved party may have.

12.4.1 The other party or any of its employees commits a breach of any obligation under this Agreement and fails to remedy such breach to the notifying party's reasonable satisfaction within 30 days of receipt after it demands that such breach be remedied.

- 12.4.2 Either party ceases to conduct business, is declared insolvent, or makes a general assignment for the benefit of its creditors, or a petition for bankruptcy filed by or against it and such petition is not dismissed within 90 days thereafter.
- 12.4.3 Either party has a material change in its ownership structure such that "voting control" is held by a new person or entity, and the new person or entity is not willing to abide by the terms of this Agreement
- 12.5 Upon termination of this Agreement for any reason:
  - 12.5.1 All Addenda and any subscription, license or sublicense granted pursuant to this Agreement shall automatically and simultaneously terminate;
  - 12.5.2 Client, its employees, its Client Affiliates, and its Client Contractors shall immediately discontinue the use of the Evolutio Products and any other confidential information and return all copies of the same to Evolutio or otherwise provide Evolutio with satisfactory evidence of their destruction in the form of an affidavit; and
  - 12.5.3 Any remaining unpaid Fees, and Additional Costs shall become immediately due and payable to Evolutio.
- 12.6 All clauses which by their nature survive termination of this Agreement or which must survive to provide the full intended benefit thereof, including without limitation clauses 10, 11, 12.5, 13 and 14, shall survive termination of this Agreement.

### **13. CONFIDENTIALITY**

- 13.1 For the purposes of this clause any person giving information shall be referred to as "the discloser" and any person receiving information shall be referred to as "the recipient". For the purposes of this clause the phrase "personnel" or "employees" shall be deemed to include directors, personnel, agents, sub-contractors, consultants, or other representatives of the recipient. Any breach of confidentiality by such persons shall be deemed to also be a breach of confidentiality by the recipient.

- 13.2 All information of a confidential nature (including, but not limited to, all information relating to the scope of this Agreement and all the details of Client), disclosed or made available by one party to the other in connection with this Agreement, whether furnished verbally or in writing or in computer language, and whether marked with proprietary legend or not, shall constitute confidential, proprietary and trade secret information (collectively referred to as "the Confidential Information") of the discloser, provided that there shall be excluded from such information any information which is, at the time of disclosure, already in the public domain otherwise than by breach of this Agreement and there shall furthermore be excluded such information as the recipient is able to show was within its knowledge prior to the disclosure thereof.
- 13.3 The recipient shall at all times, unless otherwise agreed in writing by the discloser, hold the Confidential Information furnished by the discloser in the strictest confidence and shall use such Confidential Information solely for the purposes of performing under this Agreement. The recipient and its employees shall not copy or reproduce the Confidential Information, in whole or in part, by any method whatsoever.
- 13.4 The recipient shall disclose such Confidential Information and the reports only to its own employees and professional advisers who will of necessity require it as a consequence of the implementation of this Agreement, provided that prior to any such disclosure, such employees and professional advisers undertake in writing in favor of the discloser to be bound mutatis mutandis by the provisions of this clause or are bound by equivalent obligations of non-disclosure.
- 13.5 Furthermore, it is agreed by the parties that any of the Confidential Information disclosed to the recipient shall be disclosed on no basis other than the basis herein set out, more in particular the basis that the recipient shall at all times comply with the obligations under this clause 14.

- 13.6 This Agreement will not preclude disclosure by a party of the Confidential Information of the other party as required by applicable law or pursuant to valid court order or other governmental directive so long as the disclosing party has, unless prohibited by law from doing so, provided to the other party prompt notice of such legal requirement, order, or directive so as to enable the other party to interpose appropriate objections thereto.

#### 14. GENERAL PROVISIONS

- 14.1 **Entire Agreement.** This Agreement constitutes the complete and exclusive statement and record of the Agreement between Client and Evolutio. No prior statement, representation, warranty, inducement or the like, shall be binding on either party, unless contained herein or reduced to writing in a separate formal document and signed by the parties. Furthermore, no variation of, or addition to this Agreement shall be of any force or effect unless reduced to writing and signed by the duly authorized representative of both parties.
- 14.2 **No Waiver.** If either party should condone any breach of any provision of this Agreement or the time for performance of any obligation, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 14.3 **Publicity.** Neither party shall use the name, marks and/or logos of the other in publicity, advertising, or similar activity, without the prior written consent of the other, except that Client hereby consents to Evolutio's inclusion of Client's name and logo in customer listings or in promotional or marketing material or editorial.
- 14.4 **Governing Law.** This Agreement and the rights and obligations of the parties hereto shall be governed by and construed under the laws of the state or country where Evolutio has its principal place of business.
- 14.5 **Construction of Contract** Since the provisions of this Agreement have been settled by negotiation, the rule of construction that clauses must be interpreted against the party principally responsible for drafting will not apply.
- 14.6 Notices

14.6.1 Any notices to be given to the parties in terms of this Agreement other than those contemplated in the day-to-day execution of the maintenance services, shall be in writing and delivered by hand during ordinary business hours or posted by prepaid registered post or transmitted by fax during normal business hours to the respective addresses mentioned on the front page of this document, which respective addresses the parties choose for the delivery or service of all notices, communications or legal processes arising out of this Agreement. A party shall be entitled to change such address to another physical address, which change will take effect after the expiry of thirty (30) days written notice to the other party.

14.6.2 A written notice as communication actually received by either party from the other shall be an adequate written notice as communication to such receiving party notwithstanding that it was not sent to or delivered at that party's chosen domicilium citandi et executandi.

14.6.3 A notice in terms of clause 14.6.1 which was sent by fax will be deemed to be received on the first business day after the day of dispatch and a notice which was sent by registered post will be deemed to be received 10 days after date of posting.

#### 14.7 Assignment

14.7.1 Neither Party shall have any right or ability to assign, transfer, or sublicense any obligations or benefit hereunder without the written consent of the other provided.

14.7.2 Any purported assignment in violation of this section shall be null and void. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their heirs, executors, administrators, successors, legal representatives, and permitted assigns.



- 14.8 **Severability.** If any provision in this Agreement is found or held to be invalid or unenforceable, then the meaning of such provision shall be construed, to the extent feasible, so as to render the provision enforceable. However, if no feasible interpretation would save such provision, it shall be deleted from this Agreement and the remainder of this Agreement shall remain in full force and effect. However, if the severed provision is essential and material to the rights or benefits received by either party, the parties shall use their best efforts to negotiate, in good faith, a substitute, valid and enforceable provision or Agreement which most nearly affects their intent in entering into this Agreement.
- 14.9 **Force Majeure.** Any delay or non-performance of any obligation arising from this Agreement (other than for payment of amounts due hereunder) that is caused by conditions beyond the control of the party required to perform, shall not constitute a breach of this Agreement and the time for performance of such obligation, if any, shall be deemed to be extended for a period equal to the duration of such conditions preventing performance.
- 14.10 **Dispute Resolution and Arbitration**
- 14.10.1 Should any dispute of any nature whatsoever, arise out of, or in connection with, or relating to, this Agreement, then the parties agree that members of their respective senior management shall first meet and use their best endeavors to negotiate in good faith a settlement of such dispute. Should the parties fail to meet or should such negotiations fail to resolve the dispute or to agree on a process to resolve the dispute, such as mediation or arbitration, after 30 days have elapsed after such referral of the dispute, either Party may take such action as it believes appropriate.
- 14.10.2 The provisions of clause 14.10.1 will not preclude a Party from seeking urgent relief from a Court in appropriate circumstances

## Addendum A

### Maintenance and Support

*Support for the Evolutio Products is handled by the global support team, and is coordinated through the Evolutio product support website (clientcentral.io). The global support team prides themselves on the speed and accuracy of their assistance and will meet and exceed the service levels detailed below.*

*Subscription Fees entitles Client to ongoing support of the existing Evolutio Products as well as the upgrade to future versions of the Evolutio Products.*

### 1. DEFINITIONS AND INTERPRETATION

1.1 “First Line Support” means basic customer response. Evolutio shall be responsible to answer support tickets logged by Client regarding any questions or problems Client may have with the Evolutio Products. Evolutio may appoint an agent to provide this line of support. The responsible organization shall note the problem, recording it in a support ticket. The responsible organization shall then do a basic search for the problem in a shared knowledge base to see if there is a known solution. If there is a known solution available the said organization must answer the customer inquiry directly. If there is no known solution available the problem and customer information must be forwarded promptly to a Second Line Support organization for processing.

1.2 “Second Line Support” means problem determination. Evolutio shall be responsible for providing Second Line Support and should work with Client to identify and verify the causes of suspected errors or problems in the Evolutio Products and to document the errors and problems thoroughly. If a solution is identified during the discovery process, the said organization must answer the customer inquiry directly. If no solution is identified the problem and customer information must be forwarded promptly to a Third Line Support organization for processing.

- 1.3 “Third Line Support” means the creation of a solution to a problem that has not been encountered previously. Evolutio shall be responsible for providing Third Line Support. This solution could be delivered by building a patch for the Evolutio Products, by finding a workaround, or by some other means.
- 1.4 “Critical Defects” means defects in the Evolutio Products that cause such a significant loss of functionality, reliability, performance, or quality of the Evolutio Products that the Evolutio Products cannot be used and that it prevents a time critical and crucial business process from advancing.
- 1.5 “Major Defects” means a ticket logged for a defect in the Evolutio Products that cause such a significant loss of functionality, reliability, performance, or quality of the Evolutio Products that the Evolutio Products cannot be used.
- 1.6 “Moderate Defects” means defects in the Evolutio Products that:
  - 1.6.1 Cause significant loss of functionality, reliability, performance or quality of the Evolutio Products but can be circumvented such that the software can be used; or
  - 1.6.2 Cause a feature in the Evolutio Products to be unusable while other features remain unaffected.
- 1.7 “Minor Defects” means defects in the Evolutio Products that do not have a significant effect on the functionality, reliability, performance, or quality of the Evolutio Products.
- 1.8 “Problem Solving Log” means a diagnostic file generated by the Evolutio Products and used in defect identification and resolution. The diagnostic file will not contain any confidential information or personal identifiable information.
- 1.9 “Response time” shall begin from when the ticket is logged on the support portal and end the first response is submitted
- 1.10 “Support Hours” means Monday to Friday, uninterrupted, starting 8am on Mondays SGT (Singapore) and ending 5pm PDT (USA) on Fridays, excluding public holidays.

## 2. MAINTENANCE AND SUPPORT OBLIGATIONS

- 2.1 Client shall receive First Line Support, Second Line Support and Third Line Support from Evolutio with respect to any questions or defects concerning the Evolutio Products during Support Hours.
- 2.2 Evolutio shall provide all updates, and upgrades to the Evolutio Products as the updates become commercially available, at no additional charge above the Maintenance Fees. Upgrades and updates may include new functionality and/or may be for new SAP versions, releases, support packs, etc. Evolutio shall provide upgrades and updates to support new SAP versions as they become generally available, and in no event more than two calendar quarters after they become available. Evolutio shall provide the Evolutio Products via the Evolutio product support website.

## 3. MAINTENANCE AND SUPPORT SERVICES

- 3.1 **Critical Defects.** In the event that the Client notifies Evolutio of a Critical Defect, Evolutio shall acknowledge such notification within four (4) hours during Support Hours. Evolutio shall use commercially reasonable efforts to provide an update to the Evolutio Products that corrects any Critical Defect or provide a work around within five (5) business days from the date of notification, but in any event as quickly as possible.
  - 3.1.1 Only Critical Defects should be logged as Critical priority tickets;
  - 3.1.2 In order to resolve critical priority tickets Client must provide remote access to the relevant system and the name of a contact person and telephone number at the Client who will be available throughout the resolution of the ticket. The Client's contact person must be available on a 24/7 basis.
  - 3.1.3 In order to resolve critical priority tickets, Client must provide the Problem Solving Log to Evolutio.

- 3.2 Critical Defects should be raised as critical priority tickets on the Evolutio product support website. Once the issue is investigated it may be deemed to be a Major, Moderate or Minor Defect by the global support team. All other priority tickets will be assumed to be Major, Moderate or Minor defects until investigated.
- 3.3 **Major Defects.** In the event that Client notifies Evolutio of a Major Defect, Evolutio shall acknowledge such notification within twenty-four (24) hours during Support Hours. Evolutio shall investigate the Major Defect and shall, in its sole reasonable discretion, determine if a fix is warranted prior to a scheduled release. If a fix is warranted, Evolutio will provide an update to the Evolutio Products that corrects any major defect or provide a work around. If a fix is not warranted and Evolutio has assigned the Major Defect to a target release, Evolutio shall communicate the target release and expected time frame to Client.
- 3.3.1 Major Defects can be logged as high priority tickets;
- 3.3.2 In order to resolve high priority tickets, Client must provide the Problem Solving Log to Evolutio.
- 3.4 **Moderate Defects.** In the event that Client notifies Evolutio of a Moderate Defect, Evolutio shall acknowledge such notification within twenty-four (24) hours of notification by Client during Support Hours.
- 3.4.1 Moderate Defects should be logged as medium priority tickets.
- 3.5 **Minor Defects and Suggested Enhancements.** In the event that Client notifies Evolutio of a Minor Defect or Suggested Enhancement, Evolutio shall acknowledge such notification within twenty-four (24) hours of notification by Client during Support Hours.
- 3.5.1 Minor Defects and Suggested Enhancements should be logged as low priority ticket