

PRODUCT EVALUATION AGREEMENT

This agreement is effective as of the date of last signature below ("Effective Date") and made between _____, located at _____, with Company Number _____ ("Supplier") and _____, located at _____ with Company Number _____ ("Customer").

Supplier agrees to make available to Customer the following product for Customer's evaluation and trial [describe product using its trading name, Supplier's trading name or general characteristics] (the 'Product') under the following terms and conditions:

1. Supplier grants Customer a limited, non-transferable, right to install, test, use, reproduce, access, make accessible, or practice any process in connection with the Product solely for the purpose of evaluation and trial use of the Product. This licence expires [specify] days following the Effective Date ('Evaluation period').
2. Customer acknowledges that the Product is the property of Supplier and that this agreement grants Customer no title or rights of ownership in the Product, even if Customer acquires ownership of the media on which the Product is stored. This agreement licenses the Product only for the purpose of enabling Customer to test and evaluate the Product. Customer shall be permitted to test the Product at its facilities in [city, county, country] and will not relocate it without prior written consent of Supplier. Customer may not transfer, sublicense, or resell the Product to third parties. Customer may not use the Product in any manner to operate or support its own products or business. Customer hereby assigns to Supplier any and all right, title, and interest (including, without limitation, all patent rights, design rights, copyrights, and trade secret rights) in any modifications or improvements to the Product which Customer may propose during the Evaluation Period or that may be jointly made by Supplier and Customer.
3. During the Product testing, Customer will use non-live 'dummy data' to test the Product, and no data used may be identified with a live person or otherwise meet the definition of personal information. In addition, Customer will avoid using sensitive business, financial, or commercial data while testing the Product. Supplier will not have access to any Customer data in connection with this agreement. At the end of the Evaluation Period, Customer will erase all data used in the Product prior to returning it to Supplier (to the extent technically possible).
4. Supplier will install, at its own cost, the Product at the Customer location listed above. During the Evaluation Period, Supplier will answer at no cost Customer's questions regarding the Product to enable Customer to evaluate the Product appropriately. Supplier is not responsible for data formatting, data transfer, data erasure, or similar issues with inputs that Customer makes into the Product. Following the Evaluation Period, Supplier will de-install the Product from the same premises at no charge to the Customer.
5. Customer does not commit to any exclusivity rights or any preferred supplier treatment. Customer has no obligation to enter into a final agreement or make a purchase. If Customer elects to rent, lease, licence, subscribe to, or purchase (as the case may be) the Product, the parties shall enter good faith negotiations to conclude a separate agreement.
6. Supplier represents, warrants and covenants that Supplier (i) is the owner of the Product, all materials (whether tangible or intangible) and methodologies used in the performance of this agreement or (ii) has the right to licence, use, distribute, or subcontract them in accordance with this agreement. Except as specified above, Supplier provides the Product as is with no warranties of any kind, as the purpose of supplying the Product is to identify further development, correct faults, and correct user operational issues.

Supplier will make reasonable efforts to check any software for viruses and malicious code.

7. Except in the case of death or personal injury caused by a party's negligence, each party's liability under this agreement shall not exceed the sum of £10,000.00 (ten thousand pounds sterling). Neither party shall be liable to the other party in contract, tort, negligence, breach of statutory duty, or otherwise for any loss, damage, costs, or expenses that are (a) of an indirect or consequential nature; or (b) for economic loss or other loss of turnover, revenue, profits, business, or goodwill. Nothing in this agreement excludes liability for a party's fraud.
8. This agreement is to be interpreted under the laws of England and Wales. The parties agree that the courts of England and Wales have exclusive jurisdiction over disputes related to this agreement. This agreement represents the entire agreement of the parties regarding confidential information and supersedes all prior discussions or writings. No modification of this agreement will be effective unless it is in writing and signed by the parties. No failure by any party to exercise any right or remedy will operate as a waiver of such right or remedy. If a whole or part of any term of this agreement is held to be illegal or unenforceable, that term shall be deemed not to form part of this agreement, and the enforceability of the remainder of the agreement shall not be affected.

Executed and agreed by both parties as of the dates indicated below:

Signature: _____

Title: _____
Date: _____

Signature: _____

Title: _____
Date: _____

PRODUCT EVALUATION AGREEMENT

Annex A – Confidentiality, Security and Privacy

Confidentiality

A party who receives any confidential information of the other is known as the “Receiving Party” and a party who discloses information to the other is known as the “Disclosing Party.”

“Confidential Information” means information concerning the Purpose (defined below) and any information regarding each party’s plans, designs, costs, prices, finances, marketing plans, business opportunities, investments, personnel, suppliers, research and development activities and internal know-how that is conspicuously designated as “Confidential,” “Proprietary” or with a similar legend. Information disclosed orally will only be considered confidential if it is identified as such in writing promptly following the disclosure (for example in meeting notices).

The Receiving Party may use the Confidential Information only for the purpose of discussing potential business opportunities with Disclosing Party (“Purpose”). The Receiving Party may disclose Confidential Information only to employees and subcontractors who need to know the information and are under an obligation of confidentiality when they receive it. The Receiving Party must keep all Confidential Information strictly confidential and not disclose it to any third party without written consent of the Disclosing Party. Finally, the Receiving Party agrees that software of the Disclosing Party contain valuable confidential information and agrees that it will not modify, reverse engineer, decompile, create other works from, or disassemble any software.

The Receiving Party will not be obligated under this Agreement with respect to any Confidential Information which: at the time of its disclosure was in the public domain; after disclosure came into the public domain for any reason (except breach by Receiving Party); was lawfully in the Receiving Party’s possession before such disclosure; was subsequently communicated to the Receiving Party from a third party without obligations of confidentiality; or was developed by employees or agents of Receiving Party who had no access to any Confidential Information.

Confidential Information is provided on an “as is” basis, with no warranty or representation as to accuracy. Each party acknowledges that monetary remedies may be inadequate to protect Confidential Information and that injunctive relief may be also appropriate to protect such rights.

Upon termination or expiration of this Agreement, or upon written request of the Disclosing Party, the Receiving Party will promptly return to the Company or destroy all documents and other materials containing Confidential Information; erase all the Confidential Information which is stored in electronic form (to the extent possible); and notify Disclosing Party that it has complied with the requirements of this clause. The Receiving Party may retain materials to the extent required by law and to demonstrate its compliance with this clause.

Confidential Information is and shall remain the sole property of the Company. The Receiving Party recognises and agrees that nothing in this Agreement will be construed as granting any property rights, by license or otherwise, to any Confidential Information disclosed under this Agreement, or to any invention or any patent, copyright, trademark, or other intellectual property right that has issued or that may issue, based on such Confidential Information. The Receiving Party will not make, have made, use or sell for any purpose any product or other item using, incorporating or derived from any Confidential Information. Neither this Agreement nor the disclosure of any Confidential Information shall result in any obligation on the part of either party to enter into any further

agreement with the other, license any products or services to the other, or to require the Company to disclose any particular Confidential Information. Nothing in this Agreement shall establish any partnership, joint venture, or agency between the parties.

The Receiving Party shall indemnify and keep fully indemnified the Company at all times against all liabilities, costs (including legal costs on an indemnity basis), expenses, damages and losses (including any direct, indirect or consequential losses) and all interest, penalties and other reasonable costs and expenses suffered or incurred by the Company arising from any breach of this Agreement by the Receiving Party and from the actions or omissions of any representative of the Receiving Party.

Information and Cybersecurity

Customer is responsible for preventing unauthorized access to its systems, machines, and network. The product should only be connected to Customer’s operations if Customer has confirmed that appropriate security measures (e.g., firewalls, network segmentation) are in place.

Supplier confirms compliance with applicable law with respect to security, notably minimum requirements of the Information Commissioner’s Office for non-sensitive personal data, as covered in Supplier’s Privacy Policy. Supplier disclaims all liability for security vulnerabilities identified during the Evaluation Period and is not responsible for any cybersecurity failures of the Product. The parties will cooperate to exchange any vulnerabilities identified during the Evaluation Period by either party.

Privacy Requirements between the Parties

Supplier’s Product is provided without the personal data of any identifiable individual. Customer is solely responsible for data privacy compliance while testing the Product. Supplier and Customer agree that neither party is intended to become a ‘data processor’ for the other for the purposes of this Agreement. To the extent there is incidental processing of one party’s data by the other, the following clauses apply.

Types of processing

During the activities contemplated in the Evaluation Agreement, each party may be deemed a processor of personal data of the other party. For the purposes of these clauses, the party doing the processing is referred to as the ‘data processor’ and the party who controls the data is defined as the ‘data controller.’

The purpose of the data processor’s processing of personal data on behalf of the data controller is to perform reasonable activities related to fulfilling its obligations and rights under the Evaluation Agreement.

The data processor’s processing of personal data on behalf of the data controller shall mainly pertain to using and storing contact information for individuals performing the Evaluation Agreement and incidental use of personal data to evaluate the Product.

The processing includes the following types of personal data about data subjects: Name, e-mail address, telephone number, address, place of work, employer name and organizational role.

The data processor’s processing of personal data on behalf of the data controller may be performed following execution of the Evaluation Agreement and conclude at the end of the Evaluation Period.

Processing location

Processing of the personal data cannot be performed at other locations than that specified in the Evaluation Agreement. In the context of the Evaluation Agreement the data processor will

PRODUCT EVALUATION AGREEMENT

process personal data on behalf of the data controller in accordance with this addendum. This addendum shall not exempt either party from obligations under the UK General Data Protection Regulation or other legislation.

The rights and obligations of the data controller

The data controller is responsible for ensuring that the processing of personal data takes place in compliance with the UK GDPR. The data controller has the right and obligation to make decisions about the purposes and means of the pro-cessing of personal data.

Documented instructions

The data processor shall process personal data only on documented instructions from the data controller which may be by email. Subsequent instructions can also be given by the data controller throughout the duration of the processing of personal data, but such instructions shall always be documented and kept in writing, including electronically.

The data processor shall immediately inform the data controller if instructions given by the data controller, in the opinion of the data processor, contravene the UK GDPR.

Confidentiality

The data processor shall only grant access to the personal data being processed on behalf of the data controller to persons under the data processor's authority who have committed themselves to confidentiality or are under an appropriate statutory or contractual obligation of confidentiality and only on a need to know basis.

Security of processing

The data controller and data processor shall implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk.

The data controller shall evaluate the risks to the rights and freedoms of natural persons inherent in the processing and implement measures to mitigate those risks. Depending on their relevance, the measures may include: Pseudonymisation and encryption of personal data; the ability to ensure ongoing confidentiality, integrity, availability and resilience of pro-cessing systems and services; the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident, or a process for regularly testing, assessing, and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.

Use of sub-processors

The data processor shall not engage another processor (sub-processor) for the fulfilment of its obligations without the prior consent the data controller.

Where the data processor engages a sub-processor for carrying out specific processing activities on behalf of the data controller, the same data protection obligations as set out in this addendum shall be imposed on that sub-processor by way of a contract or other legal act under English law, in particular providing sufficient guarantees to im-plement appropriate technical and organisational measures in such a manner that the processing will meet the require-ments of this addendum and the UK GDPR.

The data processor may agree a third-party beneficiary clause with the sub-processor where – in the event of bankruptcy of the data processor – the data controller shall be a third-party beneficiary to the sub-processor agreement and shall have the right to enforce the agreement against the sub-processor engaged by the data processor,

International (non-UK) transfers of personal data to a data controller or a data processor in a third country or in an international organization are not permitted.

Data Subject Rights

Each party is aware of the rights of data subjects under the UK GDPR and will comply with its respective privacy policies and procedures to fulfill those rights. Each party will assist the other with compliance with (as reasonably necessary) the following data subject rights:

the right to be informed when collecting personal data from the data subject
the right to be informed when personal data have not been obtained from the data subject
the right of access by the data subject
the right to rectification
the right to erasure ('the right to be forgotten')
the right to restriction of processing
notification obligation regarding rectification or erasure of personal data or restriction of processing
the right to data portability
the right to object
the right not to be subject to a decision based solely on automated processing, including profiling
natural persons;

Notification of personal data breach

In case of any personal data breach, the data processor shall, without undue delay after having become aware of it, notify the data controller of the personal data breach. The data processor shall assist the data controller in notifying the per-sonal data breach to the competent supervisory authority, and other appropriate remediation measures.

Erasure and return of data

On termination of the provision of personal data processing services or the end of the Evaluation Period (whichever is later), the data processor will return or destroy any personal data in its systems, unless applicable law requires other-wise.

Audit and inspection

The data processor shall make available to the data controller all information necessary to demonstrate compliance with the obligations in these Clauses and reasonably cooperate with controller's requests for inspections / reports.

Termination

For the duration of the provision of personal data processing services, these provisions cannot be terminated unless other substitute equivalent terms related to the provision of personal data processing services have been agreed between the parties.