

Software Terms & Conditions

1. Use of the System and Term of Use

Evaluate IT Ltd, trading as EvaluateMySchool is, (“**EvaluateIT**”, “EvaluateMySchool”, “**us**”, “**we**” or “**our**”) grant to you a non-exclusive licence to use the System (as detailed in the purchase order) (“**System**”) from the date of acceptance of the System on the terms of this Agreement (as defined below) unless terminated by either party in accordance with the terms detailed below. You shall be deemed to have accepted the System and this Agreement upon signing the purchase order, or when you commence operational use of such System (whichever is sooner). You may only use the System for the use of teachers, staff and students within your school for the purposes of education and assessment. Throughout these terms and conditions “Agreement” shall mean these terms and conditions, together with any purchase order, our Privacy Policy and Data Processing Agreement https://evaluatemyschool.co.uk/wp-content/uploads/2020/12/Privacy-Statement-EvaluateIT-and-EMS-Final-31_01_21.pdf

In the event of any conflict the documents shall rank in the following order of priority, Data Processing Agreement, Privacy Policy, these terms and conditions and the purchase order.

If you create a school registration on the System, you become a ‘**User**’. In becoming a User you warrant that: (i) you are of legal age to form a binding contract (or, if you are a minor, you have your parent’s permission to use the System, and your parent has read and agrees to this Agreement on your behalf); (ii) all registration information you submit is accurate and truthful; (iii) you will maintain the accuracy of such information; (iv) if you are accepting this Agreement on behalf of an institution, company or other legal entity, you have the authority to bind that institution, company or legal entity to this Agreement. You also warrant that you are legally permitted to use and access the System and take full responsibility for the selection and use of and access to the System. This Agreement is void where prohibited by law, and the right to access the System is revoked in such jurisdictions.

As a User, you also warrant that you will only grant access codes to teachers and staff members who are current employees of your school, trust or district. Upon termination of a teacher or other staff member’s employment with you, you will require such individual to return and cease using all access codes he or she has in his or her possession. If at any time you learn a user of the System claims to be affiliated with your school, trust or district who is not, in fact, affiliated with your school or district, you will notify Evaluate IT immediately.

Term

This Agreement shall commence on the date that it is accepted in accordance with clause 1 above (“**Commencement Date**”) and shall continue for the initial term as set out in the purchase order , (“**Initial Term**”) and will continue automatically thereafter for additional minimum terms of 12 months each, unless terminated in accordance with the terms of this Agreement.

2. Ownership and Fee

Ownership

This Agreement does not provide you with title to or ownership of the System nor does this Agreement provide you with any exclusive or perpetual right to use the system beyond the limits of this Agreement. Evaluate IT grants you a non-transferable, non-exclusive right for the term of this Agreement to allow Users access to the System.

The System is provided by and all materials provided by Evaluate IT in relation to the System are licensed or owned absolutely by Evaluate IT.

Fee

You shall pay to Evaluate IT the licence fee as set out in the purchase order or subsequent invoices as per section 1) “Term” in this agreement (“**Fee**”).

The terms of payment of such Fee are as set out in the purchase order and invoice issued to you by Evaluate IT from time to time.

3. Restrictions on Use

You shall not alter, modify, adapt or translate the whole or any part of the System in any way whatever or permit the whole or any part of the System to be combined with or become incorporated in any other computer program nor decompile, disassemble or reverse engineer the same nor attempt to do any of such things. To enable you to make use of the System, permission is hereby granted to you to electronically copy and store and print individual pages of the System on paper and photocopy them only for the purposes set out in clause 1. Any other use of the System, including reproduction for purposes other than that hereby authorised (including the removal of copyright or trade mark notices), the creation of an electronic or manual database by systematically downloading and storing the System, or their distribution (whether electronically or not) or republication, is prohibited. The use of this System is only permitted by schools and other educational establishments. The System can be used to edit the purchased evaluations to meet the needs of the client. You shall not distribute purchased evaluation material beyond your organisation.

Any requests for permission to use the System in a manner otherwise than permitted by this Agreement should be emailed to info@evaluatemyschool.co.uk

4. Security and Data Protection

In these terms, “**Privacy and Data Protection Requirements**” means: the Data Protection Act 2018 (“**DPA**”); the General Data Protection Regulation 2016/679 (“**GDPR**”) or any equivalent provision which may replace the GDPR following the formal political separation of the United Kingdom from the European Union; the Regulation of Investigatory Powers Act 2000; the Telecommunications (Lawful Business Practice) (Interception of Communications) Regulations 2000 (SI 2000/2699); the Electronic Communications Data Protection Directive (2002/58/EC); the Privacy and Electronic Communications (EC Directive) Regulations 2003 (SI 2426/2003); and all applicable laws and regulations which may be in force from time to time relating to the processing of Personal Data and privacy, including where applicable the guidance and codes of practice issued by the Information Commissioner or any other supervisory authority, and the equivalent of any of the foregoing in any relevant jurisdiction. “**Personal Data**”, “**Data Controller**” and “**Data Processor**” and “**processing**” shall have the meanings given to them in the GDPR. All Personal Data that is stored in the System by schools/education institutions is collected and held in accordance with the terms laid out in Data Processing Agreement (which forms part of this Agreement).

All Personal Data we collect via our website and via system registration on Users (including teachers) is held in accordance with the Privacy and Data Protection Requirements, these terms and conditions and our Privacy Policy (forms part of this Agreement).

Throughout the term of this Agreement you will and will procure that your Users:

- have up to date anti-virus software running on any device the System is accessed from;
- log off from the System if the device unattended;
- do not write down or share system passwords;
- change your password on a regular basis; and
- immediately report any suspected security breach.

Users are required to use passwords in order to access the system. The responsibility of ensuring that the passwords are not revealed or disclosed to any third party is with you and you must keep them secure. If you become aware that a third party knows or has discovered the passwords, you must contact: info@evaluatemyschool.co.uk

You must observe any user instructions of which Evaluate IT may notify you from time to time. These user instructions may be liable to change and if this happens Evaluate IT will notify you, and you must observe any new user instructions of which Evaluate IT notifies you.

a) Improvements and Updates

Evaluate IT reserves the right to:

- (a) add or remove additional functionality to the Website;
- (b) provide additional services from time to time;
- (c) introduce updates to the system;

which may at Evaluate IT's sole discretion either be provided as part of the System or provided for an additional fee.

5. **Intellectual Property**

Unless stated otherwise, any intellectual property rights arising in respect of the System, the System materials and any improvements or updates issued under clause 5 belong to Evaluate IT and/or its licensors. Any use of such intellectual property rights or software is strictly prohibited except where expressly allowed under this Agreement.

6. **System Requirements**

Without prejudice to clause 8, Evaluate IT aims to use appropriate technology to ensure that you are provided with the best quality of service. As such the functionality of the System may change from time to time and Evaluate IT cannot guarantee the availability of the System on any particular system or browser. The operation of the System requires Internet connectivity. You are responsible for making appropriate arrangements with an Internet service provider.

7. **Limitation of Liability**

Evaluate IT will provide the System with reasonable skill and care. However, Evaluate IT does not warrant that the functions contained in the System will meet your requirements or that the operation of the System or Website will be uninterrupted or error free. The warranties and conditions stated in this Agreement are in lieu of all other warranties, conditions or other terms whether express or implied.

8. **Limitation of Liability of Evaluate IT**

Whether or not Evaluate IT has been advised of the possibility of such loss, Evaluate IT shall not be liable in contract, tort or otherwise howsoever for loss of profits; loss of revenue; loss of business or goodwill; loss of, breach of, damage to, or corruption of data; or loss of opportunity whether arising out of or in connection with or in relation to the System, the Website or the availability or non-availability of the System or Website or the supply or non-supply of the System or otherwise under this Agreement.

You hereby agree to fully indemnify Evaluate IT against any claim brought by a third party resulting from use of the System by you or any staff or students in respect of all losses, costs, actions, claims, damages, expenses (including reasonable legal costs and expenses), or liabilities, whatsoever suffered or incurred directly by Evaluate IT in consequence of your breach or non-observance of this Agreement or that of any staff or students. In addition, you shall defend and pay all costs, damages, awards, fees (including any reasonable legal fees) and judgements awarded against Evaluate IT arising from any such claims and shall provide Evaluate IT with notice of such claims, full authority to defend, compromise or settle such claims and reasonable assistance necessary to defend such claims at your own expense.

Evaluate IT shall not be liable in respect of the use of or inability to use the System or in connection with any failure of performance, accuracy, error, omission, interruption, defect, delay in operation or transmission, computer virus or line or system failure even if Evaluate IT or its employees or agents are advised of the possibility of such damages or losses.

Accuracy of pupil data is the responsibility of the school and the school will have provisions in place to ensure the data is verified as accurate & up to date and complies with the Privacy and Data Protection Requirements (as amended).

Without prejudice to clause 8 and unless otherwise expressly set out in this clause 9, the total liability of Evaluate IT, whether in contract, tort (including negligence) or otherwise and whether in connection with this Agreement shall in no circumstances exceed a sum equal to the Fee paid in any 12 month period.

Nothing in this Agreement shall exclude or limit the liability of Evaluate IT for personal injury or death caused by its negligence or for any other type of loss that cannot be excluded or limited by law.

10. Force Majeure

Neither party shall be under any liability to the other in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely, circumstances beyond the control of the parties which shall include (but shall not be limited to) acts of God, perils of the sea or air, fire, pandemic, flood, drought, explosion, sabotage, accident, embargo, riot, civil commotion or civil authority, including acts of local government and parliamentary authority. In particular this clause applies to Evaluate IT being unable to supply the system due to the failure of its own service providers from time to time.

Notices

Any notices to be issued under this Agreement may be made via email or post. Notices to Evaluate IT should be sent to its registered address at 4 Merrow Chase, Merrow, Guildford, Surrey, England, GU1 2RY or to info@evaluatemyschool.co.uk. You must provide us with an email and postal address to which we can send you notices. Either party may change the address to send notices by notifying the other of such a change in writing. Notices sent by email will be deemed received on the next business day and notices sent by post deemed accepted on the third business day after posting. For the purposes of this clause no exception shall be made for school holidays.

11. Governing Law

This Agreement shall be governed in all respects by the laws of England and Wales and the parties agree to the non-exclusive jurisdiction of the courts of England and Wales.

12. Third Party Software

Software of third parties is provided under the licence terms of the relevant third parties. For connections to school systems it is the responsibility of the school to ensure that the connection is live and that data is being sent and/or received.

13. Severability and Termination

Severability

If any part, term, or provision of this Agreement is held to be illegal, unenforceable or in conflict with the law the validity or enforceability of the remaining clauses shall not be affected.

Termination

If you wish to terminate this Agreement after your initial term then you must provide us with at least 4 weeks written notice of termination of the Agreement, such notice not to expire before the end of the Initial Term or each anniversary thereafter. Termination of the Agreement does not entitle You to recompense in any way and any recompense offered will be at the discretion of Evaluate IT.

If you breach any of the terms of this Agreement, Evaluate IT is entitled to terminate this Agreement immediately without recompense to you. Evaluate IT may also terminate this Agreement if you are unable to pay your debts (within the meaning of section 123 of the Insolvency Act 1986) or become insolvent or an order is made or a resolution passed for the administration, winding-up or dissolution of the other (otherwise than for the purposes of a solvent amalgamation or reconstruction) or a bankruptcy order is made or an administrative or other receiver, manager, liquidator, administrator, trustee or similar officer is appointed over all or any substantial part of your assets or if you enter into or propose any composition or arrangement with your creditors generally or any analogous event occurs in any applicable jurisdiction.

On termination for any reason:

- (a) all rights granted to you under this Agreement shall cease;
- (b) you shall cease all activities authorised by this Agreement;
- (c) you shall immediately pay to Evaluate IT any sums due to Evaluate IT under this Agreement;

- (d) you shall immediately destroy or return to Evaluate IT (at Evaluate IT's option) all copies of the System materials then in its possession, custody or control and, in the case of destruction, certify to Evaluate IT that it has done so;
- e) data held by Evaluate IT will be deleted within 30 days.

16. **Third Party Rights**

This Agreement does not create any rights in favour of a third party

17. **Support**

Support will be an online solution via the medium of phone, email or a web browser.

18. **General**

You may not assign, sublicense, or otherwise transfer any of your rights under this Agreement. Evaluate IT may assign the benefit and the burden of this Agreement.

Evaluate IT may at any time vary the terms of the Agreement and shall provide you with 30 days written notice of any such variation, following which such varied terms shall apply.

No failure or delay by a party to exercise any right or remedy provided under this Agreement 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.

This Agreement, and any other documentation referred to herein contain the whole agreement between the parties relating to the subject matter hereof and supersede all prior agreements, arrangements and understandings between the parties relating to that subject matter. Each party acknowledges that, in entering into this Agreement and the documents referred to in it, it does not rely on any statement, representation, assurance or warranty (whether it was made negligently or innocently) of any person (whether a party to this Agreement or not) other than as expressly set out in this Agreement or those documents. Nothing in this clause shall limit or exclude any liability for fraud.

Last updated: 21/10/2021