Evolve IP EU – Processor Agreement

PROPRIETARY AND CONFIDENTIAL
EXTERNAL USE
VERSION 2.9

[NAME CUSTOMER], with its registered office and principal place of business in [ADDRESS & PLACE], hereinafter referred to as: "the Customer"

and

The private company with limited liability Mtel, trading under the name Evolve IP, with its registered office and its principal place of business in (3062 CE) Rotterdam at Kralingseweg 233 – 235, hereinafter referred to as: "Evolve IP"

taken into account that:

The Customer has concluded an agreement with Evolve IP for the provision of telecommunications services ("the Agreement") and wishes to have Evolve IP process Personal Data (as defined below) within the context of that Agreement;

When processing the Personal Data, Evolve IP is considered to be the Processor within the meaning of Article 4 of the General Data Protection Regulation (GDPR) and the Customer is considered to be the Controller within the meaning of Article 4 of the GDPR;

Evolve IP and the Customer herein wish to lay down the agreements concerning the processing of Personal Data in writing;

have agreed as follows:

ARTICLE 1. DEFINITIONS

1.1 The Data Subject is the person to whom Personal Data relate.

1.2 The Data Controller is the party that determines the purposes and means for using Personal Data.

1.3 The Data Processor is the party to whom the Data Controller has outsourced the data processing. The Data Processor is not independently responsible for the processing of the Personal Data. The Data Processor does have derived obligations for data security and confidentiality for example.

1.4 The Processor Agreement is the present agreement.

1.5 The GDPR is the European privacy regulation, known as the General Data Protection Regulation and implemented in the Member States of the European Union, such as the *Algemene Verordening Gegevensbescherming* (AVG) in the Netherlands, hereinafter referred to as the GDPR.

1.6 Sensitive data are Personal Data that are in the category of special personal data as referred to in the GDPR.

1.7 A Data Breach is a breach of security as referred to in the Data Breach (Reporting Obligation) Act and the GDPR.

1.8 Service is the Evolve IP service to be delivered under the Agreement.

1.9 The User is the natural person or legal entity affiliated with the Customer who is authorised to use the Service.

1.10 The Subcontractor is a party engaged by Evolve IP to provide support when performing the Service. If the Subcontractor processes Personal Data on the instructions of Evolve IP, the Subcontractor can also be considered to be a Subprocessor.

1.11 The Personal Data have the meaning assigned thereto in article 4 of the GDPR and are the personal data that are processed by Evolve IP within the context of the Agreement.

1.12 Processing constitutes every act with respect to Personal Data, including in any event the collection, retention and storage, use and processing.

ARTICLE 2. GENERAL

2.1 Evolve IP commits that it will process Personal Data subject to the conditions of this Processor Agreement on the instructions of the Customer. Evolve IP will process the Personal Data in a proper and careful manner and in accordance with the GDPR and related privacy legislation and regulations concerning the processing of Personal Data. Evolve IP maintains a Processing Data Inventory concerning the data types that are processed.

2.2 In the event it is necessary on the basis of changed privacy legislation and/or regulations that the business operations or the systems used by Evolve IP must be adjusted, the costs thereof are for Evolve IP's account, unless the adjustments must be implemented exclusively with respect to the Customer in which case the Customer will reimburse the reasonable costs of these adjustments.

2.3 Processing by Evolve IP will take place exclusively insofar as necessary to provide the Service to the Customer as described in the Agreement. Only the categories of Personal Data described in Annex I will be processed. Evolve IP provides at the Customer's first request a list of the roles within its organisation in accordance with the Evolve IP authorisation matrix (and those of any Subcontractors and/or Subprocessors) that are involved in the Processing.

2.4 Evolve IP will not retain the Personal Data made available within the context of the Agreement for longer than is necessary for (i) the performance of the Agreement; or (ii) to comply with a statutory obligation.

2.5 Evolve IP will (i) only use and process the Personal Data insofar as necessary within the context of the performance of the Agreement and/or (ii) only process the Personal Data on the instruction of and in accordance with the directions of the Customer. Evolve IP will not use the Personal Data for its own purposes unless the Customer has consented thereto expressly and in writing.

2.6 In accordance with the applicable criteria from the Dutch Data Protection Authority (DPA), Evolve IP does not have to conduct a Data Protection Impact Assessment (DPIA) for the data processing it performs on behalf of the Customer. Evolve IP does cooperate at the Customer's request at all times and against payment in a Privacy Impact Assessment conducted by the Customer.

2.7 At the Customer's request, there can be an annual 1-hour meeting between the Customer and Evolve IP concerning information security and privacy protection. Evolve IP in its role of Processor shows upon request how the requirements imposed are complied with and provides an oral explanation. The format used to demonstrate this is determined in mutual consultation but under the responsibility of the Customer. In case of one or more Subprocessors, Evolve IP will demonstrate that they comply at least with the requirements that are imposed on Evolve IP as Processor. If (the preparation for) the consultation takes more than 1 hour, Evolve IP will charge the costs to the Customer against the agreed hourly rates.

ARTICLE 3. SECURITY

3.1 Evolve IP applies suitable technical and organisational measures in order to protect Personal Data against loss or unlawful Processing. These measures guarantee, while accounting for the state-of-the-art and the costs of their implementation, a suitable level of security in view of the risks inherent in the Processing and the nature of the Personal Data to be protected.

3.2 The measures (including the security measures as laid down in the ISO 27001 ISMS document and what is known as the Statement of Applicability) have been laid down in writing in Annex II and comply in any event with the security requirements on the basis of the GDPR. Evolve IP will provide written information at the Customer's first request regarding the measures implemented by it in order to protect the Personal Data.

ARTICLE 4. SECURITY BREACHES

4.1 In case of a (i) Data Breach; (ii) breach of security measures; or (iii) loss of Personal Data, Evolve IP will inform the Customer immediately but in any event within 24 hours after initial discovery of the incident, such in accordance with the Evolve IP 'Policy Security Incidents and Data Breaches' described in Annex III. Evolve IP will implement all measures required within reason to prevent, limit and/or end (further) unlawful Processing or unauthorised inspection.

4.2 Evolve IP will cooperate at the Customer's request in the Customer in its role of Data Controller informing the competent authorities and Data Subject(s).

4.3 Evolve IP concludes written agreements with Subcontractors and/or Subprocessors regarding the reporting of incidents to Evolve IP, which enable Evolve IP and the Customer to comply with obligations in case of an incident as described in article 4.1.

4.4 Evolve IP maintains a current administration register concerning all security incidents or data breaches. In the event measures have been implemented pursuant to such incident or breaches, the Customer will be informed thereof when deregistering the security incident or data breach.

ARTICLE 5. DEPLOYMENT OF SUBCONTRACTORS

5.1 The Customer grants Evolve IP approval to engage Subcontractors when Processing Personal Data subject to the condition that Evolve IP has concluded a written agreement with the relevant Subcontractor that includes the obligation for the Subcontractor to act in accordance with the provisions of this Processor Agreement. The Customer has the right to inspect the agreements made with the Subcontractor insofar as they relate to the Processing of the Customer's Personal Data.

5.2 The permission provided by the Customer does not prejudice the responsibility and liability of Evolve IP concerning compliance with the Processor Agreement.

5.3 Evolve IP commits that it will maintain a register of the Subprocessors and Third Parties engaged by it including inter alia the identity, place of business and a description of the activities.

ARTICLE 6. AUDIT

6.1 Evolve IP is obliged to cooperate once every two years in an audit to be conducted by an independent IT auditor or expert at the request and for the account of the Customer, in order to determine whether Evolve IP has implemented sufficient technical and organisational measures as referred to in article 3.1. in order to protect the confidentiality, integrity, availability and security of Personal Data as described in this Processor Agreement. If it concerns the Processing of Sensitive Data, the Customer will have the right to have the audit conducted annually. The audit must never lead to disruptions of Evolve IP's business operations. If (the preparation for) the audit takes more than 1 hour, Evolve IP will charge the costs to the Customer against the agreed rates.

6.2 Evolve IP is only obliged to cooperate in an audit as referred to in article 6.1 if the independent auditor has signed a non-disclosure agreement that is acceptable to Evolve IP and has committed that it will make the findings of the audit only available to Evolve IP and the Customer.

6.3 If it is determined during an audit that Evolve IP does not comply with the provisions of the Processor Agreement, Evolve IP will implement all measures necessary within reason to ensure that it complies with these provisions as yet.

ARTICLE 7. CROSS-BORDER TRAFFIC

7.1 Evolve IP guarantees that all Processing of Personal Data that is performed by or on behalf of Evolve IP (including the Subcontractors and/or Subprocessors engaged by it) shall take place primarily within the European Union or, insofar as necessary for the management and maintenance of the services, at Evolve IP US and, exclusively for tier 3 support, with suppliers outside the EU.

Evolve IP and Evolve IP US concluded Standard Contractual Clauses (SCC's) in order to protect the Personal Data that may be exchanged for management and maintenance of the services. With suppliers outside the EU, an adequate level of security has also been agreed and recorded in Sub-Processor Agreements and SCC's.

ARTICLE 8. INVESTIGATIVE REQUESTS

8.1 In the event Evolve IP receives a request or an order from a Dutch or foreign supervisory authority, government agency or an investigative, criminal or national security agency to provide Personal Data or allow their inspection, Evolve IP will notify the Customer thereof immediately. When handling the request or order, Evolve IP will comply with all instructions from the Customer or transfer the handling of the request or order in whole or in part to the Customer.

8.2 In the event Evolve IP is prohibited from informing the Customer on the basis of the request or order, Evolve IP will look after the interests of the Customer by in any event only cooperating in the order or request if it is obliged to do so on the basis of Dutch law and at such times never provide more Personal Data than is strictly necessary.

ARTICLE 9. INFORMING DATA SUBJECTS

9.1 Evolve IP will cooperate so that the Customer is able to comply with its statutory obligations in the event a Data Subject exercises its privacy rights on the basis of the GDPR or other applicable regulations concerning the processing of Personal Data.

9.2 In the event a Data Subject contacts Evolve IP in connection with the performance of his rights, Evolve IP will contact the Customer as soon as possible with a request for further instructions before Evolve IP takes any further steps.

ARTICLE 10. MEASURES IMPOSED BY THE SUPERVISOR & INDEMNIFICATION

10.1 Evolve IP and the Customer indemnify each other against all claims from third parties, including Data Subjects, which may be brought against the Customer or Evolve IP for violation of the GDPR or other applicable Personal Data regulations, insofar as these claims are attributable directly to Evolve IP or the Customer.

10.2 In the event the supervisor imposes a measure or fine on the Customer or Evolve IP within the context of its task as enforcement agency and the cause for imposing the measure or fine is attributable to the other party, this other Party will pay that fine and the related costs insofar as these are not limited to the Liability referred to in article 11, irrespective of whether the fine was imposed on it or not.

10.3 The other Party will pay the fines imposed by the Dutch Data Protection Authority (DPA) in connection with violation of the General Data Protection Regulation (GDPR) subject to the condition that (i) the fine is the direct result of an attributable violation of the GDPR and (ii) is informed immediately by the other Party if a fine is imposed or is about to be imposed and (iii) if this is opportune in the opinion of the other Party, object to the fining decision at the request of the other Party on the basis of the objections to be submitted and allow the other Party to lead the objection procedure where possible.

ARTICLE 11. LIABILITY

11.1 The Parties' overall liability is always limited to the maximum amount that has been agreed between the Parties in the Agreement, irrespective of whether it is based on an agreement or unlawful act.

11.2 The limitations of the Parties' liability lapse if and insofar as the damage is the result of the intent or wilful recklessness of the Parties' management.

11.3 Condition for the creation of any entitlement to compensation is always that the relevant Party reports the damage to the other Party in writing as soon as possible after it arises. Any claim for compensation lapses as a result of the mere passage of twelve months after the claim arises.

11.4 Customer will immediately inform Evolve IP if a fine is imposed or threatens to be imposed. If this is opportune in the opinion of Evolve IP, Customer will, at the first request of Evolve IP, object to the penalty decision on the basis of objections to be submitted by Evolve IP and where possible put Evolve IP in the lead to conduct a notice of objection on behalf of Customer.

ARTICLE 12. TERM AND TERMINATION

12.1 The term of the Processor Agreement is equal to the term of the Agreement. The Processor Agreement cannot be terminated separately from the Agreement.

12.2 Upon termination or dissolution of the Agreement for any reason whatsoever, or at the first request of the Customer during the term of the Agreement, Evolve IP will ensure (against payment of its rates and costs that apply at that time), to be decided by the Customer, that:
- (i) all Personal Data made available by a Customer within the context of the Agreement are destroyed upon termination or dissolution of the Agreement; or
- (ii) all Personal Data or Personal Data made available by a Customer within the context of the Agreement are returned to the Customer; or
- (iii) all Personal Data made available by a Customer within the context of the Agreement are anonymised at the Customer's request during the term of the Agreement, so that the GDPR and privacy regulations derived therefrom no longer apply to these data; or
- (iv) the Customer and/or Users are able to remove or relocate the Personal Data.

ARTICLE 13. CONFIDENTIALITY

13.1 The Parties will keep secret all Personal Data and other data and information they know to be confidential in nature or may presume to be so within reason and that has come to their attention or that has been made available to them within the context of the performance of the Agreement or the Processor Agreement and will not disclose or provide them to third parties them in any way, unless:
- a. disclosure and/or provision of that Personal Data or other data or information is necessary within the context of the performance of the Agreement or Processor Agreement;
- b. any mandatory statutory regulation or court order obliges the Parties to disclose and/or provide that Personal Data or other data or information;
- c. disclosure and/or provision of that Personal Data or other data or information takes place with the prior, written approval of the other Party;
- d. it concerns information that was already lawfully public other than as a result of the acts or omissions of one of the Parties.

13.2 The parties will contractually oblige the persons that work for them (including employees), Subcontractors and/or Subprocessors that are involved in the Processing of confidential Personal Data or other data to keep secret that confidential Personal Data or other data or information.

ARTICLE 14. APPLICABLE LAW AND CHOICE OF FORUM

14.1 The Processor Agreement and its performance are governed by Dutch law.

14.2 All disputes that may arise between the Parties in connection with the Processor Agreement will be submitted to the competent court in Rotterdam.

SIGNATURES

Each party guarantees and warrants that on the date this agreement is signed, the signatories were authorised to represent the relevant party and assume the rights and obligations arising from this agreement. Drawn up in duplicate and signed,

On behalf of <<Customer name>>   **On behalf of Evolve IP**

Signature	_____		Signature	_____
Name	_____		Name	Dhr. L.J.N. Schuurmans
Position	_____		Position	Managing Director
Date	_____		Date	_____
City/town	_____		City/town	Rotterdam

The following annexes form an integral part of this agreement:
- Annex I: Categories of personal data to be processed
- Annex II: Security measures Evolve IP
- Annex III: Evolve IP Policy Security Incidents and Data Breaches – analysis and notification

Annex I: Categories of personal data to be processed

The personal data below are processed:

- ☐ User contact details
- ☐ Data Subject telephone numbers
- ☐ Data Subject email addresses
- ☐ Data Subject Facebook names
- ☐ Data Subject Twitter names
- ☐ Data Subject Twitter names
- ☐ Call recordings in case of voice recording
- ☐ Recordings in case of chat/email recording
- ☐ User screen prints in case of screen recording
- ☐ Data Subject screen prints in case of co-browsing in combination with screen recording
- ☐ Personal names in case of outbound campaigns
- ☐ Other namely ....

Annex II: Security measures Evolve IP

The security measures implemented by Evolve IP are included in the attached ISO 27001 ISMS document and the Statement of Applicability.

Annex III: Evolve IP Policy Security Incidents & Data Breaches – analysis and notification

The procedure for reporting data breaches is included in the enclosed 'Evolve IP Policy Security Incidents & Data Breaches – analysis and notification document.