

## **E-VOLVE SOFTWARE LICENCE**

This software licence (**Licence**) is a legal agreement between you (**you**) and the City & Guilds Limited for the use of the e-evolve software (including any associated documentation) (**Software**).

### **1. Grant and scope of licence**

- 1.1. City & Guilds hereby grants you a non-exclusive, non-transferable, royalty free licence to download, install, and provide access to the Software to enable candidates enrolled at your centre, and tutors, assessors, and verifiers engaged by you (**Authorised Users**) to use the Software to carry out online assessment related activities, subject to the following terms and conditions.
- 1.2. This Licence shall commence on the day on which City & Guilds notifies you of your e-evolve account details.
- 1.3. If you are a City & Guilds approved centre, this Licence shall form part of the centre approval contract between you and City & Guilds, and shall (subject to the termination provisions set out below) continue in force provided you remain an active City & Guilds approved centre.
- 1.4. If you are not a City & Guilds approved centre, this Licence shall continue in force until terminated in accordance with termination provisions set out below.

### **2. Your obligations**

- 2.1. Except as expressly set out in this Licence, or as permitted by law, you undertake:
  - 2.1.1. not to copy the Software, except where such copying is incidental to the normal use of the Software, or where it is necessary for the purpose of back-up or operational security;
  - 2.1.2. not to make any alterations or modifications to the Software or any part of it, nor permit it to be combined with, or become incorporated into, any other programs;
  - 2.1.3. not to disassemble, decompile, reverse engineer or create derivative works based on the whole or any part of the Software;
  - 2.1.4. to keep all copies of the Software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the Software;
  - 2.1.5. to replace the current version of the Software with any updated or upgraded version or new release provided by City & Guilds on receipt.
- 2.2. You are responsible for ensuring that Authorised Users abide by the e-evolve Terms of Use which are notified to Authorised Users and posted on the e-evolve website.
- 2.3. You agree to abide by all reasonable instructions which may be issued by City & Guilds in relation to your use, or the use of Authorised Users, of the Software from time to time.

### **3. Intellectual property rights**

- 3.1. You acknowledge that all intellectual property rights in and to the Software belong to City & Guilds or its licensor, and that you have no rights in or to the Software other than those rights granted under this Licence.
- 3.2. You acknowledge that you have no right to access to the Software in source code form, in unlocked coding, or with comments.
- 3.3. You must not attempt in any way to remove or circumvent any technical protection measures used to protect the integrity of the Software.

### **4. Warranties and liability**

- 4.1. Provided you have met and continue to meet the minimum technical requirements notified to you by City & Guilds, City & Guilds warrants that the Software will, when properly installed and used, perform substantially in accordance with all relevant descriptions provided directly by City & Guilds to you.
- 4.2. You acknowledge that the Software may not be free of bugs or errors and that, because the Software is provided via the internet, service availability cannot be guaranteed. You agree that the existence of minor errors or service downtime shall not constitute a breach of this Licence.
- 4.3. Nothing in this Licence shall limit or exclude the liability of either party for death or personal injury resulting from negligence, fraud, or fraudulent misrepresentation.
- 4.4. City & Guilds' liability for any losses suffered by you arising out of or in connection with this Licence (including any liability for the acts or omissions of City & Guilds employees, agents, licensors, and subcontractors), whether arising in contract, tort (including negligence), misrepresentation or otherwise, shall exclude:
  - 4.4.1. loss of income;
  - 4.4.2. loss of business profits or contracts;
  - 4.4.3. business interruption;
  - 4.4.4. loss of management or administration time;
  - 4.4.5. loss of the use of money or anticipated savings;
  - 4.4.6. loss of information;
  - 4.4.7. loss of opportunity, goodwill, or reputation;
  - 4.4.8. loss of, damage to, or corruption of data; and/or
  - 4.4.9. any indirect or consequential loss or damage of any kind howsoever arising and whether caused by tort (including negligence), breach of contract or otherwise.
- 4.5. Subject to clauses 4.3 and 4.4, City & Guilds' maximum aggregate liability under or in connection with this Licence, whether in contract, tort (including negligence) or otherwise,

shall be limited to a sum equal to any licence fees paid for the Software in the 12 months immediately preceding the event giving rise to the claim.

4.6. This Licence sets out the full extent of City & Guilds' obligations and liabilities in respect of the Software. In particular, there are no conditions, warranties, representations or other terms, express or implied, that are binding City & Guilds except as specifically stated in this Licence. Any condition, warranty, representation or other term concerning the Software which might otherwise be implied into, or incorporated in, this Licence, or any associated contract, whether by statute, common law or otherwise, is hereby excluded to the fullest extent permitted by law.

## **5. Termination**

5.1. City & Guilds may suspend or terminate this Licence (at its sole discretion) immediately by written notice to you if:

- 5.1.1. you commit a material or persistent breach of this Licence which you fail to remedy (if remediable) within 14 days after the service of written notice requiring you to do so;
- 5.1.2. if you are an approved center, your status as an active City & Guilds approved centre expires, terminates, or is suspended, for any reason;
- 5.1.3. City & Guilds is unable to procure the provision of the Software to you.

5.2. You may terminate this Licence at anytime, for any reason, by providing 1 month's written notice to City & Guilds.

5.3. If you are not a City & Guilds approved center, City & Guilds may terminate this Licence at anytime, for any reason by providing reasonable written notice to you.

5.4. City & Guilds may suspend or restrict your access, of the access of authorised Users, to Software if it deems suspension or restriction to be reasonably necessary in the circumstances.

5.5. Upon termination for any reason:

- 5.5.1. all rights granted to you under this Licence shall immediately end;
- 5.5.2. you must take all reasonable steps to ensure that Authorised Users stop using the Software; and
- 5.5.3. you must immediately delete or remove the Software from all computer equipment in your possession, and immediately destroy or return to City & Guilds (at City & Guilds' option) all copies of the Software then in your possession, custody or control and, in the case of destruction, certify to City & Guilds that you have done so.

## **6. Transfer of rights and obligations**

6.1. This Licence is binding on you and your successors and assigns.

6.2. You may not sub-licence, assign, or otherwise transfer this Licence or any of your rights or obligations arising under it, without City & Guilds' prior written consent.

6.3. City & Guilds may sub-licence, transfer, or assign this Licence, or any of its rights or obligations arising under it, at any time during the term of the Licence to a member of the City & Guilds group.

## **7. Variations**

7.1. We may revise the terms of this Licence from time to time to the extent reasonably necessary to reflect changes which may affect our business, such as changes in market conditions, technology, operational processes, or changes in relevant laws and regulatory requirements.

## **8. Jurisdiction and applicable law**

8.1. This Licence and any dispute or claim arising out of or in connection with it or its subject matter shall be governed by and construed in accordance with the law of England and Wales and the parties hereby submit to the exclusive jurisdiction of the English courts.