



PROFESSIONAL SERVICES AGREEMENT

This Professional Services Agreement ("Agreement") is effective as of the Effective Date of the relevant ORDER and is entered into by and between Avolve Software, Inc. (Avolve) and Licensee.

RECITALS

WHEREAS, Avolve provides certain Services in the United States which Licensee desires to obtain on the basis of certain Statements of Work and/or Sales Orders executed by the parties which reference and incorporate this Agreement (each an "ORDER"). The relevant ORDER will more fully describe the scope, duration, and fees for the Services.

NOW, THEREFORE, in consideration of the mutual promises and obligations in this Agreement, the sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, agree as follows:

1. Definitions

- 1.1. "Avolve Software" means (i) any and all software products licensed to Licensee under the License Agreement as specified in Software Order Forms (or other order forms, schedules or appendices as applicable) thereto; (ii) any new releases thereof made available through unrestricted shipment pursuant to the respective support agreement and (iii) any complete or partial copies of any of the foregoing.
- 1.2. "Confidential Information" means, with respect to Avolve, all information which Avolve protects against unrestricted disclosure to others, including but not limited to: (a) the Avolve Software, documentation, Work Product and other Avolve materials, including without limitation the following information regarding the Avolve software: (i) computer software (object and source codes), programming techniques and programming concepts, methods of processing, system designs embodied in the software; (ii) benchmark results, manuals, program listings, data structures, flow charts, logic diagrams, functional specifications, file formats; and (iii) discoveries, inventions, concepts, designs, flow charts, documentation, product specifications, application program interface specifications, techniques and processes relating to the software; (b) the research and development or investigations of Avolve; (c) product offerings, content partners, product pricing, product availability, technical drawings, algorithms, processes, ideas, techniques, formulas, data, schematics, trade secrets, know-how, improvements, marketing plans, forecasts and strategies; and (d) any information about or concerning any third party (which information was provided to Avolve subject to an applicable confidentiality obligation to such third party). With respect to Licensee, "Confidential Information" means all information which Licensee protects against unrestricted disclosure to others and which (i) if in tangible form, Licensee clearly identifies as confidential or proprietary at the time of disclosure; and (ii) if in intangible form (including disclosure made orally or visually), Licensee identifies as confidential at the time of disclosure, summarizes the Confidential Information in writing, and delivers such summary within thirty (30) calendar days of any such disclosure.
- 1.3. "Consultants" means employees and third party contractors which Avolve utilizes to provide Services to Licensee.
- 1.4. "Deliverables" mean such Work Products, if applicable, which are specific outputs that Avolve provides to Licensee, provided such output must be clearly and expressly labeled as a "Deliverable" in the applicable ORDER.
- 1.5. "Designated Unit" means those information technology devices (e.g. servers, hard disks, central processing units or other hardware) that have been previously approved by Avolve in writing or otherwise officially made known to the public by Avolve as appropriate for use or interoperation with the Avolve Software.
- 1.6. "Intellectual Property Rights" means patents of any type, design rights, utility models or other similar invention rights, copyrights, mask work rights, trade secret, know-how or confidentiality rights, trademarks, trade names and service marks and any other intangible property rights, including applications and registrations for any of the foregoing, in any country, arising under statutory or common law or by contract and whether or not perfected, now existing or hereafter filed, issued, or acquired.
- 1.7. "Licensee Add-on" means any custom application code developed using Avolve APIs as set forth in the documentation accompanying such API and the License Agreement which are developed by or on behalf of Licensee without Avolve's



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participation.

- 1.8. "License Agreement" means the agreement between Avolve (or an Avolve affiliate, or an authorized reseller of the Avolve software) under which Licensee procured the license rights to use Avolve Software.
- 1.9. "Services" means professional services, provided by Avolve to Licensee under an ORDER that references this Agreement.
- 1.10. "Taxes" means federal, state or local sales, use, property, excise, service or similar taxes now or hereafter levied all of which shall be for Licensee's account.
- 1.11. "Work Product" means any work product or tangible results produced by or with Avolve pursuant to this Agreement or any ORDER, including, but not limited to, works created for or in cooperation with Licensee.

2. Provision of Services.

- 2.1. Avolve will provide the Services in accordance in all material respects with the ORDER.
- 2.2. Avolve may utilize Consultants to perform the Services. Avolve shall be responsible for the performance of the Services of such Consultants to the same extent as Avolve is liable for its own employees.
- 2.3. Licensee shall perform any tasks reasonably required to enable Avolve to performing the Services, including those tasks set forth under Section 3 (Licensee's General Responsibilities) and in the ORDER. Licensee understands that Avolve's timely performance may be dependent on Licensee's timely and effective performance of such tasks and on timely decisions and approvals by Licensee. If any Service, in whole or in part, cannot be provided by Avolve due to Licensee, the time actually spent by Avolve resources on such Service will be billed to Licensee.

3. Licensee's General Responsibilities.

- 3.1. Licensee is responsible for making the necessary arrangements to allow Avolve to perform the Services.
- 3.2. Licensee shall provide and make available all Licensee personnel that Avolve reasonably requires in connection with performance of the Services and as may be further addressed in an applicable ORDER.
- 3.3. If the Services are performed at Licensee's site, Licensee agrees to provide necessary access to its site including, but not limited to, appropriate access to Licensee premises, computer systems and other facilities.
- 3.4. Licensee shall appoint a contact person to supply Avolve with any necessary or relevant information and who shall have the authority to make decisions or obtain decisions from others expeditiously.

4. Change Request Procedures.

- 4.1. During the term of an ORDER, either party can request changes to an ORDER in accordance with the change request form attached to the applicable ORDER ("Change Request"). Both parties agree to act in good faith to address and mutually agree to any requested Change Requests within a reasonable period of time.
- 4.2. Avolve will not perform under a Change Request until agreed to and signed by the parties.

5. Satisfaction with Personnel. If at any time Licensee or Avolve is dissatisfied with the material performance of an assigned Consultant or a Licensee project team member, the dissatisfied party shall promptly report such dissatisfaction to the other party in writing and may request a replacement. The other party shall use its reasonable discretion in accomplishing any such change (which, in the case of Avolve, shall be subject to staffing availability).

6. Compensation of Avolve.



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- 6.1. All Services will be provided by Avolve on a time and materials (plus expenses) basis unless otherwise agreed by the parties in the ORDER.
- 6.2. Unless otherwise agreed in an ORDER, Avolve shall invoice Licensee on a weekly basis and Licensee shall pay such invoice net thirty (30) days from the date of invoice. Avolve reserves the right to charge late fees on any payment that is not made timely at the rate of eighteen percent (18%) per annum or the maximum rate allowed under the law, whichever is less. All amounts to be paid under this Agreement shall be paid without withholding, deduction, or offset. Without prejudice to any other rights available to Avolve, Avolve reserves the right, in its sole and absolute discretion, to suspend Services where Licensee has failed to make timely payment pursuant to this Section or under any other agreement between Avolve and Licensee. Upon Licensee's payment of all outstanding amounts due, including late fees, Avolve shall resume Services pursuant to the term of this Agreement.
- 6.3. Avolve is entitled to require payment in advance if Avolve in its sole discretion, determines there are reasonable grounds to doubt that Licensee will render payment punctually, including Licensee's failing to timely pay undisputed invoices (whether from Licensee or third parties), Licensee's filing for bankruptcy or similar proceeding or, in the case of governmental organizations, where funds appear to not have been adequately appropriated for the next fiscal period.
- 6.4. Fees and other charges described in this Agreement do not include Taxes now or hereafter levied, and Licensee shall pay directly or reimburse Avolve for all such Taxes. With respect to state/local sales tax, direct pay permits or valid tax-exempt certificates must be provided to Avolve at the execution of this ORDER. Licensee hereby agrees to indemnify Avolve for any Taxes and related costs, interest and penalties paid or payable by Avolve. This Section shall not apply to taxes based on Avolve's income.

7. Term and Termination.

- 7.1. Term of the Agreement. This Agreement shall be effective as of the Effective Date, specified above, and shall remain in effect unless terminated earlier by either party in accordance with this Section 7.
- 7.2. Termination of the Agreement for Convenience. Either party may terminate this Agreement for convenience upon thirty (30) days' prior written notice to the other party. If this Agreement is terminated for convenience prior to the completion of one or more ORDERS, such termination will not affect the continuation of any such ORDER or the applicability of the provisions of this Agreement to any such ORDER for the remaining term of that ORDER.
- 7.3. Term of an ORDER. Each ORDER shall be effective on the effective date set forth in that ORDER, and shall remain in effect until completion of the Services or terminated earlier by either party in accordance with this Section 7.
- 7.4. Termination of an ORDER for Convenience. Except as otherwise agreed in an ORDER, each ORDER may be terminated by either party upon thirty (30) days' prior written notice to the other party or as otherwise stated in an ORDER. If there is more than one ORDER referencing this Agreement, an ORDER may be terminated for convenience in accordance with the terms of this section without terminating this Agreement or the other ORDERS.
- 7.5. Termination of Agreement and/or an ORDER for Cause.
Either party may terminate this Agreement and/or an ORDER for cause upon thirty (30) days' prior written notice of the other party's material breach of any provision of the Agreement or ORDER, as applicable, including more than thirty (30) days delinquency in Licensee's payment of any money due hereunder or any ORDER, unless Licensee has cured such breach during such thirty day period; or immediately if the other party files for bankruptcy, becomes insolvent, or makes an assignment for the benefit of creditors, or otherwise breaches materially its obligations in Confidential Information or Assignment.
- 7.6. Effect of Termination. Licensee shall be liable for all payments to Avolve, including fees for all Services, including expenses, incurred in the performance of such Services up to the date on which any termination of an ORDER or the Agreement takes effect. In the event of termination of an ORDER or the Agreement, except to the extent set forth



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otherwise in this Agreement or an ORDER, all Confidential Information of either party provided in connection with this Agreement or ORDER, as applicable, in the possession of either party shall be returned to the other party or destroyed with certification of such destruction from an individual of authority to bind the respective party.

8. Proprietary Rights.

8.1. Retained Technology. "Retained Technology" is defined to include (i) Avolve's products (including the Avolve Software and all Work Product other than Works), software code, programs and tools, training or professional services materials, know how, techniques, technologies, methods, concepts, reports, interfaces, and performance enhancements, (ii) ordinary course enhancements, modifications, interfaces or integrations to any materials described in Subsection 8.1(i) above, even if first developed for use by Licensee, or (iii) are developed by Avolve during the term of this Agreement, but independently and separate from the performance of the Services. All title to and rights in the Retained Technology and all Intellectual Property Rights embodied therein, including techniques, knowledge or processes of the Services and/or Work Product (whether or not developed for Licensee), shall be the sole and exclusively property of Avolve. Licensee agrees to execute and to ensure its third parties execute such documentation as reasonably necessary to secure Avolve's title over such rights.

8.2. Licensee Rights. Except as set forth otherwise in an ORDER and subject to Section 8.3 below, all right, title and interest in and to Deliverables explicitly specified on an ORDER to be owned by Licensee (the "Works") (if any) shall be, upon payment for the Services associated therewith, solely owned by Licensee and the entire right, title and interest therein shall be exclusively vested in Licensee. Such Works shall be considered works made for hire made in the course of the Services rendered hereunder. To the extent that title to any such Works may not by operation of law vest in Client, or any of them are held not to be works made for hire, Avolve hereby irrevocably assigns, effective upon payment in full for the Services associated therewith, the sole right, title and interest in such Works and Avolve's proprietary rights therein to Licensee.

8.3. Avolve Rights. Notwithstanding Section 8.2, Avolve and its licensors shall retain all right, title and interest in and to all Retained Technology that may be included in the Works. For any Works that include Retained Technology, upon payment for the Services associated therewith, Avolve grants to Licensee and its successors and assigns a non-exclusive, royalty-free, worldwide license to utilize the Retained Technology as part of the specific Works, without cost beyond any payments otherwise required by the applicable ORDER. Licensee shall protect the Retained Technology according to the existing policies and procedures that Licensee uses for its own similar proprietary information and intellectual property. For all Deliverables that are not Works, Licensee is granted a non-exclusive, non-transferable license for the duration of the license granted under the License Agreement, so long as Licensee complies with the terms of the License Agreement and this Agreement, to use such Work Products provided to it by Avolve under a relevant ORDER under this Agreement in order to run Licensee's internal business operations, and otherwise to the same extent as Licensee is granted a license to use the Avolve Software in the License Agreement.

8.4. Licensee must immediately notify Avolve in writing if any third party gains unauthorized access to the property or information to or in which Avolve retains title or rights and shall take all reasonable steps to stop such unauthorized access and also inform the third party of Avolve's rights.

9. Confidentiality

9.1. Use of Confidential Information. Confidential Information shall not be reproduced in any form except as required by the receiving party to perform its obligations under this Agreement and/or an ORDER. Any reproduction of any Confidential Information of the other shall remain the property of the disclosing party and shall contain any and all confidential or proprietary notices or legends which appear on the original. With respect to the Confidential Information of the other, each party: (a) shall take all Reasonable Steps (defined below) to keep all Confidential Information strictly confidential; and (b) shall not disclose any Confidential Information of the other to any person other than its bona fide individuals whose access is necessary to enable it to exercise its rights hereunder. As used herein "Reasonable Steps" means those steps the receiving party takes to protect its own similar proprietary and confidential information, which shall not be less than a reasonable standard of care. Confidential Information of either party disclosed prior to execution of this Agreement shall be subject to the protections afforded hereunder.



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9.2. Exceptions. The above restrictions on the use or disclosure of the Confidential Information shall not apply to any Confidential Information that: (a) is independently developed by the receiving party without reference to the disclosing party's Confidential Information, or is lawfully received free of restriction from a third party having the right to furnish such Confidential Information; (b) has become generally available to the public without breach of this Agreement by the receiving party; (c) at the time of disclosure, was known to the receiving party free of restriction; or (d) the disclosing party agrees in writing is free of such restrictions.

9.3. Confidential Terms and Conditions; Publicity. Licensee shall not disclose the terms and conditions of this Agreement or the pricing contained therein to any third party. Neither party shall use the name of the other party in publicity, advertising, or similar activity, without the prior written consent of the other, except that Licensee agrees that Avolve may use Licensee's name in customer listings and to analyze and leverage details from this Agreement and/or ORDERS respectively (e.g., to forecast product demand), or, at times mutually agreeable to the parties, as part of Avolve's marketing efforts. Avolve will make reasonable efforts to avoid having the reference activities unreasonably interfere with Licensee's business.

10. Limited Warranties; Limitation of Liabilities

10.1. Avolve warrants for a period of 30 days following delivery that the Deliverables will conform in all material respects with the specifications expressly set forth in the applicable ORDER. If Client reports in writing nonconformity with this warranty within such 30 day period, then Avolve shall, at no additional charge, use commercially reasonable efforts to re-perform the Services to correct the nonconformity and, if it is unable to effect such cure within 30 days, refund the amounts previously paid by Licensee for the defective Deliverables. The foregoing shall be Licensee's exclusive remedy for breach of Avolve's warranties. AVOLVE AND ITS LICENSORS DISCLAIM ALL OTHER WARRANTIES EXPRESS OR IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE EXCEPT TO THE EXTENT THAT ANY WARRANTIES IMPLIED BY LAW CANNOT BE VALIDLY WAIVED.

10.2. ANYTHING TO THE CONTRARY HEREIN NOTWITHSTANDING, EXCEPT FOR DAMAGES RESULTING FROM UNAUTHORIZED USE OR DISCLOSURE OF CONFIDENTIAL INFORMATION AND AVOLVE'S RIGHT TO COLLECT UNPAID FEES, (A) UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID FOR THE APPLICABLE SERVICES UNDER THE RELEVANT ORDER, DIRECTLY CAUSING THE DAMAGES OR (B) BE LIABLE TO EACH OTHER IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, LOSS OF GOOD WILL OR BUSINESS PROFITS, WORK STOPPAGE, DATA LOSS, COMPUTER FAILURE OR MALFUNCTION, ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSS, OR EXEMPLARY OR PUNITIVE DAMAGES. The provisions of this Agreement and the fees under a specific ORDER allocate the risks between Avolve and Licensee. The limited remedies set forth in this Agreement shall apply notwithstanding the failure of their essential purpose.

11. Indemnification.

11.1. General. When Service are provided on Licensee's premises or at another location designated by Licensee, each party will indemnify, defend and hold harmless the other party, its officers, directors, employees, agents and affiliates from and against any claims, demands, loss, damage or expense, including reasonable attorney's fees, (collectively, "Claims") relating to bodily injury or death of any person or damage to tangible personal property occurring at such location in connection with the performance of the Services to the extent proximately caused by the gross negligence or willful acts or omissions of the indemnifying party, its officers, directors, employees, agents and affiliates.

11.2. Infringement and Defense of Licensee. Avolve shall defend Licensee against claims brought against Licensee in the United States by any third party alleging that Licensee's use of the Deliverables, in accordance with the terms and conditions of this Agreement, constitutes a direct infringement or misappropriation of an U.S. patent claim(s), copyright or trade secret rights, and Avolve will pay damages finally awarded against Licensee (or the amount of any settlement Avolve enters into) with respect to such claims. This obligation of Avolve shall not apply if the alleged infringement or misappropriation results from use of the Deliverables in conjunction with any other software, an apparatus other than a Designated Unit, any Licensee Add-on, failure to use an update promptly provided by Avolve if



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such infringement or misappropriation could have been avoided by use of the update, or unlicensed activities. This obligation of Avolve also shall not apply if Licensee fails to timely notify Avolve in writing of any such claim. Avolve is permitted to control fully the defense and any settlement of any such claim as long as such settlement shall not include a financial obligation on Licensee. In the event Licensee declines Avolve's proffered defense, or otherwise fails to give full control of the defense to Avolve's designated counsel, then Licensee waives Avolve's obligations under this Section 11.2. Licensee shall cooperate fully in the defense of such claim and may appear, at its own expense, through counsel reasonably acceptable to Avolve. Avolve expressly reserves the right to cease such defense of any claim(s) in the event the Deliverable is no longer alleged to infringe or misappropriate, or is held not to infringe or misappropriate, the third party's rights. Avolve may settle or mitigate damages arising from any claim or potential claim, by substituting alternative substantially equivalent non-infringing programs and supporting documentation for the Deliverable. Licensee shall not undertake any action in response to any infringement or misappropriation, or alleged infringement or misappropriation of the Deliverable that is prejudicial to Avolve's rights.

- 11.3. THE PROVISIONS OF THIS SECTION 11 STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF AVOLVE AND ITS LICENSORS TO LICENSEE, AND IS LICENSEE'S SOLE REMEDY, WITH RESPECT TO THE INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.

12. General Provisions

- 12.1. Severability. It is the intent of the parties that in case any one or more of the provisions contained in this Agreement shall be held to be invalid or unenforceable in any respect, such invalidity or unenforceability shall not affect the other provisions of this Agreement, and this Agreement shall be construed as if such invalid or unenforceable provision had never been contained herein.
- 12.2. No Waiver. If either party should waive any breach of any provision of this Agreement, it shall not thereby be deemed to have waived any preceding or succeeding breach of the same or any other provision hereof.
- 12.3. Notice. All notices or reports which are required or may be given pursuant to this Agreement shall be in writing and shall be deemed to be duly given when delivered to the respective executive offices of Avolve and Licensee at the addresses first set forth above or in the applicable ORDER. Where in this Section 12.3 or elsewhere in this Agreement written form is required, that requirement can be met by facsimile transmission, exchange of letters or other written form.
- 12.4. Independent Contractor. The relationship of Avolve and Licensee established by this Agreement is that of an independent contractor and no employment, agency, trust, partnership or fiduciary relationship is created by this Agreement.
- 12.5. Force Majeure. Any delay or nonperformance of any provision of this Agreement (other than for the payment of amounts due hereunder) caused by conditions beyond the reasonable control of the performing party shall not constitute a breach of this Agreement, and the time for performance of such provision, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.
- 12.6. Governing Law. This Agreement and any claims arising out of or relating to this Agreement and its subject matter shall be governed by and construed under the laws of the State of Arizona, without reference to its conflicts of law principles. In the event of any conflicts between foreign law, rules, and regulations, and Arizona law, rules, and regulations, Arizona law, rules, and regulations shall prevail and govern. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. The Uniform Computer Information Transactions Act as enacted shall not apply. Licensee must initiate a cause of action for any claim(s) arising out of or relating to this Agreement and its subject matter within one (1) year from the date when Licensee knew, or should have known after reasonable investigation, of the facts giving rise to the claim(s).
- 12.7. Time. Time shall not be of the essence.
- 12.8. Entire Agreement; Written Form; Hierarchy.



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- 12.8.1. This Agreement, including all applicable ORDERS and Schedules thereto, constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all prior agreements between the parties, whether written or oral, relating to the same subject matter.
- 12.8.2. No modifications, amendments, or supplements to this Agreement shall be effective for any purpose unless in writing and signed by the authorized signatories of the parties. The foregoing provision also applies to any waiver of the written-form requirement. Where in this Section and elsewhere in this Agreement or an ORDER written form is required, that requirement can be met by facsimile transmission, exchange of letters, or other written form (excluding emails).
- 12.8.3. In the event of any inconsistencies between the Agreement and an ORDER, the ORDER shall take precedence over the Agreement. However, the ORDER must explicitly reference the provision of the Agreement that it amends and state that it supersedes such provision.
- 12.8.4. No conflicting or other conditions, including Licensee's general terms and conditions, form any part of the Agreement or ORDER, even where Avolve has performed Services without expressly rejecting such conditions. Any purchase order or other document issued by Licensee is for administrative convenience only. If, for reasons related to Licensee's internal arrangements or otherwise, Licensee's conditions of purchase or other standard terms are included by insertion, reference, enclosure, attachment or otherwise in Licensee's acceptance of Avolve's offer (for example, in Licensee's purchase order), Licensee cannot rely on those conditions or terms and they are not incorporated in and do not form any part of the Agreement or ORDER, and failure to expressly exclude them does not imply their acceptance.
- 12.9. Regulatory Matters. The Avolve Confidential Information inclusive of all Work Product and Deliverables are subject to the export control laws of various countries, including without limit the laws of the United States. Licensee agrees that it will not submit the Avolve Confidential Information to any government agency for licensing consideration or other regulatory approval without the prior written consent of Avolve, and will not export the Confidential Information to countries, persons or entities prohibited by such laws. Licensee shall also be responsible for complying with all applicable governmental regulations of the country where Licensee is registered, and any foreign countries with respect to the use of the Confidential Information by Licensee and/or its subsidiaries
- 12.10. Survival. Term, Proprietary Rights, Confidentiality, Limitation of Liabilities, Indemnification and Governing Law shall survive any termination of this Agreement.
- 12.11. System Security and Data Safeguards. When Avolve is given access to Licensee's systems and data, Avolve shall comply with Licensee's reasonable administrative, technical, and physical safeguards to protect such data and guard against unauthorized access. In connection with such access, Licensee shall be responsible for providing Avolve Consultants with user authorizations and passwords to access its systems and revoking such authorizations and terminating such access, as Licensee deems appropriate from time to time. Licensee shall not grant Avolve access to Licensee systems or personal information (of Licensee or any third party) unless such access is essential for the performance of Services under the Agreement. The parties agree that no breach of this provision shall be deemed to have occurred in the event of Avolve non-conformance with the aforementioned safeguard but where no personal information has been compromised.