



## LICENSE AGREEMENT

January 1<sup>st</sup>, 2022

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Sections 5 - 6, 8 - 10, and 13 - 23, as well as any other applicable provisions of this Agreement which by their nature should survive, shall survive any termination or expiration of this Agreement.

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The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure.

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**15. Limitation of Liability.** INDEPENDENT OF THE FORGOING PROVISIONS, IN NO EVENT AND UNDER NO LEGAL THEORY, INCLUDING WITHOUT LIMITATION, TORT, CONTRACT, OR STRICT PRODUCTS LIABILITY, SHALL EVOLVE OR ANY OF ITS AFFILIATES, RESELLERS OR SUPPLIERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER MALFUNCTION, OR ANY OTHER KIND OF COMMERCIAL DAMAGE, EVEN IF EVOLVE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THIS LIMITATION SHALL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY TO THE EXTENT PROHIBITED BY APPLICABLE LAW. IN NO EVENT SHALL EVOLVE'S LIABILITY FOR DAMAGES FOR ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION, EXCEED IN THE AGGREGATE THE AMOUNT OF THE LICENSE FEES PAID FOR THE THEN-CURRENT TERM, AND NOT THE ENTIRE LICENSE FEE PAID FROM SIGN-UP.

**16. Export Controls.** You agree to comply with all export laws and restrictions and regulations of the United States or foreign agencies or authorities and not to export or re-export the Software or any direct product thereof in violation of any such restrictions, laws or regulations, or without all necessary approvals.

**17. Licensee Outside The U.S.** If You are located outside the United States of America, then the following provisions shall apply: (i) Les parties aux presentes confirment leur volonte que cette convention de meme que tous les documents y compris tout avis qui siy rattache, soient rediges en langue anglaise (translation: "The parties confirm that this Agreement and all related documentation is and will be in the English language."); and (ii) You are responsible for complying with any local laws in your jurisdiction which might impact your right to import, export or use the Software, and You represent that You have complied with any regulations or registration procedures required by applicable law to make this license enforceable.

**18. Severability.** If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

**19. Arbitration.** Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall take place in Atlanta, Georgia, USA, and may be conducted by telephone or online. The arbitrator shall apply the laws of the State of Georgia, USA and/or U.S. federal law to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1000.00.

**20. Governing Law, Jurisdiction, and Venue.** The validity, construction, and performance of this Agreement shall be governed by the law of the State of Georgia, USA, without regard to conflicts of law provisions. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. The parties agree that the Uniform Computer Transactions Act or any version thereof, adopted by any state, in any form ("UCITA"), shall not apply to this Agreement, and to the extent that UCITA may be applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provision(s) contained therein.

The courts of Fulton County in the State of Georgia, USA or the U.S. District Court, Northern District of Georgia, Atlanta Division, shall be the exclusive jurisdictions and venues for all legal proceedings that are not arbitrated under this Agreement.

**21. Force Majeure.** Neither party shall be liable for damages for any delay or failure of delivery arising out of causes beyond their reasonable control and without their fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communication failures. Notwithstanding anything to the contrary contained herein, if either party is unable to perform hereunder for a period of thirty (30) consecutive days, then the other party may

terminate this Agreement immediately without liability by ten (10) days written notice to the other.

**22. Indemnification.** Licensee hereby agrees that it shall indemnify and hold harmless eVolve and its Resellers, affiliates and suppliers from and against any and all third party claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of or from Licensee's (including Licensee's user's) (i) breach of this Agreement and (ii) unauthorized access to or improper use of customer, owner or partner data.

**23. Conflicting Terms.** In the event of a conflict between any term of this Agreement and any other applicable terms of eVolve (including, without limitation, an Order Form), such other terms will apply.