



## LICENSE AGREEMENT

January 1<sup>st</sup>, 2023

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Either party may terminate this Agreement immediately for a material breach hereof. eVolve may also terminate this Agreement if Licensee becomes subject to bankruptcy proceedings, becomes insolvent, or makes an arrangement with Licensee’s creditors. This Agreement will terminate automatically without further notice or action by eVolve if Licensee goes into liquidation.

In addition, eVolve may, as an alternative to termination, suspend Licensee’s license as to the Software, if Licensee fails to make a payment to eVolve or a Reseller or otherwise fails to comply with the provisions of this Agreement or other terms relating to any such license.

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Termination of this Agreement shall be in addition to and not in lieu of any other remedies available to eVolve stemming from a material breach of this Agreement. All accrued rights to payments due under the terms of this Agreement or an Order Form shall survive termination.

Sections 5 – 6, 8 – 10, and 13 - 24, 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.

**6. Restrictions.** You may not (i) permit others to use the Software, except as expressly provided above for authorized use; (ii) modify or translate the Software, except that you may modify content/patterns and use the content/patterns in 3D drawings for You or your clients, however You may not remove or obscure any data tag, proprietary rights notices or labels or similar information; (iii) reverse engineer, decompile, or disassemble the Software, except to the extent this restriction is expressly prohibited by applicable law; (iv) create derivative works based on the Software; (v) merge the Software with another product; (vi) copy the Software, except as expressly provided above; or (vii) remove or obscure any data tag, proprietary rights notices or labels, or similar information on the Software.

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**8. Confidential Information.** "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. eVolve Confidential Information includes the Software; the Software's performance, reliability, stability, operation, techniques, processes, ideas, algorithms, design and architecture; the terms and conditions of the Order Forms (including pricing); business and marketing plans; technology and technical information; product plans and designs; and business processes.

However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement and (ii) except as otherwise authorized by the Disclosing Party in writing, limit access to Confidential Information of the Disclosing Party to those of its and its affiliates' employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections not materially less protective of the Confidential Information than those herein. Neither party will disclose the terms of any Order Form to any third party other than its affiliates, legal counsel and accountants without the other party's prior written consent, provided that a party that makes any such disclosure to its affiliate, legal counsel or accountants will remain responsible for such affiliate's, legal counsel's or accountant's compliance with this "Confidential Information" section.

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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**10.2 Customer Data.** Customer Data is data (excluding Usage Data and Resultant Data) that You upload to the Software or that You otherwise transfer, process, use, or store in connection with Your use of the Software. eVolve acknowledges that, as between eVolve and You, You own all right, title, and interest, including all intellectual property rights, in and to the Customer Data. You hereby grant to eVolve a non-exclusive, royalty-free, worldwide license to reproduce, distribute, and otherwise use and display the Customer Data and perform all acts with respect to the Customer Data as may be necessary for eVolve to provide the Software to You.

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**16. 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.

**17. 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.

**18. 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.

**19. 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.

**20. 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.

**21. 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.

**22. 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.

**23. 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.

**24. 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.