

ADDITIONAL TERMS AND CONDITIONS

These Additional Terms and Conditions (“Additional Terms”) are applicable to Customer’s Services and together with the Master Service Agreement (“MSA”) and the Incorporated Agreements constitutes the entire agreement between Customer and Evolve IP pursuant to the “Incorporated Agreements” Section of the MSA. Capitalized terms in these Additional Terms will have the same meaning given to them in the MSA, unless a different definition is provided below.

1. **Credit.** If Customer has been late in paying any invoice two (2) or more times in any rolling twelve (12) month period, Evolve IP may, as a condition of providing new Services or continuing to provide Services, require Customer to tender a deposit (or to increase or renew the amount of an existing deposit). Such assurance of performance shall take the form of a deposit equal to the total of all estimated usage-based charges, Monthly Recurring Charges (“MRCs”), and Non-Recurring Charges (“NRCs”) for the applicable Service(s) for up to two (2) months or such lesser amount as Evolve IP otherwise requires. Notwithstanding any provision in the MSA or these Additional Terms to the contrary, Evolve IP shall not be liable to Customer for the payment or accrual of any interest thereon. Evolve IP shall be entitled to apply the deposit against any and all unpaid amounts that are past due, and shall refund to Customer any remaining amount still held as a deposit upon expiration or termination of the MSA, these Additional Terms or the Incorporated Agreements. Any request for a deposit shall be honored by Customer within ten (10) business days of request by Evolve IP, and failure to remit such deposit within the foregoing period shall constitute cause for Evolve IP to suspend all Services upon five (5) day’s written or electronic notice, in addition to any other rights and remedies it may have herein or at law or equity with respect to breach.
2. **Disputes.** If Customer reasonably and in good faith disputes any portion of Evolve IP’s invoice, Customer shall, within sixty (60) days of the Payment Date, submit electronic notice to Evolve IP of such dispute, identifying in specific detail the reason for the dispute and the amount being disputed. Electronic notice of any dispute shall be sent to billing@evolveip.net. If Customer does not deliver such electronic notice within sixty (60) days of the Payment Date, the invoice will be deemed correct and Customer shall have waived its rights to dispute the invoice. Customer’s dispute as to any portion of the invoice shall not excuse Customer’s obligation to pay the undisputed portion of the invoice on time. The Parties shall negotiate in good faith to resolve any disputes within thirty (30) days following Evolve IP’s receipt of Customer’s timely electronic notice. Any amounts that Evolve IP determines to be in error shall be adjusted on the next month’s invoice, or if the disputed amount has already been paid, a credit shall be posted to Customer’s account. Any disputed amounts that Evolve IP determines to be correct as billed shall be due and payable by Customer, along with any interest charges that Evolve IP may impose pursuant to the MSA. Upon Customer’s request Evolve IP shall provide Customer with documentation supporting its determination for the resolution of the dispute, and in the event Customer does not agree with Evolve IP’s determination Customer may proceed with any other available remedy.
3. **Termination.**
 - (a) If Customer cancels in whole or in part any Service, for convenience and without cause, before the Service Activation Date for such Service, Customer shall pay (as liquidated damages and not as a penalty) a cancellation charge (“Cancellation Charge”) equal to: (i) the NRCs applicable to the Service(s) cancelled; (ii) one month’s MRC for the Service(s) cancelled; and (iii) the aggregate fees, charges, expenses, and taxes payable by Evolve IP (including, but not limited to, disconnection, early cancellation, liquidated damages, or termination charges payable to third parties) in connection with the cancellation of the Service(s).
 - (b) Evolve IP may terminate the MSA, cancel or terminate any and all Services, or suspend Services without any liability at any time upon: (i) any failure of Customer to timely pay any and all undisputed amounts due hereunder that is not cured within five (5) business days following written or electronic notice thereof; (ii) any other breach by Customer of any provision of the MSA, these Additional Terms or the Incorporated Agreements that is not cured within thirty (30) days following written or electronic notice thereof; (iii) any insolvency, bankruptcy, assignment for the benefit of creditors, appointment of a trustee or receiver or similar event with respect to Customer; (iv) any governmental prohibition or required alteration of the Service provided hereunder necessitating such termination; or (v) for international Services, if Evolve IP or its underlying providers discontinues all or any component of the Service in a particular country. In the event that Customer has multiple accounts with Evolve IP, a default under one account will be deemed a default under all accounts, and in the event of a default all Services under all accounts may be subject to suspension and/or termination.
 - (c) Customer may terminate the MSA, these Additional Terms and/or the Incorporated Agreements or cancel or terminate any and all Services without any liability at any time: (i) upon any breach by Evolve IP of any provision of the MSA, these Additional Terms and/or the Incorporated Agreements that is not cured within thirty (30) days following written or electronic notice thereof; (ii) upon any governmental prohibition or required alteration of the Service provided hereunder necessitating such termination; or (iii) pursuant to the terms detailed in any Service Level Agreement provided for in the Incorporated Agreements.
 - (d) Except as otherwise expressly provided for in Subsection (a) above (relating to cancellations by Customer prior to the Service Activation Date of a particular Service), if (i) Customer cancels or terminates a Service prior to the end of the Service Term for any reason other than that listed in Subsection 3(c) above; or (ii) Evolve IP terminates the MSA, these Additional Terms and/or the Incorporated Agreements and/or any Service(s) for any reason provided in Subsection 3(b)(i),(ii), or (iii) above or as otherwise expressly permitted by the MSA, these Additional Terms or the Incorporated Agreements, then in addition to any other rights or remedies available to Evolve IP hereunder, at law, or in equity, Customer shall pay Evolve IP early termination charges (“Early Termination Charges”) (as liquidated damages and not as a penalty) equal to:
 - 1) the replacement cost for any and all unreturned Evolve IP-Provided Equipment;

- 2) all MRCs and usage charges for the remaining balance of the Service Term. For the purpose of this calculation, Evolve IP will determine the charges by taking the quantity of cancelled or terminated Services billed on Customer's account (averaged over the three (3) month period prior to the notice of cancellation or termination) multiplied by the MRC and/or usage rate for those Services, then will multiply that figure by the number of months remaining in the Service Term.
 - i. In the event Customer's billing for the three (3) month period prior to the cancellation or termination is below the amount allowed in accordance with the "Reduction in Services" Section of these Additional Terms, then for the purpose of calculating the Early Termination Charges pursuant to this Section Evolve IP will use the amount of billing that Customer is entitled to reduce per the "Reduction in Services" Section.
 - (e) If any Service is suspended or terminated by Evolve IP because of any non-payment or other breach of the MSA, these Additional Terms or the Incorporated Agreements by Customer, no service interruption shall be deemed to have occurred. If either Party initiates legal action against the other Party (including to pursue the collection of any amount due) under the MSA, these Additional Terms or the Incorporated Agreements, the non-prevailing Party shall be responsible for and agrees to pay for any and all reasonable attorneys' fees and expenses incurred by the prevailing Party. Evolve IP may terminate the MSA, these Additional Terms or the Incorporated Agreements if Customer does not cure the cause of a Service suspension. In such event, Customer will pay all Early Termination Charges that would apply as per Subsection 3(d) above.
 - (f) Customer must continue to pay all charges for Services until any disconnection upon cancellation or early termination occurs, and until such time that all Evolve IP-Provided Equipment has been returned to Evolve IP. All Cancellation Charges and Early Termination Charges are due and payable within thirty (30) days of the effective date of cancellation or termination, as applicable. Customer acknowledges and agrees that the Cancellation Charge and Early Termination Charges are reasonable liquidated damages payable to Evolve IP, and do not represent or constitute a penalty, because actual damages would be difficult or impossible to ascertain due to the manner in which Evolve IP's provides Services to Customer which requires Evolve IP to commit to terms and conditions with numerous other providers of communications services where each agreement may have different term and volume commitments, early termination charges, cancellation charges, and other provisions making calculation of Evolve IP's damages difficult or impossible to ascertain. Upon cancellation, termination, or expiration of all Services provided under the MSA, these Additional Terms or the Incorporated Agreements, Evolve IP shall owe Customer no further duties, obligations, or consideration; provided, however, that cancellation, termination, or expiration shall not affect the rights, obligations, or liabilities of either Party that have arisen before the date of cancellation, termination, or expiration.
4. **Force Majeure.** Neither Party will be in default or otherwise liable for any service outage, other interruption or unavailability of service, delay, or failure of its performance under the MSA, these Additional Terms or the Incorporated Agreements (except with respect to payment obligations hereunder for Services) to the extent such service outage, other interruption or unavailability of service, delay, or failure arises by reason of an act of God or of the public enemy, the elements, adverse weather conditions, fire, flood, riots, strikes, catastrophic accident, war, governmental requirement or any action of government in its sovereign capacity, act of civil or military authority, action or inaction of a supplier or other third party, inability to secure materials, labor or transportation, Denial of Service ("DOS") attacks, DNS spoofing and/or any other malicious attempts orchestrated by third parties, or any other cause or circumstance of a similar nature to the foregoing, beyond the reasonable control and without the fault or negligence of the affected Party (each constituting an "Force Majeure Event"). Any such Force Majeure Event shall suspend the MSA, the Additional Terms or the Incorporated Agreements, as applicable, until the Force Majeure Event ceases. Notwithstanding the foregoing, with the exception of DOS attacks, DNS spoofing and/or any other malicious attempts orchestrated by third parties and directed towards Customer, Customer shall not be liable for charges for the Services during the duration an event of Force Majeure that directly impacts any Evolve IP-controlled hardware and/or software platforms or any Evolve IP-controlled physical plant and infrastructure facilities that prevents Customer from being able to utilize the Services.
 5. **Service Installation.** Customer will arrange to grant at no cost to Evolve IP and its agents and contractors all reasonable access to and use of Customer's facilities upon reasonable notice (including appropriate space, power, and environmental conditions) to the extent reasonably necessary for the installation, connection, provision, removal, and maintenance of any Evolve IP-Provided Equipment relating to the Services. Unless otherwise defined in the Statement of Work, all work will be performed during normal business hours. In the event Customer requests to have any work performed outside of normal business hours, Customer may incur charges for time and materials at Evolve IP's then-prevailing rates, and Customer agrees to pay for such charges. Customer will not allow or cause any Evolve IP-Provided Equipment to be rearranged, moved, modified, repaired or relocated without Evolve IP's written consent, nor will Customer create or allow any liens or other encumbrances to be placed on any such Evolve IP-Provided Equipment. All Evolve IP-Provided Equipment will be provided for the sole purpose of use in connection with the Service(s), shall remain the exclusive property of Evolve IP or its supplier, respectively, and shall be immediately returned to Evolve IP upon termination of the Service(s) to which the equipment relates. Customer shall be responsible for ensuring that any Evolve IP-Provided Equipment is maintained in a secure location, and Customer shall be fully liable for any and all costs and charges associated with damage to or loss of Evolve IP-Provided Equipment including, but not limited to, all costs associated with replacement equipment, facilities, and systems. Evolve IP shall be responsible for the replacement of any equipment deemed to be defective through no fault of Customer or any other third party accessing the Services through Customer or installing the Services on behalf of Customer.
6. **Operating and Performance Matters.**
 - (a) **Service Activation Date.** At such time that a) Evolve IP has completed the physical installation of any facilities or systems provided by Evolve IP (in instances when Customer has contracted for an on-site installation by Evolve IP), b) Customer or any 3rd party contracted by Customer receives any Evolve IP-provided equipment (in instances when Customer has elected to install the Evolve IP-provided equipment themselves, or contracts a 3rd party to do so), c) Evolve IP has made a Service available for Customer's use, including use during configuration and migration

periods (in instances when no Evolve IP-provided equipment is required, such as with cloud computing services), or d) Evolve IP has activated a Service on Customer's behalf (for 3rd party licensing services, including, but not limited, to Office 365), such date shall constitute the "Service Activation Date." If multiple Services are contained in a Sales Order, or if a Sales Order contains multiple locations, those Services and/or locations may have different Service Activation Dates.

- (b) Any failure of performance or delay attributable to Customer or Customer's agents, representatives, or other contractors, or any failure, incompatibility, or unavailability on the part of Customer's equipment or network, facilities, or systems provided by Customer's other contractors ("Third Party Equipment"), shall not serve to delay the Service Activation Date or otherwise excuse Customer from being required to make payment for the Service at such time as Evolve IP would be ready to provide the Service, regardless of whether Customer is ready to use the Service.
- i) In the event that Evolve IP installs dedicated connectivity between Evolve IP and Customer, including, but not limited to, T-1s, DS3s, Ethernet services, and fiber connectivity ("Dedicated Access"), and there has been any delay attributable (in Evolve IP's sole discretion) to Customer or any other third party that delays the Service Activation date for more than five (5) business days past the date of the installation of the Dedicated Access, Evolve IP reserves the right to begin invoicing Customer for the Dedicated Access, and Customer agrees to pay for such charges.
- ii) In the event that there has been any delay attributable (in Evolve IP's sole discretion) to Customer that delays the Service Activation Date of any Services for more than sixty (60) days past the date of the Sales Order executed by Customer, Evolve IP reserves the right to begin invoicing Customer for all or a portion of the Services ordered, and Customer agrees to pay for such charges. Notwithstanding the foregoing, these charges will not apply in the event that Evolve IP and Customer had previously agreed in writing to a phased installation of the Services.
- (c) Following the Service Activation Date, Evolve IP will provide as much advance telephonic, written, or electronic notice as reasonably practicable with regard to any scheduled maintenance with respect to the Services. Notwithstanding the foregoing, in the event of an emergency, Evolve IP shall have the right to perform maintenance and/or restoration of its network, Evolve IP-Provided Equipment, and the Services, without advance notice.
- (d) Evolve IP will provide to Customer procedures and processes for reporting repair, problem, and maintenance requirements associated with the Services. If, upon responding to a Customer-initiated service call, Evolve IP reasonably determines that the source of the trouble or failure is a failure, malfunction, or inadequacy on the part of Customer, Customer's Equipment, or any other of Customer's suppliers or contractors or Third Party Equipment, Customer shall compensate Evolve IP at its then-prevailing rates for time and materials expended during the service.
- (e) Evolve IP will invoice previously unbilled charges for service if the invoice date is no later than one hundred and eighty (180) days from the end of the monthly billing period in which the charges occurred.
7. **IP Addresses.** If necessary, Evolve IP will provide a mutually agreeable number of public IP address assignments to Customer for use solely in connection with the Service. Customer shall not obtain any property or other proprietary interest in any IP address assignments provided hereunder, and Evolve IP may at any time withdraw or reclaim any IP address(es) and provide alternative IP address assignments for use in connection with the Service. Evolve IP will reclaim any and all Evolve IP-provided IP addresses associated with the Service(s), at the end of the Term, or in the event of an early termination of the Services or the MSA for any reason whatsoever.
8. **Service Configuration.** Based upon information provided by Customer and the available Service features and capabilities, Evolve IP will configure the Service(s) for Customer prior to the activation of the Services; provided, however, that Customer shall have sole responsibility for configuration with respect to all of its own Customer Equipment, Third Party Equipment, and other networks, systems, equipment, facilities, or property not provided by Evolve IP.
9. **Reduction in Services.** Customer may reduce the quantity of any ordered Service(s) by up to five percent (5%) over the course of the then-current Service Term. If at any time after the Service Activation Date, Customer reduces the quantity of any ordered Service(s) by greater than five percent (5%), Evolve IP reserves the right to either (a) bill Customer for up to ninety-five percent (95%) of the maximum quantity of Services billed on Customer's account over the prior twelve (12) month period, or (b) bill Customer for up to ninety-five percent (95%) of the quantity of Services defined on any signed Sales Order(s). Notwithstanding the foregoing, reductions to Evolve IP DaaS Services may be made one (1) time in any twelve (12) month period, not to exceed five percent (5%) of the quantity of any ordered DaaS Service(s) over the course of the then-current Service Term. In the event of a Reduction in Services, it is Customer's responsibility to arrange for any and all Evolve IP-Provided Equipment to be returned to Evolve IP. Customer shall be responsible for all MRCs, any applicable usage-based charges, and any applicable Taxes through the date that any Evolve IP-provided equipment has been returned to Evolve IP. Please note that reductions of Dedicated Access Services are not covered under this section, and as such if Customer terminates any Dedicated Access Service that is under a Service Term Early Termination Charges will apply.
10. **Relocation of Services.** In the event Customer elects to relocate any Evolve IP-provided equipment installed at their location to a new location, the following conditions will apply:

- (a) Customer will pay Evolve IP's then-current non-recurring charges for Professional Services to facilitate the move of Evolve IP Services for customer. The Professional Services provided will include:
 - i) Evolve IP's provisioning of new Evolve IP-provided equipment (including, but not limited to, switches and routers)
 - ii) Installation of the new Evolve IP-provided equipment at Customer's new location prior to the move.
 - iii) Evolve IP Project Management will coordinate Evolve IP resources needed for the move, and for telephony-related products will update directory listings and emergency services (i.e. E911) with the applicable changes.
- (b) After the move, Customer will be required to reclaim any and all Evolve IP-provided equipment at Customer's old location and is responsible for returning said equipment to Evolve IP. Customer will continue to be billed for the Evolve IP-provided equipment at Customer's old location until such time that it has been returned to Evolve IP.
- (c) Customer will be required to move all Third Party Equipment. For telephony-related Services, Customer will also be required to move any Evolve IP-provided telephone handsets.
- (d) If Evolve IP is required to terminate any Dedicated Access at Customer's old location and install new Dedicated Access into a new location, the following conditions apply:
 - i) Customer agrees to pay any non-recurring charges assessed to Evolve IP for such reconfiguration.
 - ii) If the Dedicated Access at the old location is under a term, Customer agrees to reimburse Evolve IP for aggregate fees, charges, expenses, and taxes payable by Evolve IP (including, but not limited to, liquidated damages, and disconnection, early cancellation or termination charges payable to third parties) in connection with the termination of the Dedicated Access at the old location; provided, however, Evolve IP shall use its commercially reasonable best efforts to obtain a waiver of, or to otherwise avoid, any such charges.
 - iii) Customer acknowledges that Evolve IP's costs for Dedicated Access are based on geography, and in the event of such a move Evolve IP's monthly-recurring cost for the new Dedicated Access may be greater than the cost of the current Dedicated Access. In the event that the monthly recurring cost of the new Dedicated Access is greater than the current cost, Evolve IP reserves the right to charge customer an additional access fee, and Customer agrees to pay such fee.
 - iv) Customer understands that Evolve IP is required to commit to a term on new Dedicated Access, and as such Customer agrees that the Service Term for the Services moved to the new location will be extended for a term commensurate with the term of the new Dedicated Access, which will be no shorter than twelve (12) months. Evolve IP will notify Customer in the event the term is greater than twelve (12) months, and at that time Customer can determine if they choose to proceed with the installation of the new Dedicated Access at the new location.
 - v) Customer is liable for the monthly recurring Dedicated Access charges at both locations during any "overlap" period, and is liable for the monthly recurring Dedicated Access charges at old location for an additional thirty (30) days after the date that Customer has notified Evolve IP in writing to disconnect the Dedicated Access at the old location.

11. Responsibilities. In addition to any Service-specific responsibilities set forth elsewhere in the MSA, these Additional Terms or the Incorporated Agreements, the Parties acknowledge and agree that: (a) each Party shall comply with all applicable laws, rules, and regulations relating to its business operations; (b) Customer is solely responsible for obtaining all local permits, landlord consents, access licenses and permissions, letters of authorization, and other consents and waivers necessary for installation and activation of all network, systems, facilities, and equipment necessary for Evolve IP to provide the Service and for Customer to make use of the Service; and (c) networks, equipment, facilities, and systems used by Customer or Customer's agents, other contractors, employees or users in connection with any Service shall not: (i) interfere with or impair service over Evolve IP-Provided Equipment; (ii) impair the privacy of any communications carried over Evolve IP's Services; or (iii) create hazards to the employees, agents, or contractors of Evolve IP or to the public. In addition to any other remedies available hereunder, Evolve IP may, in its reasonable discretion and without liability, suspend Service if Customer does not comply with the foregoing sentence. Under no circumstances shall the Service be resold by Customer, and Evolve IP shall have no liability to Customer's employees, users, or any other third parties accessing the Service through Customer.

12. LIMITATION OF LIABILITY. NOTWITHSTANDING ANY OTHER PROVISION OF THESE ADDITIONAL TERMS TO THE CONTRARY, WITH THE EXCEPTION OF THE "TERMINATION" SECTION ABOVE, THE PARTIES AGREE THAT THE TOTAL LIABILITY FOR EITHER PARTY UNDER THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS IS AS FOLLOWS: (i) TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR SPECIAL, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, INDIRECT, OR PUNITIVE DAMAGES WITH RESPECT TO ANY CLAIM ARISING UNDER OR RELATING TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS INCLUDING, WITHOUT LIMITATION, LOSS OF REVENUE OR PROFIT OR ANY OTHER BUSINESS LOSS INCLUDING GOODWILL, LOSS OF USE OF ANY PROPERTY, COST OF SUBSTITUTE PERFORMANCE, EQUIPMENT OR SERVICES, DOWNTIME COSTS AND CLAIMS FOR SUCH DAMAGES, REGARDLESS OF WHETHER DAMAGES ARE CAUSED BY WILLFUL MISCONDUCT, NEGLIGENT ACT OR OMISSION, OR OTHER WRONGFUL ACT ARISING FROM OR RELATED TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS AND REGARDLESS OF WHETHER THE PARTY WAS ADVISED OF OR COULD HAVE FORESEEN THE POSSIBILITY OF SUCH DAMAGES; (ii) A PARTY'S ENTIRE LIABILITY FOR ANY CLAIM, LOSS, EXPENSE, OR DAMAGE ARISING UNDER OR RELATING TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS SHALL IN NO EVENT EXCEED THE SUM ACTUALLY PAID OR PAYABLE BY CUSTOMER TO EVOLVE IP FOR THE AFFECTED SERVICE TO WHICH THE CLAIM, LOSS, EXPENSE OR DAMAGE RELATES DURING THE SIX(6) MONTH PERIOD PRECEDING THE DATE SUCH CLAIM, LOSS, EXPENSE OR DAMAGE FIRST AROSE;(iii) THE FOREGOING LIMITATIONS ARE IN ADDITION TO (AND NOT IN LIEU OF) ANY LIMITATIONS SET FORTH ELSEWHERE IN THE THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS, AND THEY APPLY TO ALL CAUSES OF ACTION AND CLAIMS OF ANY KIND BY ANY PERSON OR ENTITY ARISING OUT OF OR RELATED TO THESE ADDITIONAL TERMS OR THE INCORPORATED AGREEMENTS INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, BREACH OF WARRANTY, STRICT LIABILITY, NEGLIGENCE, MISREPRESENTATION, OR ANY OTHER TORT. THE PARTIES ACKNOWLEDGE AND ACCEPT THE REASONABLENESS OF THE FOREGOING LIMITATIONS OF LIABILITY. FOR PURPOSES OF THIS SECTION, ALL REFERENCES TO A PARTY HERETO SHALL INCLUDE ITS AFFILIATES, AGENTS, SUPPLIERS, OTHER CONTRACTORS, OFFICERS, DIRECTORS, SHAREHOLDERS, AND EMPLOYEES.

13. General.

- (a) *Assignment.* Evolve IP may assign the MSA, these Additional Terms or the Incorporated Agreements, in whole or in part, to any subsidiary, parent, or affiliated company, or to a successor company pursuant to any reorganization or merger of its business, or to any successor pursuant to any sale or transfer of all or substantially all of its assets. Any other assignment by either Party without the prior written consent of the other Party (which consent will not be unreasonably withheld or denied) shall be null and void and, in the case of an unauthorized assignment by Customer, shall entitle Evolve IP to suspend the Services provided hereunder without liability and shall otherwise constitute a breach of the MSA, these Additional Terms or the Incorporated Agreements. The rights and obligations under the MSA, these Additional Terms or the Incorporated Agreements shall survive any merger or sale of either Party and shall be binding upon the successors and permitted assignees of each Party.
- (b) *Governing Law.* The MSA, these Additional Terms or the Incorporated Agreements are deemed to be made in the Commonwealth of Pennsylvania and will be governed by the laws of the Commonwealth of Pennsylvania, without regard to choice of law provisions. The Parties further consent to exclusive jurisdiction and venue in the state and federal courts located in Philadelphia, Pennsylvania. Each Party waives all defenses of lack of personal jurisdiction and forum non-conveniens. Process may be served on either Party in the manner authorized by applicable law or court rule.
- (c) *Construction; Severability.* In the event that any provision of the MSA, these Additional Terms or the Incorporated Agreements conflicts with the law under which they are to be construed, or if any provision is declared invalid by a court with jurisdiction over the Parties to the MSA, these Additional Terms or the Incorporated Agreements, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law. Each provision of the MSA, these Additional Terms or the Incorporated Agreements is severable from the whole, and if one provision is declared invalid, the other provisions shall remain in full force and effect.
- (d) *Waiver.* Failure of either Party to enforce any of the provisions of or its rights under the MSA, these Additional Terms or the Incorporated Agreements, or the waiver thereof in any instance, shall not be construed as a general waiver or relinquishment of any rights.
- (e) *Confidentiality.* Each Party agrees not to use any Confidential Information (as defined herein) of the other Party except to the other Party's benefit and in performance of its obligations under the MSA, these Additional Terms or the Incorporated Agreements, and not to disclose such information to third parties (other than, as determined by the receiving Party in good faith, those contractors, agents, advisors, and attorneys with a "need to know" and who are subject to obligations that will similarly limit the use and disclosure of the information). Each Party further agrees to use the same means to protect Confidential Information of the other Party as it uses for its own confidential information, provided that in no event shall a Party use less than reasonable care. "Confidential Information" includes not only proprietary or confidential information that is marked or otherwise identified as such, but also information that should reasonably be expected to be considered confidential or proprietary by the disclosing Party regardless of marking or identification. Confidential Information shall not include any information that: (i) is now or becomes available in the public domain through no breach of the MSA, these Additional Terms or the Incorporated Agreements; (ii) can be shown through documented evidence to have been in the possession of the receiving Party as of the date of execution hereof or prior to the date of disclosure by the disclosing Party; (iii) can be shown through documented evidence to have been independently learned by the receiving Party from a third party without breach of the MSA, these Additional Terms or the Incorporated Agreements; (iv) can be shown through documented evidence to have been independently developed by the receiving Party; or (v) is required by law or order of a court, administrative agency or other governmental body to be disclosed by the receiving Party. Confidential Information is and shall remain the sole and exclusive property (or, where applicable, valid license) of the disclosing Party. The Parties acknowledge that unauthorized disclosure or use of any Confidential Information could cause irreparable harm and significant injury to the disclosing Party, the extent and consequences of which may be difficult to assess. Therefore, if a Party believes its Confidential Information may be, or has been, disclosed contrary to the terms of this Section, that Party shall be entitled to seek specific performance, injunctive and/or other equitable relief by a court of competent jurisdiction as a remedy for any such breach or anticipated breach without the necessity of posting a bond. Any exercise by the non-breaching Party of its right to equitable relief or specific performance shall not constitute a waiver by the non-breaching Party of any other rights which it may have to monetary damages or other relief. Notwithstanding the requirements and obligations of this Section, Evolve IP shall have the right to issue a press release and/or otherwise publicly disclose that it has entered into an agreement to provide services to Customer.
- (f) *Third Party Beneficiaries.* The representations, covenants, obligations, rights, and agreements of the Parties set forth in the MSA, these Additional Terms or the Incorporated Agreements are not intended for, nor shall they be for the benefit of or enforceable by, any third party or person not a party to the MSA, these Additional Terms or the Incorporated Agreements including, without limitation, Customer's employees, users, and customers. Evolve IP shall have no relationship with any third party that may obtain access to the Services through Customer. The Parties further acknowledge and agree that no fiduciary relationship arises under the MSA, these Additional Terms or the Incorporated Agreements.
- (g) *Non-Solicitation.* Customer agrees that during the MSA Term and for a period of twelve (12) months thereafter, Customer, nor its affiliates, nor its subsidiaries, nor any employees of the foregoing, nor its representatives, shall not, without first obtaining Evolve IP's prior written consent, directly or indirectly, for itself or on behalf of another person or entity, solicit for employment or otherwise induce, influence or encourage to terminate employment with Evolve IP, any employee of Evolve IP, or any person employed by Evolve IP as a third party contractor or consultant with whom Customer has had more than incidental contact or who became known to Customer in connection with Evolve IP's provision of Service(s). Furthermore, Customer agrees that the restrictions set forth above are reasonable, and that money damages would not be a sufficient remedy of any breach of this Section by Customer and that in addition to all other remedies it may be entitled to, Evolve IP shall be entitled to seek specific performance and injunctive or other equitable relief as a remedy for any such breach.

- (h) *Headings; Interpretation.* The headings used in the MSA, these Additional Terms or the Incorporated Agreements are for convenience only and do not in any way limit or otherwise affect the meaning of any terms of the MSA, these Additional Terms or the Incorporated Agreements. The MSA, these Additional Terms or the Incorporated Agreements shall be construed fairly according to its terms, without regard to the drafter of any provision hereof.
- (i) *Use of Customer Proprietary Network Information (“CPNI”).* Evolve IP is committed to protecting the confidentiality of Customer’s Service information, and has the duty to do so under Federal law. Federal law gives Customer a right to protection of all information pertaining to the Services received from Evolve IP, such as how many Services are used, the types of Services used, technical characteristics, and related billing information. From time to time, Evolve IP may have the opportunity to offer Services that will better meet Customer’s needs by using information about the Services already being purchased from Evolve IP. Use of Service-related information for this purpose may enhance Evolve IP’s ability to make Customer aware of new or alternative Services that are tailored to Customer’s needs. By signing the MSA, Customer expressly consents to allow Evolve IP to use CPNI as described in this paragraph.
- (j) *Access to and Use of Customer Proprietary Network Information (CPNI) by Third Parties.* If Customer subscribed to Evolve IP’s service through the use of an independent contractor or a third party, Evolve IP may share Customer’s CPNI (see subsection “Use of Customer Proprietary Network Information “ above for a definition of “CPNI”) with such third parties for administrative, customer service and billing purposes. For purposes of illustration only, the compensation of such entities may be tied to the amount Customer is billing with Evolve IP. In such instances and in other similar circumstances, Evolve IP may share CPNI with these third parties. By signing the MSA, Customer expressly consents to allow Evolve IP to share CPNI with third parties and to allow such third parties to use CPNI as described in this paragraph.
- (k) *Other Marketing Activities.* Evolve IP will use e-mail addresses controlled and/or used by Customer, the online portal used by Customer to access account information, and telephone numbers used and controlled by Customer, to engage in marketing campaigns in compliance with relevant law. Marketing campaigns include, but are not limited to, providing information concerning updates to the Services received by Customer, new service offerings, product and feature information, and to communicate other information deemed relevant by Evolve IP.
- (l) *Acceptable Use.* Customer and any and all third parties obtaining access to the Services through Customer shall comply with Evolve IP’s Acceptable Use Policy (the “AUP”). The current, complete AUP is located at <http://www.evolveip.net/paperwork/aup.pdf>. Evolve IP reserves the right to amend the AUP from time to time and to suspend the affected Services immediately upon a violation of the AUP. Customer shall be responsible to ensure compliance on the part of its employees, its contractors, and all other third parties obtaining access to the Services through Customer, and agrees to indemnify, defend, and hold harmless Evolve IP from any losses, damages, costs or expenses resulting from any liabilities, allegations, claims, losses, damages, expenses (including reasonable attorney’s fees and costs), judgments, and causes of action arising out of or relating to any alleged or actual violation of the AUP by Customer or any user or other third party obtaining access to the Service through Customer.
- (m) *Independent Contractors.* Except as specifically and expressly provided herein, the Parties shall be considered independent contractors for the purposes of the MSA, these Additional Terms and the Incorporated Agreements. The relationship between Evolve IP and Customer shall not be that of partners, agents, or joint ventures for one another, and nothing in the MSA, these Additional Terms or the Incorporated Agreements shall be deemed to constitute a partnership, agency agreement, or joint venture between them for any purpose whatsoever.
- (n) *Survival.* Provisions contained in the MSA, these Additional Terms or the Incorporated Agreements that by their sense and context are intended to survive completion, performance, termination, suspension, cancellation, or expiration of the MSA, these Additional Terms or the Incorporated Agreements shall survive.

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