

**EVOLVE ADDITIVE SOLUTIONS, INC.**  
**GENERAL TERMS AND CONDITIONS**

1. **GENERAL.** All quotations or contracts furnished by Evolve Additive Solutions, Inc., its subsidiaries or its authorized agents (“**Evolve**”) are conditioned upon acceptance by the purchaser of goods or services from Evolve (“**Client**”) of the terms and conditions set forth herein. These General Terms and Conditions (the “**General Terms**”), the terms of Evolve’s quote or purchase agreement (the “**Sales Contract**”), and such other terms and documents incorporated into these General Terms by reference as set forth on our web site (“**Client Documents**”) at [www.evolveadditive.com](http://www.evolveadditive.com) (collectively the General Terms, Sales Contract and Client Documents are referred to as the “**Agreement**”) constitute the entire agreement between Evolve and Client with respect to the subject matter of the Agreement, and supersede all other negotiations, agreements and undertakings, whether written or oral, between Evolve and Client with respect to the subject matter of the Agreement. Evolve hereby rejects the inclusion of any different, conflicting or additional terms proposed by Client in any form, including, without limitation, those set forth in any purchase order submitted by Client. In the event of an inconsistency in this Agreement, the inconsistency will be resolved by giving precedence in the following order: (1) the Sales Contract, then (2) the Client Documents, then (3) these General Terms. These General Terms are hereby deemed accepted by Client when Client places an order for Products, Software, Services, or Materials (each as defined below), without the separate requirement for written execution or other acceptance.
  
2. **CERTAIN DEFINITIONS.**
  - 2.1. “**Product**” means any hardware, equipment, machine, and documentation purchased from Evolve in a Sales Contract, including but not limited to those utilizing Electrophotographic (EP) imaging and deposition technology.
  - 2.2. “**Services**” means work and services performed by Evolve for Client as expressly defined in a Sales Contract.
  - 2.3. “**Materials**” means resins, toner, and support materials used in additive manufacturing and production, operator replaceable components (ORC), service replaceable components (SRC), and spare parts.
  - 2.4. “**Software**” means any software or documentation included in a Product or otherwise provided by Evolve or its affiliates to Client and is supplied only under license as set forth below. For purposes of this Agreement, the term "sale" or "purchase" will be understood to mean "license" whenever used in connection with such software or documentation.
  - 2.5. “**Documentation**” means any documentation, instructions, or manuals included with a Product by Evolve or otherwise provided by Evolve.
  
3. **CHANGES.** Client shall bear the costs of any and all changes and modifications Client requests to be made to any Product, Software or Services. All changes must be mutually agreed upon by Evolve and Client in writing before Evolve will perform such changes. Client is responsible for all reasonable costs and all damages Evolve incurs related to or resulting from any changes or delays by Client.

#### 4. **TERMS OF PAYMENT; TAXES.**

4.1. All invoiced amounts are due thirty (30) days from the date of the invoice, unless otherwise agreed in the Sales Contract. Client's obligation to timely pay amounts due under the Agreement is of the essence of the Agreement. Client shall pay all invoiced amounts, without setoff or deduction, according to the Sales Contract. All amounts not timely paid will incur a daily interest charge at the lesser of (a) 1.5% per month (18% per annum) or (b) the highest interest rate allowable under applicable law. Failure to pay amounts due under the Agreement in full will result in a revocation of any licenses or rights granted to Client under the Agreement.

4.2. Any taxes which Evolve may be required to pay or collect, under any existing or future law, upon or with respect to the sale, purchase, delivery, storage, processing, use or consumption of any of the Products, Software, Services, or Materials, including, without limitation, taxes upon or measured by the receipts from the sale thereof, shall be for the account of Client, who shall promptly pay the amount thereof to Evolve upon demand.

5. **DELIVERY TERMS.** Unless otherwise stated in the Agreement, all deliveries hereunder shall be shipped by Evolve from the manufacturing facility of its choice EXW (Evolve's factory dock) with title passing at such dock. Evolve's and Client's respective obligations with respect to delivery, contracts of carriage and insurance, risk of loss, payment of applicable duties and taxes, and export compliance shall be EXW, in accordance with the provisions of Incoterms® 2020 related to the term EXW, which are hereby incorporated by reference.

6. **PACKAGING.** Evolve will package the Product in accordance with prevailing industry standards as determined by Evolve. Evolve shall mark all containers or packages with necessary lifting and loading information.

7. **ORDER CANCELLATION / TERMINATION.** If any order placed by Client and accepted by Evolve is cancelled for any reason, Client must pay Evolve a cancellation charge (the "**Cancellation Charge**") as set forth in this Section 7. An order may only be cancelled by written notice to the non-terminating party. For orders cancelled within ten (10) calendar days after the date such order is placed (the "**Order Date**"), the Cancellation Charge will equal the amount of all costs and commitments incurred by Evolve related to the order through the date that proper notice of cancellation is received (the "**Cancellation Date**"). For orders cancelled eleven (11) or more calendar days after the Order Date, the Cancellation Charge will equal the amount of all costs and commitments incurred by Evolve related to the order through the Cancellation Date plus 30% of the aggregate purchase price of all Products, Software, Services and Materials included in the order. If Client has made advance payments and the amount owed under this Section 7 is less than the amount of such advance payments, then Evolve shall return such excess amount after the costs and commitments have been ascertained and agreed upon by the parties.

8. **TERMINATION FOR BANKRUPTCY.** Either party may terminate this Agreement immediately upon written notice to the other party, at no cost to the terminating party, if the other party becomes insolvent; files a petition for bankruptcy; commences or has commenced against it proceedings related to bankruptcy, receivership, reorganization or assignment for the benefit of creditors; or ceases or threatens to cease carrying on business.

9. **SHIPPING DATES.** Shipping dates quoted by Evolve represent a reasonable estimate of the time required for manufacturing at the time of order acceptance or quotation. These dates will not be construed as promises by or obligations of Evolve to ship or deliver goods.
10. **INSTALLATION AND TRAINING.** Unless otherwise specifically set forth in the Sales Order, Client or its designee will be responsible for installing the Product at Client's site. Evolve shall attend the installation and shall provide to Client training on the use and operation of the Product for the time set forth in the Sales Contract. Evolve may provide additional training to Client upon Client's reasonable request, at Evolve's standard hourly rates, pursuant to a separate Sales Contract. All travel and related expenses actually incurred by Evolve in connection with attending the installation and providing the training will be reimbursed by Client in accordance with Evolve's travel policy.
11. **PRODUCT USAGE.** Client represents, warrants and covenants that the Product, Software, Services or Materials; including any resale or Client-modified Product, Software, Service or Material, will only be used for the specific purpose for which such Product, Software, Service or Material was designed, and that such Product, Software, Service or Materials will not be used in any hazardous application or environment without first obtaining qualifying certification (UL, FM or equivalent) of said Product for such purpose.
12. **MATERIALS.** Client shall only use Materials purchased from Evolve or a supplier approved by Evolve (an "Approved Supplier") in the operation of the Product. If Client uses Materials supplied by any person or entity other than Evolve or an Approved Supplier, all warranties applicable to the Product, Software, Service, or Material, including, without limitation, those under Section 20 below, shall be null and void.
13. **LIMITATION OF LIABILITY.** EVOLVE'S LIABILITY UNDER THIS AGREEMENT IS LIMITED TO ACTUAL DAMAGES INCURRED BY CLIENT. IN NO EVENT WILL EVOLVE BE LIABLE FOR ANY SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES WHATSOEVER, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES ARISING FROM DELAYS IN DELIVERY, INSTALLATION AND/OR USE OF THE PRODUCT, SOFTWARE, SERVICE, OR MATERIAL, OR ANY LOST PROFITS, LOST REVENUE OR BUSINESS INTERRUPTION, REGARDLESS OF THE THEORY ADVANCED, EVEN IF EVOLVE HAS BEEN ADVISED BY CLIENT OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF CLIENT ASSERTS OR ESTABLISHES A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED IN THE AGREEMENT. IN NO EVENT SHALL EVOLVE'S AGGREGATE LIABILITY UNDER THE AGREEMENT EXCEED THE PURCHASE PRICE OF THE PRODUCT, SOFTWARE, SERVICE, OR MATERIAL AT ISSUE ACTUALLY PAID TO EVOLVE.
14. **EXPORT.** Client will not (a) disclose, export, re-export, or divert to any country: any Product, Software, Service, or Material; any system incorporating a Product; or any technical information, document or material, or (b) direct Products, Software, Services, or Materials to any country or person to whom disclosure, export, reexport or diversion is restricted under U.S. law, unless all necessary and appropriate authorization has been obtained from the U.S. government.
15. **FORCE MAJEURE.** Neither party shall be liable for any delay or failure to perform any of its obligations under this Agreement (other than the payment of money), if and to the extent such delay or failure is due to circumstances beyond the reasonable control of such party, including but not limited to, fires, floods, explosions, accidents, acts of God, declared and undeclared wars or riots, strikes, pandemics, epidemics, lockouts or other concerted acts of workmen, labor shortages, shortages of supply or materials, inability to obtain export or import licenses, change in law, rule or regulation, any provision or

requirement of the U.S. Export Administration Regulations, or any government act, omission, regulation, license, order or rule.

16. **COMPLIANCE WITH AND GOVERNING LAW.** Evolve and Client shall at all times comply with all applicable laws, rules and regulations. This Agreement shall be governed by the laws of the state of Minnesota except its conflict of law principles. The rights and obligations of the parties shall not be governed by the 1980 United Nations Convention for the International Sale of Goods in any respect or any replacement thereto.

17. **CLIENT ACCEPTANCE/DEEMED ACCEPTANCE.**

17.1. Factory Acceptance Testing. If the applicable Sales Contract provides for factory acceptance testing (“**FAT**”), Evolve will use reasonable efforts to notify Client (the “**FAT Notice**”) that Evolve will conduct FAT at least two weeks in advance of the date Evolve will conduct such FAT (the “**FAT Date**”). Client will then have the option of either (a) participating in FAT at Evolve’s plant or (b) reviewing FAT results with representatives of Evolve in lieu of participating in FAT. To participate in FAT, Client must notify Evolve in writing of its intent to do so at least seven (7) days before the FAT Date. If Client fails to so notify Evolve, Client shall be deemed to have waived its right to participate in FAT. If Client properly notifies Evolve of its intent to participate in FAT, then FAT shall be conducted in the presence of Client’s designated inspectors at Evolve’s plant, and Client shall ensure the attendance of such persons at the time and place duly appointed by Evolve in its sole discretion. FAT shall be deemed “satisfactory” if the Product substantially meets any specific requirements in the Sales Contract and performs substantially in accordance with the applicable Evolve specifications for that Product (“**Specifications**”). If scheduled FAT is delayed thirty (30) days or more as a result of Client’s action or inaction, the Product shall be deemed “satisfactory” to the same extent as if the Product were so deemed pursuant to FAT, and Evolve shall ship the Product to Client.

17.2. Site Acceptance Testing. If the applicable Sales Contract provides for site acceptance testing (“**SAT**”), following installation of the Product at the location designated by Client, Client or its designee shall perform SAT by operating the Product on a test basis for up to seven (7) days after the initial start-up (the “**SAT Period**”). Client shall not be deemed to have accepted the Product by operating it or having it operated according to SAT during the SAT Period. SAT will follow the protocols and procedures of FAT. If the Product substantially meets any specific requirements in the Sales Contract and performs substantially in accordance with the Specifications during the SAT Period, the Product shall be deemed accepted. If the Product fails to so comply during the SAT Period, Evolve shall assist Client in adjusting the Product, at Evolve’s cost, and the Product shall be retested within five days after Evolve provides notice the Product is ready for SAT retest. If, after such retesting, the Product still fails to so comply, Client may, at its option, either accept the Product or reject the Product; *provided, however*, that if Client fails to expressly reject the Product by written notice to Evolve within five (5) calendar days after such retesting is complete, Client shall be deemed to have accepted the Product. Furthermore, if Client uses the Product for any reason or purpose other than for SAT prior to Client’s formal acceptance of the Product, then Client shall be deemed to have accepted the Product. Without limiting the foregoing, Client will execute Evolve’s Certificate of Acceptance upon the successful completion of SAT.

## 18. INTELLECTUAL PROPERTY

18.1. CONFIDENTIAL INFORMATION. All non-public, confidential or proprietary information of the either party, including, but not limited to, specifications, samples, patterns, designs, plans, drawings, documents, data, business operations, customer lists, pricing, discounts or rebates, disclosed by one party (the “**Disclosing Party**”) to the other (the “**Receiving Party**”), whether disclosed orally or disclosed or accessed in written, electronic or other form or media, and whether or not marked, designated or otherwise identified as “confidential,” in connection with the Agreement (all such information being “**Confidential Information**”) is deemed confidential and solely for the use of performing the Agreement and may not be disclosed or copied by the Receiving Party unless authorized by Disclosing Party in writing. Confidential Information expressly includes any and all information derived from Confidential Information. The Receiving party shall treat Confidential Information as confidential and use commercially reasonable efforts designed to help prevent disclosure of the Confidential Information. The Receiving Party shall only use Confidential Information in connection with fulfilling its obligations under the Agreement. Client will not use Evolve Confidential Information to assist in creating or attempting to create by reverse engineering or otherwise, the source code, hardware designs or manufacturing processes from any Product or to make a new Product or system, or repair any Product or system except as necessary to support the use of any Product supplied by Evolve. The Receiving Party will return all Confidential Information to the Disclosing Party upon Disclosing Party’s written request. The parties’ obligations under this Section 18 will survive the termination or cancellation of this Agreement or final payment under any or all Sales Contracts. Notwithstanding the foregoing, Confidential Information shall not include information or material that (i) is publicly available or becomes publicly available through no action or fault of the Receiving Party, (ii) was already in the Receiving Party’s possession or known to the Receiving Party prior to being disclosed or provided to the Receiving Party by or on behalf of the other party, provided, that, the source of such information or material was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect thereto, (iii) was or is obtained by the Receiving Party from a third party, provided, that, such third party was not bound by a contractual, legal or fiduciary obligation of confidentiality to the non-disclosing party or any other party with respect to such information or material, or (iv) is independently developed by the Receiving Party without reference to the Confidential Information.

18.2. EVOLVE IP. “**Evolve IP**” comprises all (a) Products, Software, Services and Materials; (b) drawings, data, designs, equipment, procedures, engineering changes, inventions, trade secrets, copyrights, mask works, source code, object code, patents, patent applications, knowhow, computer code and/or Software, trademarks and all other information, technical or otherwise, which was or is developed, made or supplied by or for Evolve, and all derivative works thereof, and (c) know how, techniques, inventions, discoveries and work product of any nature whatsoever created by either party during the performance of the Agreement, and all intellectual property associated with the foregoing, which represents improvements and developments to the Products, Software, Services, or Materials, including without limitation, any trade secrets. All Evolve IP shall be the sole and exclusive property of Evolve and if not created or invented by Evolve shall be deemed “works made for hire,” under United States copyright laws, as applicable. Client hereby assigns to Evolve, and agrees to assign to Evolve at any time in the future upon request of Evolve, all right, title and interest to Evolve IP. Client will not reverse engineer any Evolve Products, Software, Services, or Materials.

**19. EVOLVE SOFTWARE LICENSE AGREEMENT AND THIRD PARTY SOFTWARE.**

- 19.1. Other than the limited license granted below, Evolve shall retain all right, title and interest in and to any and all Software. Upon Client's acceptance of the Product, Evolve grants Client a limited, non-transferrable, non-sublicensable license to use the Software solely in connection with and for use of the Product for the life of the Product. The foregoing license grant may be limited by terms set forth in the Sales Contract. The Software cannot be separated from the applicable Product.
- 19.2. Evolve hereby grants Client a limited, non-transferrable, non-sublicensable sublicense (the "**Sublicense**") to use the third-party software listed on the Sales Contract (and any documentation associated therewith) only in connection with the Product for a period of one (1) year or such other period set forth on the Sales Contract. Unless the Sales Contract provides otherwise, the Sublicense will automatically renew for consecutive one year terms unless Client or Evolve provides the other with written notice at least thirty (30) days prior to the end of the then current license period of its desire not to renew the Sublicense. Upon the initial grant and upon each renewal of the Sublicense, Client will pay to Evolve the license fee set forth in the Sales Contract; if no fee is set forth in the Sales Contract, Client will pay Evolve's then current license fee. The Sublicense will also terminate if the underlying license to Evolve is terminated or expires.

**20. EVOLVE LIMITED WARRANTIES.**

- 20.1. Evolve Product Limited Warranty. Unless otherwise expressly agreed to in writing by Evolve, Evolve warrants that Products will be free from defects in materials and workmanship for a period of twelve (12) months from date of shipment by Evolve; or if Evolve is responsible for installation, for a period of twelve (12) months from installation, but not to exceed fifteen (15) months from date of shipment by Evolve. Product is warranted only to the extent used under normal conditions that are equivalent to those as tested by Evolve. Evolve shall, at its sole option, repair or replace free of charge within the warranty period any Product which proves to be defective in materials or workmanship (subject to the requirements of Section 20.4 below). Materials, consumables and normal wear and tear are not covered under this Section 20.1; Materials are subject to the warranty in Section 20.3 below. Without limiting the requirements of Section 20.4 below, Evolve reserves the right to reject those claims for warranty where it is reasonably determined that failure is caused by Client or third-party modifications, improper maintenance or service, misuse, misapplication, abuse, failure to comply with Documentation, damage due to factors which are beyond the control of Evolve, damage caused by connections, interfacing or use in unforeseen or unintended environments. These conditions will render the warranties null and void.
- 20.2. Services Warranty. Services are warranted to be provided in a workmanlike manner for a period of ninety (90) days after performance. Evolve's entire liability and Client's exclusive remedy, whether in contract, tort or otherwise for any claim related to or arising out of the breach of warranty covering Services will be re-performance or credit, at Evolve's option.

20.3. Materials Warranty. Unless otherwise expressly agreed to in writing by Evolve, Evolve warrants that Materials will be free from substantial manufacturing defects in workmanship and materials for the periods set forth in the chart below (as applicable to each type of Material). Materials are warranted only to the extent used in a Product and under normal conditions that are equivalent to those as tested by Evolve. If the Materials breach the foregoing warranty within the applicable warranty period below, Evolve shall, at its sole option, repair or replace such Materials (subject to Section 20.4 below). Without limiting Section 20.4 below, Evolve reserves the right to reject those claims for warranty where it is reasonably determined that failure is caused by Client or third-party modifications, improper maintenance, misuse, misapplication, improper storage, abuse , failure to comply with Documentation, damage due to factors which are beyond the control of Evolve, damage caused by connections, interfacing or use in unforeseen or unintended environment. These conditions will render the warranties null and void.

Warranty Periods Per Material:

Materials	Warranty Period
ORC's (Operator Replaceable Components)	The earlier of: (a) 12 months from shipment or (b) such time that 40% of the Rated Life of the Materials (as set forth from time to time in the Client Documents) has been depleted (measured as of such date the Materials have been put into service as determined by the Product) (" <b>Rated Life Depletion Date</b> ")
SRC's (Service Replaceable Components)	The earlier of: (a) 12 months from shipment or (b) the Rated Life Depletion Date.
Part and Support toner Materials	90 days from shipment
Developer Materials	90 days from shipment
Support Removal Wash	90 days from shipment
Spare Parts	The earlier of (a) 12 months since being put into service, or (b) the Rated Life Depletion Date.

20.4. General Warranty Matters.

20.4.1. Evolve has the sole discretion to determine the best method of replacement, compensation, credits or repair for any warranty claim.

20.4.2. The applicable warranty(ies) in this Section 20 are applicable if, and only if, Client notifies Evolve in writing of the warranty claim during the applicable warranty period and provides a detailed written explanation of any alleged defects, deficiencies or non-performance that trigger application of the applicable warranty(ies) and the issue giving rise to such claim is repeatable by Evolve.

20.4.3. Warranties do not apply to any defects, deficiencies or non-performance caused by accident, misuse, abuse, neglect, relabeling, improper installation, unauthorized alteration or repair, tampering, improper testing, improper storage, or if the integrity of the Product or Material has been altered in any way. No warranty covers damages that may result from the Client or its designee(s) moving, handling, using or installing Products, Software, Services or Materials.

20.4.4. Products, Software, Services and Materials will not be covered under the applicable warranty(ies) if:

- Client cannot provide proof of date of purchase.
- Materials are not returned if, when and pursuant to the requirements designated by Evolve.
- Materials or Products is/are contaminated with dirt, sand, water or any other substance that may damage any components or inhibit performance.
- Supply Voltages fluctuate beyond +/- 5% of required Client facility supply (e.g. 220VAC or 400VAC).
- Any filters are removed or not cleaned or replaced in an appropriate manner.
- Parts or materials not approved by Evolve in writing are used.



- Modifications are made to the Products, Software or Materials that are not approved by Evolve in writing.
- The Products, Software, Services or Materials are used/operated by persons who have not been trained by Evolve to use the applicable Product(s) or Material(s).
- Servicing is not performed at Evolve-designated cadence or in accordance with Evolve's requirements.

Client is solely responsible for determining if Products, Software, Services and/or Materials is/are fit for a particular purpose and suitable for Client's method of application. Accordingly, and due to the nature and manner of use of Evolve's Products, Software, Services and/or Materials, to the extent permitted by applicable law Evolve is not responsible and shall not be liable in any manner whatsoever for the application for which its Products, Software, Services, or Materials are used, or the results obtained through the use of Products, Software, Services or Materials.

**20.5. WARRANTY LIMITATION. THE EVOLVE LIMITED WARRANTIES SET FORTH IN THIS SECTION 20 ARE THE SOLE AND EXCLUSIVE WARRANTIES UNDER THE AGREEMENT OR OTHERWISE, AND ARE EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES. EVOLVE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTY OF INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND NO WARRANTIES ARE EXPRESSED OR IMPLIED WHICH EXTEND BEYOND SECTION 20.**

20.6. Product Returns. For any warranty claim, Evolve may require that Client first return the Product or Material to Evolve for inspection by Evolve. In such case, Client must obtain written return authorization from Evolve or the shipment may be refused. Client shall pay all shipping charges for returning any Product or Material to Evolve; provided, however, if the Product is covered by the warranty in Section 20, Evolve will reimburse Client for its reasonable shipping costs. If not covered by warranty, Evolve's costs for inspection, testing, repair, handling the claim, shipping, expediting and placing returned Product or Materials into working condition will be paid by Client.

## 21. GENERAL PRODUCT SAFETY STATEMENT.

21.1. The Products, Software, Services and Materials, to Evolve's knowledge, comply with national and international safety standards to the extent such standards apply to additive manufacturing. Because of the wide range of applications which Products, Software, Services and Materials are used, and over which Evolve has no control, additional protective devices and operating procedures may be necessary pursuant to specific accident prevention regulations, safety regulations, further directives or other applicable laws, rules or regulations; Evolve is not responsible for any such determination or failure of the Products, Software, Services or Materials to so comply. Evolve strongly recommends that the Client conduct its own product safety risk assessments. At Client's request, Evolve will provide advice and quotations for additional safety devices such as protective shielding, warning signs and methods of restricting access to the Product; *provided, however*, that Evolve shall not be liable to Client for any reason whatsoever related to such advice, or for any reason related Client's failure to comply with applicable laws or safety regulations.

21.2. No obligation or liability shall arise out of Evolve's rendering of technical or other advice in connection with Client's order or the recommendation of or use of Products, Software, Services or Materials. Any such advice furnished or recommendations made by Evolve or any employee or

representative of Evolve, concerning any use, application or installation of any Products, Software, Services or Materials is believed to be reliable, but Evolve makes no covenant, representation or warranty, express or implied, related thereto. Client assumes all responsibility and risk for loss or damage resulting from the recommendation, handling, installation or use of any Products, Software, Services or Materials in accordance with such advice or recommendation. The selection of the Products, Software, Services, or Materials ordered, or design of any custom Products, Software, Services, or Materials, shall be Client's sole and ultimate responsibility, and Evolve shall have no liability whatsoever for any design defects of custom Products, Software, Services or Materials, or if the Products, Software, Services or Materials ordered are unsuitable for Client's intended use. Any advice or assistance provided by Evolve to Client in connection with Client's selection or design of the Products, Software, Services, or Materials is at Client's sole risk, and Evolve makes no covenant, representation or warranty whatsoever in connection with such advice or assistance. Without limiting the foregoing, even if Evolve recommends, sells or installs a Product or Material for Client, Evolve is not responsible for ensuring (i) the security of any hardware, software, network or other device or (ii) that Client's systems are or will be in compliance with any standards or protocols.

22. **INDEMNIFICATION.** Client shall indemnify, defend (at Evolve's option), and hold harmless Evolve, its affiliates, and their respective employees, officers and directors ("**Indemnitee**") from and against any and all liabilities, losses, damages, costs and expenses, including without limitation reasonable attorney fees, arising from any third-party claim, suit, action or proceeding (collectively, "**Claims**") that results from (i) Client's negligent or intentionally-wrongful act or omission; (ii) Client's breach of any of the terms of this Agreement; or (iii) products, features, materials or things created by Client or its designees using the Products, Software, Services or Materials (e.g., product liability claims alleging liability, loss, damage, etc. from anything Client creates using any Product).
23. **NATURE OF BREACH.** A party's liability for a material breach under the terms of the Agreement shall arise only after (i) the breaching party receives written notice of the breach from the other party and (ii) the breaching party fails to cure such breach within thirty (30) days (ten (10) days with respect to nonpayment) after receipt of written notice.
24. **INSURANCE.** The parties shall obtain and maintain insurance coverage with limits sufficient to cover the liabilities outlined in the Agreement. Evolve or Client, as applicable, will provide a basic certificate of insurance evidencing coverage upon the other party's reasonable request.
25. **GOVERNMENT SALES.** Evolve objects to the application of any United States Federal Acquisition Regulation ("**FAR**") or Defense Federal Acquisition Regulation ("**DFAR**") provision or clause to this Agreement, and Client acknowledges that any such FAR or DFAR provisions contained in any Sales Contract, quotation or other document(s) furnished by Client shall be of no force or effect unless otherwise agreed in writing by an officer of Evolve.
26. **SITE PREPARATION AND CONDITION.**
- 26.1. If applicable, prior to the date specified in the applicable Sales Contract, Client will (i) obtain and pay for all governmental or third-party consents, permits, approvals, licenses and public and private easements necessary for Evolve's unrestricted access to any site or location needed for performance of the Services and delivery and installation of the Product, and (b) although Client is

responsible for all compliance with all applicable laws, regulations and ordinances, notify Evolve in advance of any requirements including all laws, regulations and/or ordinances with which Evolve will be required to comply in the rendering of Services and in the supplying of the Products, Software, Services, or Materials. Client shall be solely responsible for preparation of the site at which Evolve will perform the Services in full compliance with the specifications and time schedule in the Sales Contract or Client Documents. Installation and training services shall be provided by Evolve in accordance with its then-current training procedures and protocols, in consultation with Client. Client warrants to Evolve that each such site is in compliance with all applicable health and safety regulations and is free from all asbestos and hazardous contamination or pollutants. Without limiting the foregoing, Client shall comply with obligations set forth in Evolve's installation and site preparation manual.

26.2. If Evolve is installing or offering Products, Software, Services or Materials outside of the United States of America, Client shall provide Evolve with all necessary documentation requested by Evolve (or otherwise necessary or helpful) to obtain proper work permits and/or visas to perform installation services. Product/Material installation time periods are subject to the type of Product/Material, location of installation, ability to timely provide training and SAT; provided, that any such time periods (if provided by Evolve in its discretion) are only estimates that are provided for Client's informational purposes (and do not represent a binding commitment that Client may rely upon for, among other things, business planning purposes). To ensure timely Product/Material installation, Client shall provide Evolve-designated personnel with access to the Product/Material and Client's intended operators as and when reasonably requested by Evolve from time to time.

27. **CLIENT'S DEFAULT.** Evolve may, upon written notice to Client, suspend or cancel the Agreement or any or all Sales Contracts, quotations or other agreements effective immediately if: (a) in Evolve's opinion, Client's financial condition deteriorates in a way that detrimentally impacts Evolve's interest in the Agreement; (b) Client fails to perform any obligations under the Agreement and such failure is not remedied within ten (10) days after notice has been given to Client; (c) Client fails to pay in accordance with any invoice payment terms; or (d) any change occurs in the direct or indirect ownership of Client that, in Evolve's opinion, would be detrimental to Evolve's interest in the Agreement. Evolve's cancellation rights under this Section 27 is in addition to, and shall not prejudice any other rights or remedies at law or in equity available to Evolve.

28. **INTELLECTUAL PROPERTY INFRINGEMENT AND DEFENSE.** If any Evolve Product, Software, Service or Material becomes the subject of a claim of infringement of any copyright or patent, Evolve may, at its option and expense, either: (a) modify the Product, Software, Service or Material to make it non-infringing; (b) settle such claim by procuring for Client the right to continue using the Product, Software, Service or Material; or (c) defend Client against such claim, provided that the Client gives Evolve prompt written notice of all facts and circumstances necessary or desirable for a proper defense of the claim, Client cooperates in the defense of such claim, and has fully complied with the Sales Contract between the Parties, all Client Documents, and these General Terms. Evolve will not be responsible for any settlement made without its written consent. Evolve shall have no liability for any software or other intellectual property included in any Sublicense.

29. **ASSIGNMENT.** Client may not assign its rights and obligations under this Agreement, except with written consent of Evolve. Any assignment or delegation without such consent shall be null and void.

30. **WAIVER.** No waiver by any party of any of the provisions of the Agreement shall be effective unless explicitly set forth in writing and signed by the party so waiving. Except as otherwise set forth in the Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power or privilege arising from the Agreement shall operate or be construed as a waiver thereof, nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
31. **SURVIVAL.** The following sections survive termination, cancellation or expiration of this Agreement: 1-4, 7, 8, 11-16, 18, 19, 20.5, 21-23, 27, and 29-33.
32. **SEVERABILITY.** Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement will be prohibited by or invalid under any such law, such provision will be limited to the minimum extent necessary to render the same valid or will be excised from this Agreement, as the circumstances require, and this Agreement will be construed as if said provision had been incorporated herein as so limited or as if said provision had not been included herein, as the case may be, and enforced to the maximum extent permitted by law, unless the deletion of such provision or provisions results in such a material change so as to cause completion of the transactions contemplated herein to be unreasonable.
33. **MISCELLANEOUS.** No other person or entity will have any rights, interest, or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third party beneficiary or otherwise. Any modification or amendment of any provision of this Agreement will be effective only if in form of a written amendment to this Agreement and signed by Client and an authorized representative of Evolve. Exclusive jurisdiction and venue for any claims made by either party against the other will be in an appropriate state or federal court in or for Minneapolis, Minnesota, and the parties irrevocably consent and agree to the exclusive jurisdiction and venue of such courts; provided, however, Evolve has the right to seek equitable relief in any jurisdiction and either party shall have the right to enforce a judgement in any jurisdiction. Client shall pay to Evolve any and all collection fees and legal fees incurred by Evolve in connection with Client's breach of this Agreement, during or after the term. Headings are for reference purposes only and have no substantive effect. This Agreement may be executed in counterparts, each of which will be deemed an original. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. Each party and its employees are independent contractors in relation to the other party with respect to all matters arising under this Agreement. Nothing herein shall be deemed to establish a partnership, joint venture, association or employment relationship between the parties.