

U.S. Public Sector Addendum to Evolv Service Terms

This U.S. Public Sector Addendum (the “**Indirect PSA**”) modifies, supplements, or replaces certain terms of the Evolv Service Terms (the “**Service Terms**”) solely with respect to U.S. federal, state, and local government entities, including publicly funded educational institutions, that access or use Evolv Products through a prime contractor, reseller, or other intermediary rather than through a direct contractual relationship with Evolv Technologies, Inc. (“**Evolv**”).

This Indirect PSA becomes effective on the date the applicable government Customer first accesses or uses the Products or Professional Services and applies thereafter to such access and use. Capitalized terms used but not defined in this Indirect PSA have the meanings assigned in the Agreement.

1. Purpose

This Indirect PSA serves as an end-user agreement applicable to the Customer’s authorized access to and use of the Products and Professional Services and modifies the Service Terms solely as expressly set forth herein or as required by mandatory applicable law. Except as so modified, the Service Terms remain unchanged and continue to govern the access to and use of the Products and Professional Services.

2. Amendments to the Service Terms

2.1 A new Section 1(m) of the Service Terms is hereby added as follows:

“(m) Authorized Users means the individuals whom Customer permits to access and use the Products and Professional Services, including Customer’s employees, temporary personnel, contractors, and other persons acting on Customer’s behalf and under Customer’s direction and control. Authorized Users must be designated or approved by Customer and may use the Products and Professional Services solely for Customer’s internal governmental purposes and in accordance with the Agreement and the Documentation.”

2.2 Conforming Change. All references in the Agreement to Customer “Indemnitees” are hereby deleted and replaced with “Authorized Users” as defined in Section 1(m) of the Service Terms (as amended herein).

2.3 A new Section 4(c) of the Service Terms is hereby added as follows:

“(c) Evolv Confidential Information expressly includes Evolv proprietary, technical, financial, operational, and trade secret information that is exempt from public disclosure under applicable federal, state, and local public records laws, including the Freedom of Information Act (FOIA) and state open records or sunshine laws, to the extent such exemptions apply. Customer will reasonably cooperate with Evolv, consistent with Customer’s legal obligations and discretion, in asserting any applicable exemptions or protections from disclosure for Evolv Confidential Information; provided that Customer does not guarantee that such information will be withheld if disclosure is required by law.”

2.4 A new Section 4(d) of the Service Terms is hereby added as follows:

“(d) Nothing in this Section 4 restricts or prevents either Party from making any disclosure that is legally required or that is made in good faith to report suspected fraud, waste, abuse, corruption, criminal conduct, or other violations of law to appropriate governmental, oversight, investigatory, or regulatory authorities. Such good-faith reporting shall not, in itself, be deemed a breach of confidentiality under the Agreement and shall not authorize disclosure beyond what is legally required.”

2.5 A new Section 5(e) of the Service Terms is hereby added as follows:

“(e) Customer acknowledges and agrees that Evolv’s data governance, data protection, privacy, and security obligations are as set forth in the Agreement (including the Data Processing Addendum (DPA)) and shall not be expanded, modified, or supplemented by any Customer-specific data governance, privacy, or security requirements (including those contained in any purchase order, Order Document, procurement instrument, policy, guideline, or arising under Customer-specific statutes or regulations) unless Evolv has expressly reviewed and agreed to such requirements in a separate written agreement executed by Evolv. Evolv does not agree to implement or certify against any Customer-specific or governmental information security or cybersecurity frameworks (including without limitation, NIST SP 800-171/-53, or state/local equivalents) unless expressly set forth in a written amendment executed by both Parties. Customer will provide any proposed additional requirements or certifications in writing for Evolv’s review; Evolv will evaluate such requirements in good faith and determine, at its sole discretion, whether it is able to comply. In the meantime, Customer agrees not to provide Evolv sensitive government information, including but not limited to controlled unclassified information (CUI).”

2.6 A new Section 5(f) of the Service Terms is hereby added as follows:

“(f) Accessibility. Upon Customer’s reasonable request, Evolv will provide available accessibility conformance information (e.g., VPAT/Section 508 or WCAG statements). Any accessibility commitments shall be as expressly agreed in writing.”

2.7 Section 6.1(a) of the Service Terms is deleted in its entirety and replaced with the following:

“6.1(a) Customer Responsibilities; Allocation of Risk.

(i) Operational Responsibilities. Customer shall: (A) use, operate, and manage the Products strictly in accordance with the Documentation; (B) ensure that its Authorized Users are competent, qualified, and appropriately trained to operate the Products; (C) comply with all applicable laws, rules, warnings, and regulations regarding the use and operation of the Products; and (D) maintain and follow procedures for responding to, investigating, and clearing Product alerts.

(ii) Allocation of Risk (No Indemnification). As between the Parties, Customer is responsible for and shall bear the risk of any third-party claims, complaints, investigations, fines, penalties, damages, or other amounts paid in settlement and the costs and expenses incident thereto (including reasonable attorney’s fees) (“Losses”) to the extent arising out of: (1) Customer’s or its Authorized Users’ use, operation, possession, or control of the Products in contravention of the Documentation; (2) Customer’s or its Authorized Users’ violation of applicable law, rule, warning, or regulation; or (3) failure by Customer personnel to appropriately respond to or clear a Product alert; except to the extent such Losses are caused by Evolv’s gross negligence or willful misconduct. For the avoidance of doubt, this subsection allocates responsibility and risk and does not require Customer to defend, indemnify, or hold harmless Evolv.

(iii) Management of Third-Party Matters. Customer will be the primary point of contact for, and will manage and respond to, third-party inquiries, complaints, or claims asserted against Customer that relate to subsection (ii), consistent with applicable law. Each Party will reasonably cooperate with the other, at its own expense, provided that nothing herein obligates Customer to assume Evolv’s defense or reimburse Evolv’s defense costs.

(iv) Reimbursement of Adjudicated, Direct Losses (No Direct Payment Obligation). To the extent a court of competent jurisdiction issues a final, non-appealable judgment determining that Evolv incurred direct Losses solely and proximately caused by Customer’s breach of subsection (i) or responsibility under subsection (ii), responsibility for such Losses shall be allocated to the Government Customer as a matter of risk under this Agreement, subject to Section 6.3 (Limitation of Liability) and all applicable fiscal and procurement laws. For avoidance of doubt, this subsection allocates responsibility and risk only and does not create any obligation for the Government Customer to make payment directly to Evolv, nor does it create a defense, indemnity, or hold-harmless obligation or a direct contractual relationship between Evolv and the Government Customer.

(v) Anti-Deficiency. Nothing in this Section shall be construed to expand Customer’s payment obligations beyond those expressly set forth herein or to commit funds in violation of applicable law; this Section is an allocation-of-risk provision and not an indemnity, defense, or hold-harmless obligation.”

2.8 Section 6.1(b) applies only to procedural aspects of Evolv’s obligations under Section 6.1(c), as amended herein, to the extent compatible with subsections (i)–(vi) above (e.g., notice and cooperation). Any references to “defense” or “control of defense” are inapplicable to Customer and are replaced by reasonable cooperation and information-sharing, with Customer’s authorized government counsel retaining control of the proceeding.

2.9 A new Section 6.1(c) of the Service Terms is hereby added as follows:

“6.1(c) Evolv Responsibilities; IP Infringement and Misconduct Remedies.

(i) No Duty to Defend. The Parties acknowledge that Customer is represented in legal matters exclusively by the United States Department of Justice (for federal entities) or the applicable State Attorney General (for state entities) and that Evolv has no duty, right, or authority to defend Customer in any proceeding.

(ii) Cooperation and Information. For any third-party claim, demand, investigation, or proceeding against Customer that alleges either (A) Customer’s authorized use of the Products infringes a U.S. patent, copyright, or other intellectual property right, or (B) Losses arising from Evolv’s gross negligence or willful misconduct in connection with delivery, installation, repair, or maintenance of the Equipment, Evolv shall, at its own expense, reasonably cooperate with Customer and its authorized government counsel by providing timely information, documents, and knowledgeable personnel.

(iii) Reimbursement Obligation (Direct Damages Only). In lieu of any obligation to defend or hold harmless, Evolv shall reimburse Customer for final, non-appealable judgments (or court-approved settlements entered with Evolv’s written consent, not to be unreasonably withheld) for direct Losses awarded against Customer to the extent caused by: (A) Customer’s authorized use of the Products infringing a third party’s U.S. intellectual property right; or (B) Evolv’s gross negligence or willful misconduct in the delivery, installation, repair, or maintenance of the Equipment; in each case subject to the exclusions in subsection (iv) and the caps and exclusions in Section 6.3 (Limitation of Liability).

(iv) Exclusions. Evolv has no responsibility under subsection (iii) for claims to the extent based on: (A) Customer's use of the Products in a manner not expressly authorized by the Agreement or Documentation; (B) combination, operation, or use of the Products with third-party materials, products, or software where the claim would have been avoided but for such combination, operation, or use; or (C) modifications to the Products not authorized in writing by Evolv.

(v) IP Claim Mitigations. If a claim described in subsection (iii)(A) is asserted or, in Evolv's reasonable judgment, likely to be asserted, Evolv may, at its own expense, (1) procure for Customer the right to continue the authorized use, (2) replace the Products with non-infringing products of materially equivalent functionality, or (3) modify the Products so they become non-infringing with no material reduction in functionality. If none of the foregoing is reasonably available, Customer may (4) terminate the affected order and be refunded the unused, prepaid fees for the affected Products calculated from the date Customer's authorized use ceased through the end of the then-current Subscription Term. These are Customer's exclusive remedies for the infringement claim types in subsection (iii)(A).

(vi) Settlement. Customer retains exclusive control of its defense through authorized government counsel. Evolv shall not enter any settlement that purports to bind Customer without Customer's written approval. Customer shall not enter any settlement that imposes payment obligations on Evolv or admits fault on behalf of Evolv without Evolv's written approval (not to be unreasonably withheld).

2.10 The following is hereby added to Section 6.3 (Limitation of Liability):

"Notwithstanding anything to the contrary in this Section 6.3 or elsewhere in the Agreement, the limitations, caps, exclusions of types of damages, and disclaimers do not apply to amounts that Customer is legally required to recover as restitution, fines, penalties, assessments, multipliers, or treble damages pursuant to: (a) the federal False Claims Act, 31 U.S.C. §§ 3729–3733, and (b) any state, territorial, or local false claims, fraud-against-the-government, or equivalent public procurement fraud statute (including administrative false claims regimes), to the extent finally imposed by a court of competent jurisdiction or agreed in a settlement approved by the government authority with jurisdiction."

2.11 A new Section 6.4 of the Service Terms (Performance and Termination) is hereby added as follows:

"(a) Continued Performance. During the pendency of any dispute, claim, audit, or controversy (including any dispute regarding non-payment by Customer) and to the extent applicable, Evolv shall continue to perform in accordance with the Agreement; provided, however, that Evolv may suspend performance to the limited extent necessary to avoid violation of applicable law or to address a material security risk that cannot reasonably be mitigated by other means, in which case Evolv shall provide prompt notice to Customer. This Section does not waive Evolv's right, after final resolution of the dispute, to seek relief consistent with Section 6.3 (Limitation of Liability).

(b) Effect of Termination. Upon any termination and to the extent applicable: (i) Evolv shall promptly cease work on the terminated portions and take reasonable steps to mitigate costs; (ii) access to and use of Software associated solely with the terminated portions will cease as of the effective date of termination; and (iii) each Party shall return or destroy (at the other Party's option) the other Party's Confidential Information in its possession for the terminated portions, subject to any retention required by law."

2.12 Section 7.1 is deleted in its entirety and replaced with the following:

"7.1 Governing Law; Dispute Resolution.

(a) Federal Customers. For Customers that are United States federal executive agencies, the Agreement shall be construed and enforced under federal law. All claims and disputes arising under or relating to the Agreement shall be resolved exclusively in accordance with the Contract Disputes Act of 1978 (CDA) and applicable implementing regulations. Disputes shall be submitted first for a contracting officer's final decision, and any appeal shall be taken to the appropriate agency board of contract appeals or to the United States Court of Federal Claims, with further appeal as permitted by the United States Court of Appeals for the Federal Circuit. Nothing herein waives sovereign immunity or authorizes any forum or procedure inconsistent with the CDA.

(b) State or Local Government Customers. For Customers that are state or local governmental entities, the Agreement shall be governed by the laws of the state of the governmental Customer without regard to conflict-of-laws rules. To the extent applicable, disputes shall be resolved in accordance with the governing state's public procurement dispute statutes, regulations, or administrative procedures (including any required agency review or claim presentment) and, where judicial review is authorized, exclusively in the courts of that state having subject-matter jurisdiction and located within that state. Nothing herein waives any applicable fiscal limitations or procedural prerequisites to suit.

(c) Interim Performance. Unless applicable law or an authorized government official directs otherwise, the Parties will continue performance during the pendency of any dispute to the extent required by law and the Agreement.

(d) Indirect Procurement Limitation. Notwithstanding anything to the contrary in this Section, this Indirect PSA does not create a direct contractual relationship between Evolv and the Government Customer for purposes of asserting contractual claims, disputes, or remedies, except to the limited extent provided herein and required by mandatory applicable law.”

2.13 Section 7.4 is deleted in its entirety and replaced with the following:

“7.4 Government Contract Clauses; No Automatic Incorporation. No government-specific contract clauses, flow-down requirements, or procurement regulations (including any FAR, DFARS, or state/local equivalents) that appear in or accompany a Customer purchase order, ordering system, or other procurement instrument shall apply unless expressly agreed to in writing by Evolv. The mere inclusion, reference, hyperlink, or incorporation by reference of any such terms does not constitute Evolv’s acceptance, and such terms are void and of no effect unless and until separately agreed in writing. Performance by Evolv or acceptance of an Order Document or award does not constitute acceptance of any such additional terms. For clarity, this Section does not exclude the application of any clause or requirement that is (i) mandatory as a matter of law for contracts of this type and (ii) applies by operation of law irrespective of agreement.”

2.14 A new Section 7.9 is added as follows:

“7.9 Property; Bailment; Risk of Loss.

(a) Evolv Property at Customer Sites (Government as Bailee). If Customer has not purchased the Equipment or other tangible property, then title to all Equipment and other tangible property provided by Evolv (“Evolv Property”) remains with Evolv; no title passes to Customer by delivery, installation, or payment. Customer’s possession of Evolv Property constitutes a mutual-benefit bailment. Customer will exercise reasonable care to safeguard Evolv Property while in its custody and will use it only as authorized. Customer is not an insurer of Evolv Property. Each Party is responsible for direct loss or damage to Evolv Property to the extent caused by its failure to exercise reasonable care. Customer has no responsibility for ordinary wear and tear, latent defects, or consumption in authorized use. Customer will provide reasonable access for inspection, maintenance, repair, or removal and will not relocate Evolv Property without Evolv’s consent (except for emergency protection/safety). Customer will promptly notify Evolv of any loss, theft, or material damage and will not permit liens or encumbrances on Evolv Property.

(b) If Customer has purchased Equipment or other tangible property, the terms and conditions set forth in the applicable Product Schedule shall continue to expressly govern such Equipment. Notwithstanding any contrary or similar provisions in 48 C.F.R. § 52.212-4, Contract Terms and Conditions—Commercial Products and Commercial Services, or any other accepted flow-down or mandatory clause, and to the maximum extent permitted by applicable law and the Prime Contract, the Product Schedule terms relating to Products shall apply to and bind Customer and shall take precedence as between Evolv and Customer.

(c) Government-Furnished Property in Evolv’s Possession (Evolv as Bailee). “Government-Furnished Property (GFP)” means property to which Customer retains title that is furnished to Evolv for performing the Agreement. Title to GFP does not transfer to Evolv. Evolv’s possession of GFP constitutes a mutual-benefit bailment. Evolv will exercise reasonable care to safeguard GFP, use it only as authorized, maintain basic custody records (receipt, location, return), and make such records reasonably available to Customer. Evolv will promptly notify Customer of any loss, theft, or material damage to GFP and will follow Customer’s written disposition instructions, subject to applicable law. Evolv will keep GFP free of liens and segregated or clearly identified where practicable to avoid commingling.

(d) Insurance. Neither Party is required to obtain insurance covering the other Party’s property unless expressly stated in a written instrument signed by both Parties. This Section allocates responsibility and care and does not impose insurer-like liability.”

2.15 A new Section 7.10 is added as follows:

“Referenced Documents. Notwithstanding any provision of the Agreement that references the Evolv website or requires the Customer to access web-hosted documents, the Parties agree that: (i) the DPA and all applicable Product Schedules, Professional Services Schedules, and any other Evolv-published schedules or documents incorporated by reference into the Agreement (collectively, the “Referenced Documents”) shall be provided to Customer as attachments to this Indirect PSA; (ii) the attached are incorporated into and made a part of the Agreement as if fully set forth therein and supersede any requirement to obtain such documents from the Evolv website; and (iii) future updates to the Referenced Documents shall not apply to Customer unless Evolv provides the updated version or other mutually agreed written form and the Parties expressly agree in writing to adopt the updated version.”

3. Conflicts

To the extent of any conflict between the terms of this Indirect PSA and the Agreement, the terms of this PSA control. All unmodified terms of the Agreement remain in full force and effect.

4. Miscellaneous

This Indirect PSA becomes effective on the date the applicable government Customer first accesses or uses the Products or Professional Services and applies thereafter to such access and use. No execution required.

[ATTACHMENTS]

Attachment A: Service Terms

Attachment B: Data Processing Addendum

Attachment C: Product Schedule(s)