SOFTWARE LICENSE AGREEMENT

**This AGREEMENT** effective as of \_\_\_\_\_\_\_\_\_, 20XX ("Effective Date") by and between EVOLVEWARE, a corporation organized under the laws of the State of California and having a principal place of business at 4677 Old Ironsides Drive, Suite 240, Santa Clara, CA 95054 ("EW") and \_\_\_\_\_\_\_\_\_\_\_ a corporation organized under the laws of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ and having a principal place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, ("Company").

**WHEREAS**, EW has the right to and is the lawful owner of the Licensed Software (as defined below) that is used to assess, document, modernize and migrate applications;

**WHEREAS**, Company is in the business of providing services and desires to obtain a full use license of the Licensed Software;

**WHEREAS**, EW is willing to provide the Licensed Software to Company so that Company may use, have customized, market, distribute, license, and sell Licenses of the Licensed Software (as defined below) in order to support Company’s customers;

**NOW, THEREFORE**, **EW AND COMPANY AGREE AS FOLLOWS:**

# DEFINITIONS.

## **Affiliate** - shall mean a corporation, company, or other entity which now or hereinafter, directly or indirectly, controls, is controlled by or is under common control with a party.

## **Agreement** - shall mean this agreement between EW and Company, including all amendments and modifications hereto.

## **Licensed Software** – shall mean EW’s full use software product(s) and all related modules, applications, components, connectors and limited use license keys, including any copyrights and patents that it currently offers to the market as set forth in Exhibit A, including hard-copy and electronic versions of product manuals and end-user documentation.

## **Process Code** – shall mean using the Licensed Software to assess, document, extract business rules, optimize and modernize applications based upon the type of license issued for the Licensed Software.

## **Derivative Software** – shall mean any software that results due to combination with, addition to, resulting from integration with, or used in conjunction with the Licensed Software or the resulting transformed code that is generated from using the Licensed Software to Process Code.

## **Automatic Transformation Rate of Source Data** – shall mean the automatic transformation of Source Data into Target Code. The automatic transformation rate shall be calculated as number of lines of source code transformed by the Licensed Software divided by the total number of lines of source code selected for transformation by the Licensed Software.

## **Sale** (Licensed, Sold) - shall mean any sale, rental, lease, license,or other form of distribution of the Licensed Software, either directly or through a chain of distribution, with or without consideration and as recognized in accordance with Generally Accepted Accounting Principles (“GAAP”).

# LICENSE GRANT AND DELIVERY.

## Subject to the terms and conditions of this Agreement and while the Agreement is in force, EW hereby grants to Company and its Affiliates an irrevocable, non-exclusive, world-wide, nontransferable license for the Licensed Software to Process Code owned by Company, or to Process Code owned by Company’s Sub-licensees to whom a valid sublicense has been granted, or to Process Code that Company or its Sub-licensee has authority from the code’s owners pursuant to a license, as under:

### **Right to Sell Licenses.** Offer for Sale and Sell an object code license of the Licensed Software for use to Company’s customers.

### **Sublicense Rights.** Company shall have the right to grant sublicenses to the Licensed Software to resellers, distributors and system integrators who are a part of the Company chain of distribution partners and who shall sell object code licenses of the Licensed Software to their customers (the “Sub-licensee”).

The foregoing is an express limited-use license and not an assignment, sale, or other transfer of the Licensed Software or any Intellectual Property Rights of EW.

# Ownership and intellectual property

## EW shall and will continue to have sole and exclusive ownership of all rights, title, and interest in and to the Licensed Software (including ownership of all patents, trademarks, trade secrets, copyrights and other intellectual property rights pertaining thereto), in the form delivered to Company.

# RESTRICTIONS:

## Any breach by Company of any of the restrictions set forth in this section will be deemed to be a material breach of this Agreement and will be grounds for termination of this Agreement.

4.1.1 Company is expressly prohibited from copying, modifying, merging, or transferring in any matter other than as expressly provided for in this Agreement, the Licensed Software or any portion thereof.

4.1.2 Company is expressly prohibited from reverse engineering, decompiling, translating, disassembling, deciphering, decrypting, or otherwise attempting to discover the source code of the Licensed Software. It is agreed that the Licensed Software contains proprietary material of EW. Company may not otherwise modify, alter, adapt, port, or merge the Licensed Software.

4.1.3 Company may not access the Licensed Software through automated means such as scripts, bots and similar applications and technologies.

4.1.4 Company may not remove, alter, deface, overprint or otherwise obscure EW patent, trademark, service mark or copyright notices.

4.1.5 Company agrees that the Licensed Software will not be shipped, transferred or exported into any other country, or used in any manner prohibited by any government agency or any export laws, restrictions or regulations.

4.1.6 The License is limited to allowing Company to use the Licensed Software to process Code owned by Company, or Code owned by Company’s Sub-licensees or Code used by Company pursuant to a license from the Code’s owner which license allows Company to assess and inventory the Code, extract the Code’s program logic, business rules and data model, optimize and modernize the extracted information embedded in the Code, and transform the extracted information after optimization and modernization to the targets specified in the license/s issued by EW.

4.1.7 Company may not use the Licensed Software to process any Code that Company or its Sub-Licensees are not legally entitled to assess and inventory, extract the Code’s program logic, business rules and data model, optimize and modernize the extracted information embedded in the Code, or transform the extracted information to another target format.

# Company’S OBLIGATIONS.

## **License Agreement with Customers**. Company shall ensure that the rights, restrictions and obligations of this License Agreement for the Licensed Software as specified in Exhibit C are incorporated into Company’s agreement with their customers when licensing/sublicensing the Licensed Software.

## **Support Obligations.** Company is responsible for providing adequate support (installation, basic on-going technical support, training and consultations) to its Customers and Sub-Licensees. EW will provide technical support that is outside the scope of Company’s expertise and as requested by Company. EW’s obligations in providing technical support will be limited only to providing support for the Licensed Software and the completion of the resulting transformed code that is generated from using the Licensed Software to Process Code.

## **License Fees.** Company agrees to pay the license fee and maintenance & support fees for licenses ordered in accordance with the fees set forth in Exhibit A. The license fees are non-cancellable and non-refundable regardless of the number of copies of the Software, if any, that are used or distributed by Company. Company shall not pay any fees to EW for revenues received for Company software and/or service(s). Company may set the prices and fees to Customers and Sub-Licensees for the Licensed Software and service(s) and may bundle such prices and fees with other Company products and/or services as they deem fit.

## **Payment and Taxes.** All amounts due hereunder shall be paid to EW within fifteen (15) days from the date EW invoices Company. On undisputed overdue balances, EW may charge Company interest at the rate of 1% per month upon written notification to Company. The license fees do not include any amount for sales and use taxes and Company shall pay, if any, such taxes that EW is required to collect for licensing the Licensed Software.

# EW’s Obligations.

## **Support Obligations.** During the Term and for as long as Company has any Customers using the Licensed Software distributed pursuant to this Agreement, EW covenants and agrees to provide Secondary Support Services to Company at the fees set forth in Exhibit A. For the purpose of this Agreement, “Secondary Support Services” shall mean using best reasonable commercial efforts with competent personnel and in accordance with best industry practices to (a) promptly track, respond to and diagnose reported errors and bugs in the Licensed Software, (b) promptly modify the Software to correct, fix, and/or eliminate issues identified through using the Licensed Software to assess, document, modernize and migrate the supported data model and applications in the same manner as EW supports their other existing customers, provided that all workarounds shall be promptly followed by a permanent fix or correction as required, (c) provide fixes, service packs, changes, modifications, updates, upgrades and new releases of the Licensed Software, provided that Company or Company’s Customer(s) have purchased and maintained a current Support and Maintenance Agreement, as they generally become available to end-users at no additional fees other than minimal media and shipping charges; (d) provide updates and changes to Documentation to reflect all of the foregoing; and (e) provide help desk and technical customer support services for its Licensed Software between the hours of 6:00 a.m. to 5:00 p.m. (PST), Monday through Friday. In the event of a production system failure, EW agrees to use its best commercially reasonable efforts to provide technical customer support and diagnosis and correction services for the purpose of system restoration twenty-four (24) hours a day, seven days a week. EW agrees not to discontinue maintenance and support of the Licensed Software or declare the Software unsupported without at least a one year advance notice for as long as any Company Customer is using the Licensed Software. In the event EW discontinues maintenance and support of the Licensed Software while any Company Customer or Sub-licensee is using the Licensed Software, EW will provide Company with all the tools and accessories necessary to support the Licensed Software, including but not limited to, if necessary, the source code of the Licensed Software.

## A “**Bug**” shall mean a defect in the Licensed Software which defect either causes a material corruption of data or a material failure of the Licensed Software to perform a function promised in its documentation. Lack of functionality not promised in the documentation or processing speed is not a “bug.” An incompatibility between the Licensed Software and other software applications is not a bug. Company understands that the performance of the Licensed Software is limited as set forth in the following paragraph.

**TESTING AND FINAL MODIFICATIONS:** Company is hereby notified that it is estimated that the Licensed Software will automatically extract the Source Data using a defined process that includes generating and sending support logs to EW. It is estimated that the Licensed Software will automatically transform between 75% and 95% of the Source Data to the licensed target format. In the event the Licensed Software, even after modifications of the Licensed Software by EW’s technical team, is unable to automatically transform at least 75% of the Source Code, EW will provide manual services at no additional cost to Company to transform the Source Code until at least 75% transformation of the Source Code is achieved. Whatever be the intended output from the Licensed Software, it will require careful and thorough review and/or testing. Company is warned that the Licensed Software’s output should not be used for any purpose unless and until it has been thoroughly reviewed and/or tested.

## **Consulting Services**. EW shall provide certain professional services to Company as set forth on Exhibits A & B attached hereto.

# REPRESENTATIONS AND WARRANTIES.

## EW represents and warrants to the best of its knowledge that the delivery, licensing and use of the Licensed Software as contemplated under this Agreement will not infringe any patent, copyright or other intellectual property right of any third party.

## EW represents and warrants that it owns and has the right to license the Licensed Software, including all intellectual property rights thereto, for the purposes described in this Agreement.

## EW represents and warrants to the best of its knowledge that it has obtained all consents and licenses and given all notices required to enable it to execute and perform its obligations under this Agreement without violating the terms of any agreement, law, rule, or regulation binding upon EW.

## Each party represents and warrants that it shall comply with all applicable laws, regulations or ordinances pertaining to its performance hereunder.

## Each Party further represents and warrants that in executing this Agreement, it does not rely on any promise, inducement, or representation made by any party or third party that is not expressly set forth in this Agreement, or on any other business dealing with any Party or third party, now or in the future.

## Other than the express warranties of this Article 7, EW PROVIDES THE LICENSED SOFTWARE “AS IS,” AND, TO THE MAXIMUM EXTENT PERMITTED BY LAW, EW DISCLAIMS ANY AND ALL OTHER WARRANTIES AND REPRESENTATIONS (WHETHER EXPRESS, IMPLIED OR STATUTORY) INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, ABSENCE OF HIDDEN IMPERFECTIONS, FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT EW HAS BEEN INFORMED OF OR IN FACT KNOWS SUCH PURPOSE), THAT THE OPERATION OF THE LICENSED SOFTWARE WILL ACHIEVE A PARTICULAR RESULT OR BE UNINTERRUPTED OR ERROR FREE, OR WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

SOME STATES OR JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON THE NATURE OR TERM OF AN IMPLIED WARRANTY, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO COMPANY. IF ANY LIMITATION OF WARRANTIES SET FORTH IN THIS AGREEMENT IS HELD TO BE UNENFORCEABLE FOR ANY REASON, THEN ANY SUCH WARRANTY, GUARANTEE, REPRESENTATION AND/OR WARRANTY IS: (1) HEREBY LIMITED TO THE PERIOD OF EITHER (A) THIRTY (30) DAYS FROM THE DATE OF OPENING OR INSTALLING THE PACKAGE CONTAINING THE LICENSE SOFTWARE, WHICHEVER IS EARLIER, OR (B) THE SHORTEST PERIOD ALLOWED BY LAW IN THE APPLICABLE JURISDICTION IF A THIRTY (30) DAY LIMITATION WOULD BE UNENFORCEABLE; AND (2) EW'S SOLE LIABILITY FOR ANY BREACH OF ANY SUCH WARRANTY, GUARANTEE, REPRESENTATION, AND/OR CONDITION SHALL BE TO PROVIDE COMPANY WITH A NEW OR AMENDED COPY OF THE LICENSE SOFTWARE OR A REFUND OF THE LICENSE FEE ACTUALLY PAID FOR THAT PARTICULAR COPY OF THE LICENSED SOFTWARE. PROVIDING A NEW OR MODIFIED COPY OF THE LICENSED SOFTWARE OR THE REFUND OF THE LICENSE FEE WILL BE PERFORMED AT THE SOLE DISCRETION AND ELECTION OF EW.

# INDEMNITY AND LIMITATION OF LIABILITY.

## **Indemnity by EW.** EW will indemnify, defend and hold Company harmless against any and all actions, suits, claims, demands, prosecutions, liabilities, costs and expenses (including reasonable attorneys’ fees) based on or arising out of this Agreement, directly or indirectly, including without limitation, based upon a claim or allegation that all or a portion of the Licensed Software infringes intellectual property rights of any third party.

## **Notice.** In the event of any action subject to Paragraph 8.1, Company agrees to (i) notify EW promptly of any claim covered by Paragraph 8.1; (ii) permit EW to assume direction and control of the defense of such claim (including the right to settle such claim at the sole discretion of EW; provided that any such settlement is subject to Company’s consent and approval to the extent it impacts Company’s use of the Licensed Software) which shall not be unreasonably withheld; and (iii) cooperate as reasonably requested in the defense of such claim at EW’s expense.

## If such a claim is made or appears possible, EW shall, at EW’s option: (i) cancel the license granted hereunder without any liability to Company other than the obligation to refund all advance fees paid by Company, indemnify Company per section 8.1 above and pay any damages owing to the third party for any infringement prior to the time when EW notified Company to halt all allegedly infringing use of the Licensed Software, (ii) secure for Company the right to continue to use the Licensed Software; or (iii) modify or replace the Licensed Software so that it is non-infringing.

## **Indemnity by Company**. Company will indemnify, defend and hold EW harmless against any and all actions, suits, claims, demands, prosecutions, liabilities, costs and expenses (including reasonable attorneys’ fees) based upon a claim or allegation that the Derivative Software infringes intellectual property rights of any third party; **provided** that the claim is based solely on the Derivative Software and not the underlying Licensed Software or components thereof.

## **Notice.** In the event of any action subject to Paragraph 8.4, EW agrees to (i) notify Company promptly of any claim covered by Paragraph 8.4; (ii) permit Company to assume direction and control of the defense of such claim (including the right to settle such claim at the sole discretion of Company; provided that any such settlement is subject to EW’s consent and approval to the extent it impacts EW’s rights in and to the Licensed Software) which shall not be unreasonable withheld; and (iii) cooperate as reasonably requested in the defense of such claim at Company's expense.

## **Limitation of Liability; Exclusion of Consequential Damages.** NEITHER PARTY SHALL HAVE LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT, OR OTHERWISE, FOR ANY CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, OR PUNITIVE DAMAGES SUFFERED BY THE OTHER PARTY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH POTENTIAL LOSS OR DAMAGE. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES. THE LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION SHALL NOT APPLY TO: (i) EW’S OR COMPANY’S INDEMNIFICATION OBLIGATIONS; OR (ii) BREACH OF ANY OF ITS REPRESENTATIONS AND WARRANTIES CONTAINED IN THIS AGREEMENT.

IN NO EVENT SHALL EW BE LIABLE TO COMPANY OR ANY THIRD PARTY FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL DAMAGES OF ANY KIND, OR ANY DAMAGES WHATSOEVER IN EXCESS OF THE AMOUNT OF THE LICENSE FEES ACTUALLY PAID, INCLUDING, WITHOUT LIMITATION, THOSE DAMAGES RESULTING FROM LOSS OF USE, LOSS OF DATA OR LOSS OF PROFITS, WHETHER OR NOT EW HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND ON ANY THEORY OF LIABILITY, ARISING OUT OF OR IN CONNECTION WITH THE USE OF THE LICENSED SOFTWARE.

SOME JURISDICTIONS PROHIBIT THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO COMPANY. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. COMPANY'S REMEDIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND IN LIEU OF ANY OTHER REMEDIES AVAILABLE TO COMPANY, WHETHER PROVIDED AT LAW, EQUITY OR OTHERWISE.

EW’S MAXIMUM LIABILITY IN CONNECTION WITH THE LICENSED SOFTWARE UNDER ANY LEGAL THEORY SHALL NOT EXCEED AN AMOUNT EQUAL TO THE LICENSE FEE PAID FOR THE PARTICULAR COPY OF THE LICENSED SOFTWARE THAT IS DEFECTIVE OR WHICH CAUSES THE LOSS. THE ESSENTIAL PURPOSE OF THIS PROVISION IS TO LIMIT THE POTENTIAL LIABILITY OF EW ARISING OUT OF THIS AGREEMENT AND/OR SALE/LICENSE/DISTRIBUTION OF THE LICENSED SOFTWARE TO NO MORE THAN THE REFUND OF THE LICENSE FEE PAID BY THE CLAIMANT FOR THE PARTICULAR COPY OF THE LICENSED SOFTWARE IN QUESTION.

# LICENSE TERM AND TERMINATION.

### 9.1 **License Term**. This Agreement shall continue from the Effective Date and shall expire in \_\_\_\_\_\_ (\_) years in accordance with the terms of this section.

### 9.2 **Company Termination**. This Agreement may be terminated by Company upon the occurrence of any of the following events:

#### 9.2.1. with thirty (30) calendar days written notice if EW files a petition in bankruptcy or the equivalent thereof, or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) calendar days after the filing date thereof, or is or becomes insolvent, or admits of a general inability to pay its debts as they become due; or

#### 9.2.2 with thirty (30) calendar days written notice upon any failure by EW to provide within thirty (30) calendar days after written notice from Company satisfactory and adequate assurances that EW is able and willing to fully perform its obligations under this Agreement; or

#### 9.2.3 upon any failure by EW to cure a breach within sixty (60) calendar days after written notice from Company

#### 9.2.4. with one hundred eighty (180) calendar days written notice for Company’s convenience.

9.3 **Effect.** Upon termination of this Agreement for any reason, EW agrees to permit Company to sell and distribute the Licensed Software, including any previously paid minimum license fees, for any outstanding sales orders, quotes or RFP responses submitted prior to date of termination and EW will permit Company to retain a copy of the Licensed Software with a limited use license in order for Company to continue to fulfill its support obligations to Company’s Customers and Sub-licensees.

### 9.4 **EW Termination.** This Agreement may be terminated by EW upon the occurrence of any of the following events:

#### 9.4.1. with thirty (30) calendar days written notice if Company files a petition in bankruptcy or the equivalent thereof, or is the subject of an involuntary petition in bankruptcy that is not dismissed within sixty (60) calendar days after the filing date thereof, or is or becomes insolvent, or admits of a general inability to pay its debts as they become due; or

#### 9.4.2 with thirty (30) calendar days written notice upon any failure by Company to provide within thirty (30) calendar days after written notice from EW satisfactory and adequate assurances that Company is able and willing to fully perform its obligations under this Agreement; or

#### 9.4.3. upon any failure by Company to comply with the terms of this Agreement or cure a material breach including non-payment of undisputed overdue amounts within sixty (60) calendar days after written notice from EW

9.4.4. with one hundred eighty (180) calendar days written notice in the event Company has a change in management control as a result of Company being acquired by or merged into another party that EW deems to be a competitor and results in a conflict of interest.

# Provided that EW shall have no right to terminate to the extent: (i) Company withholds any payments as a result of a dispute; or (ii) EW is in breach of its obligations under the Agreement.

Upon termination of the License, Company shall, at EW’s option, destroy all copies of the Licensed Software in Company’s possession or under its control or shall promptly return all copies of the Licensed Software to EW and shall certify to EW in writing that all such copies have been destroyed and/or returned, other than retaining a limited use license of the Licensed Software pursuant to Section 9.3.

# CoNFIDENTIAL INFORMATION

## **Obligation**. Information that is transmitted by one party to the other hereunder and, if in written form, is marked "confidential" or with a similar legend by the disclosing party before being furnished to the other, or if disclosed orally or visually is identified as such prior to disclosure and summarized, in writing, by the disclosing party to the receiving party within thirty (30) days shall be deemed to be confidential information of the disclosing party for purposes of this Agreement. In addition, the existence and terms of this Agreement shall be deemed confidential information. Each of the parties expressly undertakes to retain in confidence and not to disclose to any third party any such confidential information received from the other party hereunder except as expressly permitted herein or to exercise any rights expressly granted herein. Each of the parties further agrees to make no such use of such confidential information except as expressly permitted by this Agreement. The obligations of confidentiality and restricted use set forth in this Section 9 shall survive the expiration or any earlier termination of this Agreement for a period of five (5) years.

## **Exceptions**. The confidential information of a party shall not include and the foregoing obligation shall not apply to data or information which: (i) was in the public domain at the time it was disclosed or falls within the public domain, except through the fault of the receiving party; (ii) was known to the receiving party at the time of disclosure without an obligation of confidentiality; (iii) was disclosed after written approval of the disclosing party; (iv) becomes known to the receiving party from a source other than the disclosing party without breach of this Agreement by the receiving party; (v) was required to be disclosed pursuant to a requirement of a governmental agency or law so long as the recipient provides the other party with notice of such required disclosure prior to any such disclosure; (vi) is furnished to a third party by the disclosing party without an obligation of confidentiality; or (vii) was independently developed by the receiving party without the benefit of confidential information received from the disclosing party. The receiving party shall have the burden of establishing by clear and convincing evidence the applicability of any of the foregoing exceptions.

# MISCELLANEOUS PROVISIONS.

## **Successors and Assigns**. This Agreement and the rights and obligations arising hereunder will be binding upon and inure to the benefit of the parties and to their respective successors and assigns. Neither party will assign any of its rights or obligations hereunder whether voluntarily or by operation of law without the prior written consent of the other part, which consent will not be unreasonably withheld. Notwithstanding the foregoing, any merger, acquisition of all or substantially all of the assets or change of control relating to either party shall not be deemed an assignment of the Agreement to the acquiring entity, and therefore no written consent is required.

## **Notice**.

### All Notices required or permitted under this Agreement shall be sent by certified mail. Such notices so sent shall be effective as of the date of mailing.

### All notices from EW to Company shall be sent to:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

All notices from Company to EW shall be sent to:

EvolveWare

Attn: Legal Counsel

4677 Old Ironsides Drive, Suite 240

Santa Clara, CA 95054

## **Relationship**. Nothing in this Agreement shall be construed to create a principal-agent relationship, partnership or joint venture between the parties, or give rise to any fiduciary duty from one party to the other party.

## **Severability**. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable or contrary to law, the remaining provisions of this Agreement shall remain in full force and effect.

## **No Waiver**. The failure of either party at any time to require performance by the other party of any provision of this Agreement shall not be construed as acquiescence or waiver of such failure to perform such provision. The failure of either party to take action upon the breach of any provision of this Agreement shall not be construed as acquiescence or waiver of any such breach.

## **Binding on Successors**. This Agreement shall be binding upon and inure to the benefit of the parties and their successors and assigns to the extent assignment is permitted by this Agreement.

## **Bankruptcy**. The parties agree that Company will retain and may fully exercise all of its rights under the United States Bankruptcy Code, as may be amended or supplemented from time to time (the "Code"). Without limiting the foregoing, the parties agree that the Licensed Software is "intellectual property" as defined in 11 U.S.C. 101(35A) which has been licensed hereunder in a contemporaneous exchange for value and that this Agreement will be governed by 11 U.S.C. 365(n), as the same may be amended or supplemented from time to time, if EW files for bankruptcy.

## **Article and Paragraph Headings**. The article and paragraph headings contained in this Agreement are for reference purposes only and shall not in any way control the meaning or interpretation of this Agreement.

## **Choice of Law.** The validity, construction and performance of this Agreement shall be governed by the substantive law of the State of California, United States of America, without regard to the conflict of law rules in the jurisdiction where a claim arising from this Agreement is brought.

## **No Third Party Beneficiaries**. Nothing in this Agreement shall be construed to give rise to any obligation on either party hereto for the benefit of a third party or to confer any rights on any third party.

## 11.11. **Force Majeure.** Except with regard to obligations to pay amounts due hereunder, each party shall be excused from performance in the event and to the extent of any occurrence of force majeure, including but not limited to strikes, lockouts, and other labor disputes, wars, revolutions, civil strife, riots, disturbances, acts of enemies, accidents, typhoons, hurricanes, fires, floods, earthquakes, diseases, pandemics, hazards of transportation, material shortages, acts of state, and all other causes beyond the control of such party.

## 11.12. **Entire Agreement.** The provisions of this Agreement, including any attachments and amendments, constitute the entire agreement between the parties and supersede any and all prior communications and understandings, oral or written, between the parties relating to the subject matter hereof. No amendment of this Agreement shall be effective unless such amendment is in writing, specifically references this agreement and is signed by all parties hereto.

11.13. **Counterparts**. This Agreement may be executed by any of the parties hereto in counterparts, each of which shall be deemed to be an original, but all such counterparts shall together constitute one and the same Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_.

## COMPANY EVOLVEWARE, INC.

## Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Signature: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Miten Marfatia

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: CEO

**EXHIBIT A**

**Licensed Software:** The Licensed Software shall include EvolveWare’s full featured Intellisys together with the required license keys.

**License Details:**

Type of License: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

No. of Installations: One (1)

Extraction License in Months: \_\_\_\_\_\_\_ ()

Volume of code that can be processed: Unlimited

Limitations on language of applications that can be processed: None

No. of users who can access the installation to generate documentation, review & analysis only: \_\_\_\_\_\_\_\_ (\_\_)

No. of users who can access the installation to generate documentation, review, analysis & perform BRE: \_\_\_\_\_\_\_ (\_\_)

No. of users who can access the installation to generate documentation, review, analysis & perform optimization: \_\_\_\_\_\_\_ (\_\_)

Transformation License in Months: \_\_\_\_\_\_\_\_\_ ()

**License Fees:** The non-refundable License Fees payable by Company under this Agreement is US$\_\_\_\_\_\_\_\_\_\_\_\_\_ (US$ \_\_\_\_) payable in advance in equal installments every quarter.

Included in above license fee:

• Product support

• Product updates (enhancements to existing features) and upgrades (new features)

**EXHIBIT B**

**Professional Services**

If contracted to provide manual services on a time and material basis, EW will charge Company as follows:

1. Offshore rate at US$\_\_\_\_\_\_\_/hour per person
2. Offsite rate at US$\_\_\_\_\_\_\_/hour per person
3. Onsite rate at US$\_\_\_\_\_\_/hour per person

Professional Service invoices will be payable within thirty (30) days from date of invoice.

**EXHIBIT C**

**RIGHTS, RESTRICTIONS & OBLIGATIONS OF CUSTOMER’S CUSTOMERS & SUB-LICENSEES**

Any breach by Licensee of any of the restrictions set forth in this section will be deemed to be a material breach and will be grounds for termination of the License.

(a) This is a limited, non-exclusive, non-transferable, non-assignable license(s) of the Licensed Softwarewhich authorizes Licensee to inventory the Code, extract the Code’s program logic, business rules and data model, optimize and modernize extracted information embedded in the Code, and transform the extracted information after optimization and modernization to the target specified in the License issued. The foregoing is an express limited-use license and not an assignment, sale, or other transfer of the Licensed Software or any Intellectual Property Rights of Licensor.

(b) The Licensee is expressly prohibited from copying, modifying, merging, selling, leasing, renting, redistributing, assigning, or transferring in any matter, the Licensed Software or any portion thereof.

(c) The Licensee is expressly prohibited from reverse engineering, decompiling, translating, disassembling, deciphering, decrypting, or otherwise attempting to discover the source code of the Licensed Software. It is agreed that the Licensed Software contain proprietary material of Licensor. The Licensee may not otherwise modify, alter, adapt, port, or merge the Licensed Software.

(d) The Licensee may not remove, alter, deface, overprint or otherwise obscure Licensor patent, trademark, service mark or copyright notices.

(e) The Licensee agrees that the Licensed Software will not be shipped, transferred or exported into any other country, or used in any manner prohibited by any government agency or any export laws, restrictions or regulations. This License is personal to Licensee only and may not be transferred or assigned.

(f) The Licensee may not publish or distribute in any form, electronic, printed or otherwise any of the materials comprising, within or otherwise related to the Licensed Software, including but not limited to the object code, documentation, help files, examples, documentation or benchmarks.

(g) The Licensed Software is intended solely for use in business situations and by business organizations and for business purposes and not for home, household, or consumer use. Licensee represents and warrants that Licensee is a business user and not a consumer user.

(h) Licensee may not use the Licensed Software to process any software that Licensee is not legally entitled to inventory, extract the Code’s program logic, business rules and data model, optimize and modernize the extracted information embedded in the Code, or transform the extracted information to another target format.