



# Internet Service Agreement

## Internet Service Agreement

THIS SERVICE AGREEMENT ("Service Agreement"), between the customer named above ("Customer") and IEVOLVE, Inc. ("IEVOLVE") is effective when signed by both Customer and IEVOLVE (the "Effective Date"), and shall continue in effect as long as the Services are provided under this Service Agreement. This agreement is part of the master services agreement signed by the parties (the "Master Services Agreement").

### 1. Term.

This Service Agreement shall be effective on the Effective Date and the term of the Service Agreement shall commence upon the later of (i) installation of the initial Services or (ii) the Effective Date and shall continue for a period of 36 months (the "Term"). The Term automatically renews for another Term of equal length, unless either party gives the other party written notice of its intent not to renew at least 30 days before the end of the then-current Term. If notice of non-renewal is not timely received, then the Term will automatically renew.

### 2. Authorization.

Customer hereby authorizes IEVOLVE to provide the services described on any attachments to this Service Agreement (the "Services").

### 3. Charges, Payments, and Taxes

**a. Charges.** IEVOLVE's fees and charges are set forth in *Appendix A* and the applicable Master Services Agreement. IEVOLVE's fees and charges may be changed by the IEVOLVE from time to time upon reasonable advance notice to Customer. The Customer will be billed for Services, equipment costs (including shipping), installation fees, taxes and other recurring charges, in advance. However usage charges, termination charges and other charges may be billed in arrears, as IEVOLVE shall determine. Customer is responsible for paying the first and last months of service in advance.

**b. Late Fees.** Amounts that are posted to the Customer's account will be deemed late if not paid within 10 days from the date of posting and will bear interest at the greater of the rate of 1.5% per month or the maximum rate allowed by law.

**c. Service - Billed in Full Months.** The Services are billed in full months and during each month, all normal charges will apply. "Normal charges" include access, line, usage, taxes, surcharges and any other fees. The Customer is obligated to pay for a full month's Services, even if notice of non-renewal is given by the Customer at the beginning of the month.

### 4. Special Terms and Conditions

**a.** In addition to the provisions set forth in 3 (a) above, IEVOLVE will require a deposit of the first and last month's payment prior to the

delivery of service and also may request a deposit at any time as a condition to continuation of Services. Unused customer deposits will be refunded following expiration or termination of this Service Agreement.

**b.** If the Customer fails to make any payment when due and such failure continues for 5 business days after written notice from IEVOLVE, IEVOLVE reserves the right to immediately terminate or suspend Services without any further notification to Customer.

**c.** Upon a termination of the Services and timely payment of all charges then due, IEVOLVE may release or transfer terminated Internet related services such as web domain names, IP addresses or DNS to the Customer's new service provider, in IEVOLVE'S sole and absolute discretion, if: i. IEVOLVE is notified in writing by the Customer of such requested transfer and all necessary information and consents are provided to IEVOLVE; ii. the new service provider is able to accept such information; iii. the Customer making the request was not in breach of this Service Agreement at any time during the Term.

**5. Installation, Acceptance and Access.** IEVOLVE will attempt to provide the Services by any requested installation date, but will not be liable for any delays in Services delivery. The Services are delivered on the date the Services is installed ("Service Start Date"). Unless Customer notifies IEVOLVE in writing within 3 business days following the Service Start Date that Services are not operational, then the Services will be deemed accepted by the Customer. At this time, the Term will commence and Customer will begin paying for the Services as of the Service Start Date.

**6. IEVOLVE MAKES NO WARRANTIES ABOUT THE SERVICES PROVIDED HEREUNDER, EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSES. IN NO EVENT SHALL IEVOLVE BE LIABLE TO THE CUSTOMER FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OR REVENUE, LOSS OF PROFITS, OR LOSS OF CUSTOMERS, CLIENTS, OR GOODWILL ARISING IN ANY MANNER FROM THIS SERVICE AGREEMENT AND/OR THE PERFORMANCE OR NON-PERFORMANCE HEREUNDER.** The Service Agreement shall be interpreted, construed, and enforced in accordance with the laws of the State of New York, without regard to its conflict of laws and/or principles. This Service Agreement is subject to and controlled by Customer's standard terms and conditions of service and the service-specific terms and conditions attached as *Schedule 1* hereto, as such terms and conditions may be modified from time to time and all of which are hereby expressly incorporated by reference.

**7.** This Service Agreement shall be accepted by IEVOLVE only when signed by duly authorized officers of both Customer and IEVOLVE. No modification or revision to this Service Agreement by Customer (whether written or oral) shall be binding on IEVOLVE if it is in conflict with, inconsistent with or in addition to any of the terms contained herein, and in the Master Services Agreement, unless expressly accepted and agreed to by IEVOLVE in writing. Any customer form containing terms and conditions of purchase shall not have the effect of modifying the terms and conditions herein and all

such terms and conditions which are in conflict with, inconsistent with or in addition to any of the terms contained herein are specifically rejected by Customer.

**8. Customer shall be solely responsible for ensuring that the materials and services sold hereunder are used only by authorized users. Under no circumstances shall IEVOLVE have any liability whatsoever to Customer or any other party in connection with or arising out of the unauthorized use of such materials or services.**

**9. Maintenance by IEVOLVE (which may impact service) is included in the fees for service, unless such maintenance is necessitated by acts or omissions attributable to the Customer, for which Customer will pay cost of maintenance to IEVOLVE. In addition to service maintenance, IEVOLVE may make certain network modifications and changes to the Customer's Services which changes do not materially and adversely affect Service performance. In the event of such a network modification(s) and changes, customer understands that the same may limit Customer's ability to retain existing specialty programming and/or necessitate other changes or modifications to customer's Services. Customer will reasonably cooperate with IEVOLVE to facilitate such modifications.**

#### **10. Prohibited Uses.**

Listed below are the Prohibited Uses. The use of Services and the equipment as described below in this Section is strictly prohibited ("Prohibited Uses"). The Customer hereby authorizes IEVOLVE to terminate or modify the Services at any time and without notice, if IEVOLVE determines in its sole discretion that the Services or the equipment is, or was at any time, used for a Prohibited Use. The Customer is solely responsible for any Prohibited Use of the Services or the equipment by the Customer or by anyone other than the Customer using the Services or the equipment, whether authorized by the Customer or not. The Prohibited Use are as follows:

**a. Unlawful Uses.** The Customer may not use the Services or the equipment for any illegal act or use in any jurisdiction where the Services are used or where a call originates or terminates.

**b. Submission of the Customer Information to Authorities.** If IEVOLVE believes that the Services or the equipment is or has been used for an unlawful purpose, the IEVOLVE may forward the relevant information to the appropriate authorities for investigation and prosecution without notice to the Customer. Such information may include the Customer's identity, address and calling detail records and any other information in the possession of the IEVOLVE. The Customer hereby consents to the IEVOLVE's forwarding of any such communications and information to these authorities.

**c. Subpoenas and other Legal Requests for Information.** In addition, IEVOLVE will provide information and respond to law enforcement requests, subpoenas, court orders, and the like, for any purpose IEVOLVE determines is appropriate in its sole discretion, including to protect IEVOLVE, IEVOLVE's rights and/or property and in the case where failure to disclose the information may lead to personal injury or loss of property of the Customer or others.

**d. Inappropriate Conduct.** The Customer shall not use the Services or the equipment in any way that is threatening, abusive, harassing, defamatory, libelous, deceptive, fraudulent, invasive of another's privacy, or any similar behavior.

**e. Tampering, Circumvention and Theft of Service.** The Customer may not change the electronic serial number, "machine access control address" or equipment identifier of the equipment. The Customer may not perform a factory reset of the equipment unless instructed to do so by IEVOLVE. The Customer shall not attempt to hack, break-in, circumvent the Customer's billing, tracking or other systems, or otherwise disrupt the Services or make any use of the Services that is inconsistent with its intended purpose. IEVOLVE may immediately terminate the Services without notice if IEVOLVE believes, in its sole and absolute discretion, that the Customer has tampered with the equipment or the Services or otherwise breached the terms of this paragraph. In the event of such termination, the Customer will remain responsible for the full month's charges to the end of the current Term, including, without limitation, unbilled charges, plus a termination fee (as defined below), if applicable, all of which will immediately become due and payable.

**f. Loss, Damage, Theft or Misuse of Equipment.** The Customer shall immediately notify IEVOLVE in writing if the equipment is stolen, damaged or is being fraudulently used or otherwise being used in an unauthorized manner. When the Customer notifies IEVOLVE, the Customer must provide the account number and a detailed description of the circumstances of the equipment theft, fraudulent use or unauthorized use of Services. Failure to do so in a timely manner may result in the termination of the Services and additional charges to the Customer. The Customer is responsible for all monthly charges and usage charges until the Customer notifies IEVOLVE of theft or fraudulent use of the equipment or the Services.

**g. Customer acknowledges that it has read and accepted IEVOLVE's Acceptable USE Policy (the "AUP") located at [www.i-evolve.com/company/Legal/acceptable\\_use\\_policy.html](http://www.i-evolve.com/company/Legal/acceptable_use_policy.html), or other locations that IEVOLVE may designate.**

#### **11. Miscellaneous Provisions.**

**IEVOLVE Provided Equipment – Customer acknowledges that equipment not purchased by the Customer but provided by IEVOLVE in order to facilitate the Services shall remain property of IEVOLVE. Such equipment shall be returned to IEVOLVE immediately upon termination of Services.**

**a. Labels on Equipment.** At all times while this Service Agreement is in effect or when using the Services, the Customer must display all warning or other notification labels on the equipment or telephones, as directed by the IEVOLVE or other equipment provider. This includes but is not limited to an accurate and legible local number for appropriate police and fire departments, as well as other first responders.

**b. License to the Customer.** IEVOLVE hereby grants the Customer a non-exclusive license to the IP for the sole purpose of the Customer's use of the Services, and for no other purpose (the "License"). "IP" means any software, firmware or other intellectual property that is provided by IEVOLVE or used by the Customer in connection with the Service, whether provided along with the Equipment, is in the Equipment, is located on IEVOLVE's website for viewing or download, along with all documentation, manuals, guides or other information or materials used in connection with the Services. All IP included in this Service Agreement is the sole and exclusive property of IEVOLVE. The License is valid only during the Term and will automatically terminate upon the expiration or termination of the Term or the termination or discontinuance of the Services for any reason. The Customer acknowledges and agrees that the IP is the sole and exclusive property of IEVOLVE and that nothing herein conveys any interest in the IP to the Customer, except

the foregoing grant of the License. This paragraph shall survive expiration or termination of the Service Agreement

**c. Usage of Equipment.** The Customer may use certain equipment provided by IEVOLVE (hereinafter "IEVOLVE-Provided Equipment") only in connection with the appropriate service and as permitted in this Service Agreement. Any other use of this IEVOLVE-Provided Equipment is strictly prohibited and may result in immediate termination of the Services and require payment of the termination fee (as defined below) and all other charges then due, plus any damages incurred by IEVOLVE as a result thereof. The Customer may not use the IEVOLVE-Provided Equipment with any other devices or other equipment not provided by IEVOLVE. The Customer agrees: (i) the IEVOLVE-Provided Equipment or any IP provided in connection with the Service may not be transferred to another party, (ii) the Customer will not reverse engineer, translate, decompile, disassemble or derive the source code from the binary code of the Equipment's firmware or software of any IP provided with the Services, and (iii) the Customer agrees that no provider of IP or any software used by the Customer in connection with the Services will have any liability to the Customer.

**d. IEVOLVE as Reseller or Licensor.** IEVOLVE is acting only as a reseller or licensor of the hardware, software and equipment used in connection with the products and/or Services that were or are manufactured or provided by a third party ("Non-IEVOLVE Product"). IEVOLVE shall not be responsible for any changes in the Services that cause the Non-IEVOLVE Product to become obsolete, require modification or alteration, or otherwise affect the performance of the Services. Any malfunction or manufacturer's defects of any and all Non-IEVOLVE Products either sold, licensed or provided by IEVOLVE to Customer or purchased directly by Customer used in connection with the Services will not be deemed a breach of IEVOLVE's obligations under this Service Agreement. Any rights or remedies Customer may have regarding the ownership, licensing, performance or compliance of Non-IEVOLVE Product are limited to those rights extended to Customer by the manufacturer of such Non-IEVOLVE Product. Customer is entitled to use any Non-IEVOLVE Product supplied by IEVOLVE only in connection with Customer's permitted use of the Services. Customer shall use its best efforts to protect and keep confidential all intellectual property provided by IEVOLVE to Customer through any Non-IEVOLVE Product and shall make no attempt to copy, alter, reverse engineer, or tamper with such intellectual property or to use it other than in connection with the Services. Customer shall not resell, transfer, export or reexport any Non-IEVOLVE Product, or any technical data derived there from, in violation of any applicable United States or foreign law.

**e. IP Address Ownership.** If IEVOLVE assigns Customer an Internet Protocol address, if applicable, for Customer's use, the right to use that Internet Protocol address shall belong only to IEVOLVE, and Customer shall have no right to use that Internet Protocol address except as permitted by IEVOLVE in its sole discretion in connection with the Services, during the Term of this Service Agreement. IEVOLVE shall maintain and control ownership of all Internet Protocol numbers and addresses that may be assigned to Customer by IEVOLVE, and IEVOLVE reserves the right to change or remove any and all such Internet Protocol numbers and addresses, in its sole and absolute discretion.

**f. Suspension of Service.** IEVOLVE reserves the right to suspend the Service, in whole or in part, including any features, at any time in the IEVOLVE's sole and absolute discretion if deemed necessary but agrees it shall restore the Services to Customer promptly and in a

commercially reasonable manner. If IEVOLVE determines that the suspension of the Services is not the fault of the Customer, then the Customer may request a pro-rated (number of full 24 hour periods divided by the number of days in the billing cycle) credit of the monthly charges for each day the Service was not operating pursuant to this Service Agreement.

**g. Termination.** If Customer terminates Service for convenience or Customer terminates Service for cause, Customer will pay IEVOLVE a termination fee (the Termination Fee) (which customer acknowledges is a reasonable approximation of damages and is not a penalty) as follows: (a) all unpaid amounts for Service provided through the date of termination; plus (b) all previously waived charges for the Service; plus (c) 100% of the remaining monthly recurring charges (if any) for the Term; plus (d) if not recovered by the foregoing, any termination liability payable to third parties.

**h. Relocation.** Should the customer relocate its facilities during the Term of this Service Agreement, a new service agreement will be required to implement new services at the customers' new facilities and shall replace this Service Agreement. Installation and move fees may apply and are solely at IEVOLVE's discretion. Customer agrees to give IEVOLVE ninety (90) days notice of any facilities move. However, IEVOLVE in no way warrants that its services are guaranteed to be delivered to customer premises at any date as service is dependent on construction and facilities available from its last mile provider.

**i. Amendment.** IEVOLVE may amend, modify or update this Service Agreement or AUP at any time in its sole discretion. IEVOLVE will provide electronic and written notice of any amendment, modification or update of this Service Agreement or the AUP to Customer. If any material modification to this Service Agreement or the AUP is unacceptable to Customer, Customer may terminate this Service Agreement and a prorated refund for the duration remaining will be sent to Customer. However, if Customer does not terminate the Agreement, or if Customer continues to use the Services following effectiveness of the modification, Customer's continued use will mean that Customer has accepted that modification.

**j. Customer Supplied Equipment.** In the event that IEVOLVE approves the use of customer supplied equipment, Customer acknowledges that it takes full responsibility for the installation, maintenance and operation of such equipment and IEVOLVE will in no way be held liable for Services interruptions or degradation of Services as a result of customer supplied equipment.

**k. Previous Contractual Obligations.** Customer agrees that IEVOLVE will not be responsible for the termination or cancellation of any existing service contracts or agreements with any other communications service provider and any fees or penalties associated with such contracts.

**l. Installation.** Customer acknowledges that it is the owner of the site that IEVOLVE Internet Services will be installed in, or if the customer is a tenant and not the owner of the site, the Customer acknowledges that it has secured the permission of the owner for installation of services required to support this Service Agreement. The Customer is also required to secure any licenses, permits or right of ways in order to complete this installation.