

## **Evolv Health, LLC Affiliate Terms of Service**

This Agreement (the "Agreement") is made and entered into by and between Evolv Health, LLC ("Evolv" or "we"), and you, ("You", "Your", or "Affiliate") the party submitting an application to become an Evolv Affiliate. The terms and conditions contained in this Agreement apply to Your participation with Evolv's Affiliate Program ("Affiliate Program"). The Affiliate Program offer ("Offer") may be for any offering by Evolv and may link to a specific website ("Program WebSite") for that particular Offer. Furthermore, each Offer may have additional terms and conditions on pages within the Affiliate Program and are incorporated as part of this Agreement. By submitting an application or participating in Offer, You expressly consent to all the terms and conditions of this Agreement.

### **1. Terminology**

The following terminology is applied throughout this agreement:

"The HOPE Movement" means Evolv's Social Business program that provides immune supporting nourishment to malnourished children or malnourished individuals in need, when an Evolv product is purchased. The HOPE Movement includes compensation for the Affiliates who bring customers to Evolv to purchase products, which generates revenue to fund the purchases of donating immune supporting nourishment to the malnourished on a buy 1 give 1 basis.

Evolv's "Affiliate Program" means, the unique program developed by Evolv to compensate Affiliates for successful customer acquisition which helps support The Hope Movement.

"Affiliate(s)" means a person or entity that participates in The HOPE Movement and makes him or herself available to participate in bringing customers to Evolv, where the customers purchase Evolv products which in turn, supports the The Hope Movement.

"Content" means information, reviews, posts, blogs, data, text, documents, images, software, music, sound, photographs, graphics or video posted to a website, blog, social channel or elsewhere online and includes any physical media distributed by any means.

"End user" refers to an actual or potential consumer or customer.

"Entity" refers to a sole proprietorship, corporation, partnership, limited liability company (LLC), or other entity recognized by law as a legal person separate from its owners.

The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation."

"Intellectual Property Rights" means any technology, designs, Web Sites, processes, strategies, business marks, logos, content, documentation, training manuals, and other materials, as well as any and all patent, trade secret, trademark, copyright, database rights and other intellectual property and proprietary rights, whether or not registered.

"Link" means any software, software code, programming or other technology or method (or any combination of the foregoing) that (a) creates a hyperlink between two Sites, or (b) otherwise causes a Web access device to display to its user a "banner," "button," text-mention, word, phrase, logo or other textual or graphical material that, when activated by a person, results in a Site being served to such person or such person being able to electronically access, receive or obtain Content, products, services or other offerings from the linked Site.

"Network" means the online affiliate marketing network operated by Evolv, through which Affiliates are granted access to marketing campaigns offered by Evolv and through which Affiliates may bring customers to purchase Evolv products.

A "Person" includes any natural person or entity.

"Prohibited Activity" includes but may not be limited to the following activities: (a) discrimination on the basis of race, ethnicity, gender, religion, sexual orientation, age or disability or any other unlawful basis under applicable law; (b) libelous, defamatory, derogatory, threatening, harassing, tortious, or similarly abusive activities; (c) obscene, pornographic, sexually explicit or similar activities; (d) illegal gambling; (e) sale, export or use of illegal substances; (f) terrorism, sedition or other illegal activities; (g) offering of any MP3, MPEG and/or other proprietary materials for download, sale or otherwise, in any case without the permission of the owner of the Intellectual Property Rights or otherwise infringing the Intellectual Property Rights of any third party (h) a conflict or violation of any law, rule, regulation, self-regulatory principles, Intellectual Property Rights or other rights of any person or entity to which You do not hold exclusive rights or ownership; (i) harm to minors in any way; or (j) fraudulent activities or impersonation of any person or misrepresentation of any entity or affiliation with such person or entity (k) attempting to, in any way, entice and individual or entity to purchase products through You and/or Your link, when such individual or entity has already been connected to Evolv through another individual or entity.

"Promotional Location" means the web page or pages or other such delivery channels which contain the URL necessary for the creation of qualifying sales in the Affiliate Program.

"Site" refers to (a) web pages, social media channels, database, computer files, emails, scripts, software or other application accessible through the Web, or (b) a person or entity owning or operating any such Site, or (c) both. A person that owns or operates a Site may have offline businesses which would not preclude it from being a Site for the purposes of this Agreement.

"Tracked activity" refers to any type of pre-agreed or predefined activity or result that is sought by Evolv in relation to a Qualifying purchase. These may include but not be limited to: click through purchases, sale of products or services, Customer sign up, and any other kind of action, qualifying event or transaction that can be tracked and reported.

"Web", "internet" or "online" refers to the World Wide Web in a broad sense and any technology or platform used to access it.

## **2. Enrollment in the Affiliate Program**

You must submit an Affiliate Program enrollment form (which can be physical or from Evolv's website). You must accurately complete the form to become an Affiliate (and provide us with future updates) and not use any aliases or other means to mask Your true identity or contact information. After we review

Your form application, we will notify You of Your acceptance or rejection to the Affiliate Program, generally within three (3) business days. We may accept or reject Your application at our sole discretion for any reason.

**3. Obligations of the Parties**

This Agreement is between You and Evolv, a limited liability company organized and existing under the laws of Delaware, United States of America ("USA"). If You have registered for or on behalf of an entity, You are deemed to have accepted this Agreement on behalf of that entity.

**4. Registration:**

To use the Evolv Affiliate Program as an Affiliate, the information You provide to Evolv must be accurate, complete and truthful. If any such information changes, You must immediately update Your registration information;

**5. Accurate Registration Information:**

Evolv reserves the right to verify the registration information at any time. If the information is determined by Evolv at its sole discretion to be misleading, inaccurate or untruthful, Evolv may restrict, deny or terminate Your account and/or Your access and use of the Evolv Affiliate Program.

**6. Participation:**

To join the Evolv Affiliate Program, You must be either an entity or an individual who is at least 18 years old.

**7. Use of the Network.**

You hereby acknowledge that the services offered by Evolv are provided for the sole purpose of facilitating any sales or marketing transaction between You and Customers. You agree that when using the Network, You are engaged in a business activity.

**8. Prohibited Activities.**

Affiliates may not engage in any Prohibited Activity or promote any Prohibited Activity.

**9. Evolv's Agreement.**

Subject to our acceptance of You as an Affiliate and Your continued compliance with the terms and conditions of this Agreement, Evolv agrees as follows:

We will make available to You via the Network, either a replicated website, and/or graphic and textual marketing material and/or other creative materials which You may display on websites owned or controlled by You, in emails sent by You and clearly identified as coming from You and through online advertisements (collectively, "Media"). Either Your unique identifier code or the embedded Links will serve to identify You as a member of our Affiliate Program ("Affiliate Program") and will establish a link from Your Media to our Network.

We will pay Affiliate for each Qualified Action (the "Commission"). A "Qualified Action" means a non-returned or non-refunded purchase made by an entity or individual who was connected directly to Evolv by such Affiliate.

We will pay You any Commissions earned monthly and/ or weekly, depending on the Commission type, provided that Your account has earned an amount greater than \$30.00 USD. Accounts with a balance of less than \$30.00 USD will roll over to the next month and will continue to roll over monthly until \$30.00 USD is reached. We reserve the right to charge back to Your account any previously paid Qualified Actions that are later determined to have not met the requirements to be a Qualified Action.

Payment for Commissions is dependent upon Customers providing such funds to Evolv, and therefore, You agree that Evolv shall only be liable to You for Commissions to the extent that Evolv has received such funds from the Customers. You hereby release Evolv from any claim for Commissions if Evolv has not received such funds from the Customers.

Evolv shall automatically generate an invoice on behalf of Affiliate for all Commissions payable under this Agreement and shall remit payment to Affiliate based upon that invoice. All tracking of sales and determinations of Qualified Actions and Commissions shall be made by Evolv in its sole discretion. In the event that Affiliate disputes in good faith any portion of an invoice, Affiliate must submit that dispute to Evolv in writing to info@evolvhealth.com and in sufficient detail within thirty (30) days of the date of the invoice. If Affiliate does not dispute the invoice as set forth herein, then Affiliate agrees that it irrevocably waives any claims based upon that invoice. In the event that Affiliate is also tracking Qualified Actions and Affiliate claims a discrepancy, Affiliate must provide Evolv with Affiliate's reports within three (3) days after 28th day of the calendar month, and if Evolv's and Affiliate's reported sales vary by more than 10% and Evolv reasonably determines that Affiliate has used generally accepted industry methods to track Qualified Actions, then Evolv and Affiliate agree to make a good faith effort to arrive at a reconciliation. If the parties are unable to arrive at a reconciliation, then Evolv's numbers shall govern.

If Affiliate has an outstanding balance due to Evolv under this Agreement or any other agreement between the Affiliate and Evolv, whether or not related to the Affiliate Program, Affiliate agrees that Evolv may offset any such amounts due to Evolv from amounts payable to Affiliate under this Agreement.

#### **10. Affiliate's further Agreement**

Affiliate also agrees to the following specific items:

Affiliate Will:

Have sole responsibility for the development, operation, and maintenance of, and all content on, or linked to, Your Media.

Ensure that all materials posted on Your Media or otherwise used in connection with the Affiliate Program (i) are not illegal, (ii) do not infringe upon the intellectual property or personal rights of any third party and (iii) do not contain or link to any material which is harmful, threatening, defamatory, obscene, sexually explicit, harassing, promotes violence, promotes discrimination (whether based on sex, religion, race, ethnicity, nationality, disability or age), promotes illegal activities (such as gambling), contains profanity or otherwise contains materials that Evolv informs You that it considers objectionable (collectively, "Objectionable Content").

Not make any representations, warranties or other statements concerning Evolv or The HOPE Movement or any of their respective products or services, except as expressly authorized herein.

Make sure that Your Media does not copy or resemble the look and feel of the Evolv Web Site or other Evolv content or media properties including, but not limited to, social channels (i.e Facebook, Twitter and others), or create the impression that Your Media is endorsed by Evolv or a part of the Evolv HOPE Movement Web Site, without prior written permission from us.

Comply with all (i) obligations, requirements and restrictions under this Agreement, and any other agreements You agreed upon related to the Evolv Affiliate Program, and (ii) any laws, rules and regulations as they relate to Your business, Your Media or Your use of the Links.

Comply with the terms, conditions, guidelines and policies of any third party services used by Affiliate in connection with the Affiliate Program, including but not limited to, email providers, social networking services and ad networks.

Always prominently post and make available to end-users, including prior to the collection of any personally identifiable information, a privacy policy in compliance with all applicable laws that clearly and thoroughly discloses all information collection, use and sharing practices, including providing for the collection of such personally identifiable information in connection with the Affiliate Program and the provision of such personally identifiable information to Evolv for use as intended by Evolv.

Always prominently post and make available to end-users any terms and conditions in connection with the Offer set forth by Evolv, or as required by applicable laws regarding such Offers.

Make sure to not place Evolv ads on any online auction platform (i.e. eBay, Amazon, etc).

**11. No Sublicense.**

You may not sublicense, rent, lease, sell, resell, outsource or service bureau any Offerings, and any attempt to do so shall be null and void.

**12. No Reverse Engineering.**

You will not make unauthorized modifications, reverse engineer, disassemble, decompile or attempt to derive source code of any Evolv media content.

**13. No Hacking, etc.**

You agree not to hack, abuse, adversely interfere with, infect with viruses, worms or other malicious or destructive code, or use or cause to be used in extraordinary and unreasonable or inappropriate ways or amounts, any Evolv Media, including any servers, bandwidth supply, equipment, software and other technological resources provided by Evolv.

**14. No Interference.**

You may not, through downloadable or other technology, replace, intercept, redirect, block, alter or otherwise interfere with the full functioning and intended actions of any Qualifying Link that has been placed or distributed by another affiliate including any action that would in any way prevent the behavior or result that would occur or would have occurred had an end user activated such Qualifying Link without Your interference.

**15. No Infringing Uses.**

You may not use any name, trademark, service mark, domain name or other Intellectual Property Rights of any third party in connection with Your use of any Qualifying Links, the Network or any other Evolv Media, in any way or for any purpose that infringes or violates any Intellectual Property Rights or other rights of such third party, whether for the purpose of increasing the levels of sales attributable to Your Qualifying Links or for any other purpose. Evolv and/or the Affiliate may take whatever action is necessary, legal or otherwise, to protect their rights under this Agreement with regards to Intellectual Property Rights.

The following additional program-specific terms shall apply to any promotional programs set forth below:

**16. Email Campaigns.**

For all email campaigns, Affiliate must agree not to email or contact any current customer or affiliate of Evolv who was not introduced as a Evolv customer by You.

**17. Advertising Campaigns.**

No Links can appear to be associated with or be positioned on chat rooms or bulletin boards unless otherwise agreed by Evolv in writing. Any pop-ups/unders used for the Affiliate Program (if allowed) shall be clearly identified as Affiliate served in the title bar of the window and any client-side ad serving software used by Affiliate shall only have been installed on an end-user's computer if the function of the software is clearly disclosed to end-users prior to installation, the installation is pursuant to an affirmatively accepted and plain-English end user license agreement and the software be easily removed according to generally accepted methods.

**18. Affiliate Network Campaigns.**

For all Affiliate's that maintain their own affiliate networks, Affiliate agrees to place the Links in its affiliate network for access and use by those affiliates in Affiliate's Network (each a "Third Party Affiliate"). Affiliate agrees that it will expressly forbid any Third Party Affiliate to modify the Links in any way. Affiliate agrees to maintain its Network according to the highest industry standards. Affiliate shall not permit any party to be a Third Party Affiliate whose website or business model involves content containing Objectionable Content. All Third Party Affiliates must be in good standing with Affiliate. Affiliate must require and confirm that all Third Party Affiliates affirmatively accept, through verifiable means, this Agreement prior to obtaining access to the Links.

Affiliate shall promptly terminate any Third Party Affiliate who takes, or could reasonably be expected to take, any action that violates the terms and conditions of this Agreement. In the event that either party suspects any wrongdoing by a Third Party Affiliate with respect to the Links, Affiliate shall promptly disclose to Evolv the identity and contact information for such Third Party Affiliate. Affiliate shall promptly remove any Third Party Affiliate from the Affiliate Program and terminate their access to future offers of Evolv in the Network upon written notice from Evolv. Unless Evolv has been provided with all truthful and complete contact information for a Third Party Affiliate and such Third Party Affiliate has affirmatively accepted this Agreement as recorded by Evolv, Affiliate shall remain liable for all acts or omissions of any Third Party Affiliate.

**19. Payments.**

You acknowledge that Your entitlement to any compensation reported with respect to any qualifying activity is solely a function of the agreements You have entered into with Evolv. You further acknowledge that Your entitlement to any compensation reported with respect to any qualifying activity is subject to Evolv's receipt of funds from the customers giving rise to the compensation in question.

The fact that a compensation amount is reported for any qualifying activity does not necessarily mean that a payment is due to You, since payment may be subject to conditions established by Evolv, including policies regarding order cancellation, returned merchandise, receipt of pending credit card authorizations and/or chargebacks, credits, fraudulent activity and minimums for earned compensation before payment is made.

**20. Disputes.**

Evolv is under no obligation to investigate or resolve any claim or dispute involving You and any customer or other third party person. If Evolv, in its sole discretion, elects to investigate or otherwise become involved in any such claim or dispute, it shall not thereby undertake, assume or have any duty, obligation or liability to You or any other party to the claim or dispute.

**21. Inactivity.**

If Your account is inactive for more than twelve (12) consecutive months, Evolv reserves the right to debit Your Affiliate account balance in accordance with the schedule below to cover the cost of account maintenance until (a) You reactivate Your account by generating a commissionable activity through Your account, or (b) Your account balance is zero. If the balance in Your inactive account is or becomes zero, Evolv reserves the right close the account permanently and cease to maintain Your account records and Network program access. The inactive account maintenance charge will not cause Your account balance to become negative and will not cause You to owe money to Evolv. Your Affiliate account becomes "Inactive" when You have failed to generate commissionable activity through a Qualifying Purchase associated with Your account for a period of 12 consecutive months.

Inactivity Fee Schedule:

If Your account balance is greater than \$100 US Dollars (USD) a monthly fee the lessor of (a) \$50 USD or (b) 10% of the outstanding balance will be assessed;

If Your account balance is less than \$100 USD, a monthly fee of \$10 USD will be assessed;  
If Your account balance is less than \$10 USD, a fee equivalent to the full balance in Your account will be assessed.

Evolv may, at its sole discretion, modify this Inactivity Fee Schedule at any time and/ or apply the same or different rules to other foreign currencies.

**22. Right to Assess Fees.**

Evolv may, at any time upon prior written notice to You as described below, commence charging or assessing fees in relation to Your participation in the Network(s). Except as otherwise expressly provided in this Agreement, in the event Evolv elects to charge or assess fees, You will be notified at least fourteen (14) days in advance in writing by email or posting to the Affiliate Account website or via the email address provided in Your account registration. You may elect not to pay any such fees by discontinuing Your participation in The HOPE Movement prior to the commencement of such fees. Evolv may, at its discretion, withhold and offset any fees or other charges owing to Evolv against any and all compensation and/or other fees that are then unpaid to You. Such withholding of such compensation and/or other fees is in addition to any other rights and remedies that Evolv may have in contract, law or in equity.

**23. Tax.**

You agree that You are solely responsible for any and all tax obligations, if any, due to all taxing authorities arising from or in connection with any compensation earned by You as a result of Your participation in The HOPE Movement or any Evolv incentives. If Evolv is contacted by a taxing authority, Evolv reserves the right to withhold money for taxes.

**24. Qualifying Links**

Use of Qualifying Links. Each Qualifying Link used by You must include, in unaltered form, the Evolv tracking code in the format provided or required by Evolv.

**25. Valid Referrals Only.**

Affiliates may only place or use Qualifying Links with the intention of delivering the agreed upon tracked sales.

**26. Final and Binding Determinations.**

Evolv, at its sole discretion, shall determine whether tracked sales resulted from a Qualifying Link and such determination is binding upon the Affiliate.

**27. No Modification of Content.**

You may not modify, resize, reformat, edit or otherwise alter any Content provided by Evolv, unless expressly authorized to do so by Evolv.

**28. Discontinuing Use of Qualifying Links.**

You may at any time discontinue use of Qualifying Links by removing such Qualifying Links from Your Site, with or without notice to Evolv provided, however, You shall remain subject to the terms of this Agreement.

**29. Confidentiality**

Except as otherwise provided in this Agreement or with the consent of Evolv, You agree that all information, including, without limitation, the terms of this Agreement, business and financial information, customer and vendor lists, and pricing and sales information, concerning us or any of our Affiliates provided by or on behalf of any of them shall remain strictly confidential and secret and shall not be utilized, directly or indirectly, by You for any purpose other than Your participation in the Affiliate Program, except and solely to the extent that any such information is generally known or available to the public through a source other than You. Affiliate shall not use any information obtained from the Affiliate Program to develop, enhance or operate a service that competes with the Affiliate Program, or assist another party to do the same.

### **30. Limited License & Intellectual Property**

We grant You a nonexclusive, non-transferable, revocable right to use the Links and to access our website through the Qualifying Links solely in accordance with the terms of this Agreement, for the sole purpose of identifying Your Media as a participant in the Affiliate Program and assisting in increasing sales through the Program WebSite.

You may not alter, modify, manipulate or create derivative works of the Links or any Evolv graphics, creative, copy or other materials owned by, or licensed to, Evolv in any way. You are only entitled to use the Links to the extent that You are a member in good standing of the Affiliate Program. We may revoke Your license anytime by giving You written notice. Except as expressly stated herein, nothing in this Agreement is intended to grant You any rights to any of Evolv's trademarks, service marks, copyrights, patents or trade secrets. You agree that Evolv may use any suggestion, comment or recommendation You choose to provide to Evolv without compensation. All rights not expressly granted in this Agreement are reserved by Evolv.

### **31. Termination**

This Agreement shall commence on the date of our approval of Your Affiliate Program application and shall continue thereafter until terminated as provided herein. You may terminate Your participation in the Affiliate Program at any time by removing all Links from Your Media and deleting all copies of the Links. We may terminate Your participation in the Affiliate Program or this Agreement at any time and for any reason which we deem appropriate with or without prior notice to You by disabling the Links or providing You with a written notice. Upon termination of Your participation in the Affiliate Program or this Agreement for any reason, You will immediately cease all use of and delete all Links, plus all Evolv intellectual property, and will cease representing Yourself as an Evolv. All rights to validly accrued payments, causes of action and any provisions, which by their terms are intended to survive termination, shall survive any termination.

### **32. Remedies**

In addition to any other rights and remedies available to us under this Agreement Evolv reserves the right to delete any actions submitted through Your Links and withhold and freeze any unpaid Commissions or charge back paid Commissions to Your account if (i) Evolv determines that You have violated this Agreement in any manner whatsoever, (ii) Evolv receives any complaints about Your participation in the Affiliate Program which Evolv reasonably believes to violate this Agreement or (iii) any Qualified Action is later determined to have not met the requirements set forth in this Agreement or in the Affiliate Program. Such withholding or freezing of Commissions, or charge backs for paid Commissions, shall be without regard as to whether or not such Commissions were earned as a result of such breach. In the event of a material breach of this Agreement, Evolv reserves the right to disclose Your identity and contact information to appropriate law enforcement or regulatory authorities or any third party that has been directly damaged by Your actions.

### **33. Anti-Spam Policy**

You must strictly comply with the federal CAN-SPAM Act of 2003 (the "Act") any and all applicable foreign, national, federal, state, local or provincial laws prohibiting or restricting the delivery of unsolicited electronic communications, also known as SPAM. All emails sent in connection with the Affiliate Program must include the appropriate party's opt-out link. From time to time, we may request, prior to Your sending emails containing linking or referencing the Affiliate Program, that You submit the final version of Your email to Evolv for approval and upon receiving written approval from Evolv of Your email that the email may be transmitted to third parties.



It is solely Your obligation to ensure that the email complies with the Act. You agree not to rely upon Evolv's approval of Your email for compliance with the Act or assert any claim that You are in compliance with the Act based upon Evolv's approval.

#### **34. Fraud**

You are expressly prohibited from using any persons, means, devices or arrangements to commit fraud, violate any applicable law, interfere with other Affiliates or falsify information in connection with referrals through the Links or the generation of Commissions or exceed Your permitted access to the Affiliate Program. Such acts include, but are in no way limited to, using automated means to use spyware, used stealware, cookie-stuffing and other deceptive acts. Evolv shall make all determinations about fraudulent activity in its sole discretion.

#### **35. Representations and Warranties**

You hereby represent and warrant that this Agreement constitutes Your legal, valid, and binding obligation, enforceable against You in accordance with its terms and that You have the authority to enter into this Agreement. Subject to the other terms and conditions of this Agreement, Evolv represents and warrants that it shall not knowingly violate any law, rule or regulation which is applicable to Evolv's own business operations or Evolv's proprietary products or services.

#### **36. Modifications**

In addition to any notice permitted to be given under this Agreement, we may modify any of the terms and conditions of this Agreement at any time by providing You with a notification by email. The changes will become effective ten (10) business days after such notice. If the modifications are unacceptable to You, You may terminate this Agreement without penalty solely on the account of such termination within such ten (10) business day period. Your continued participation in this Affiliate Program ten (10) business days after a change notice has been posted will constitute Your acceptance of such change. In addition, Evolv may change, suspend or discontinue any aspect of an Offer or Link or remove, alter, or modify any tags, text, graphic or banner ad in connection with a Link. Affiliate agrees to promptly implement any request from Evolv to remove, alter or modify any Link, graphic or banner ad that is being used by Affiliate as part of the Affiliate Program.

#### **37. Independent Investigation**

You acknowledge that You have read this Agreement and agree to all its terms and conditions. You have independently evaluated the desirability of participating in the Affiliate Program and each Offer and are not relying on any representation, guarantee or statement other than as set forth in this Agreement or on the Affiliate Program.

#### **38. Independent Contractors**

The parties are independent contractors and not partners or participating in a joint venture of any kind. Nothing in this Agreement shall confer upon either party any authority to obligate or bind the other in any respect or cause either party to have a fiduciary relationship to the other.

#### **39. Force Majeure**

Evolv shall not be liable to You by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, governmental action, strikes, lockouts or other industrial disputes, earthquakes, interruptions in telecommunications services or internet facilities, or any other cause which is beyond the reasonable control of Evolv, whether or not similar to the foregoing.

#### **40. Mutual Indemnification**

Affiliate hereby agrees to indemnify, defend and hold harmless Evolv and its respective subsidiaries, affiliates, partners and licensors, directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on (i) any failure or breach of this Agreement,

including any representation, warranty, covenant, restriction or obligation made by Affiliate herein, (ii) any misuse by Affiliate, or by a party under the reasonable control of Affiliate or obtaining access through Affiliate, of the Links, intellectual property, or (iii) any claim related to Your Media, including but not limited to, the content contained on such Media (except for the Links).

Evolv hereby agrees to indemnify, defend and hold harmless Affiliate and its subsidiaries, affiliates, partners, and their respective directors, officers, employees, owners and agents against any and all claims, actions, demands, liabilities, losses, damages, judgments, settlements, costs, and expenses (including reasonable attorneys' fees and costs) based on a claim that Evolv is not authorized to provide You with the Links.

#### **41. Disclaimers**

THE AFFILIATE PROGRAM AND LINKS, AND THE PRODUCTS AND SERVICES PROVIDED IN CONNECTION THEREWITH, ARE PROVIDED TO AFFILIATE "AS IS". EXCEPT AS EXPRESSLY SET FORTH HEREIN, EVOLV EXPRESSLY DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. EVOLV DOES NOT WARRANT THAT THE AFFILIATE PROGRAM OR LINKS WILL MEET AFFILIATE'S SPECIFIC REQUIREMENTS OR THAT THE OPERATION OF THE AFFILIATE PROGRAM OR LINKS WILL BE COMPLETELY ERROR-FREE OR UNINTERRUPTED. EVOLV EXPRESSLY DISCLAIMS ANY LIABILITY FOR ANY ACT OR OMISSION OF A CLIENT OR THEIR PRODUCTS OR SERVICES. EVOLV DOES NOT GUARANTEE THAT AFFILIATE WILL EARN ANY SPECIFIC AMOUNT OF COMMISSIONS.

#### **42. Limitation of Liability**

IN NO EVENT SHALL EVOLV BE LIABLE FOR ANY UNAVAILABILITY OR INOPERABILITY OF THE LINKS, PROGRAM WEBSITES, TECHNICAL MALFUNCTION, COMPUTER ERROR, CORRUPTION OR LOSS OF INFORMATION, OR OTHER INJURY, DAMAGE OR DISRUPTION OF ANY KIND BEYOND THE REASONABLE CONTROL OF EVOLV. IN NO EVENT WILL EVOLV BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PERSONAL INJURY / WRONGFUL DEATH, SPECIAL OR EXEMPLARY DAMAGES, INCLUDING BUT NOT LIMITED TO, LOSS OF PROFITS OR LOSS OF BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT EVOLV HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. EVOLV'S CUMULATIVE LIABILITY TO AFFILIATE, FROM ALL CAUSES OF ACTION AND ALL THEORIES OF LIABILITY, WILL BE LIMITED TO AND WILL NOT EXCEED THE AMOUNTS PAID TO AFFILIATE BY EVOLV IN COMMISSIONS DURING THE SIX (6) MONTHS IMMEDIATELY PRIOR TO SUCH CLAIM.

#### **43. Governing Law & Miscellaneous**

The application of the United Nations Convention on the International Sale of Goods is expressly excluded. This Agreement shall be governed by Texas, USA law (except for conflict of law provisions). The exclusive forum for any actions brought in connection with this Agreement shall be in the state and federal courts in and for the State of Texas, USA (County of Dallas) and You consent to such jurisdiction. Affiliate shall be responsible for the payment of all attorneys' fees and expenses incurred by Evolv to enforce the terms of this Agreement. This Agreement contains the entire agreement between Evolv and Affiliate with respect to the subject matter hereof and supersedes all prior and/or contemporaneous agreements or understandings, written or oral. Affiliate agrees that Evolv shall not be subject to or bound by any Affiliate insertion order or online terms and conditions that amend, conflict with or supplement this Agreement, regardless of whether Evolv "clicks through" or otherwise indicates its acceptance thereof. Affiliate may not assign all or any part of this Agreement without Evolv's prior written consent. Evolv may assign this Agreement at any time with notice to Affiliate. This Agreement will be binding on and will inure to the benefit of the legal representatives, successors and valid assigns of the parties hereto. The provisions related to any accrued payment obligations shall survive the termination of this Agreement. Except as set forth in the "Modifications" section above, this Agreement

may not be modified without the prior written consent of both parties. If any provision of this Agreement is held to be void, invalid or inoperative, the remaining provisions of this Agreement shall continue in effect and the invalid portion of any provision shall be deemed modified to the least degree necessary to remedy such invalidity while retaining the original intent of the parties. Each party to this Agreement is an independent contractor 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. No course of dealing nor any delay in exercising any rights hereunder shall operate as a waiver of any such rights. No waiver of any default or breach shall be deemed a continuing waiver or a waiver of any other breach or default.

By submitting an application to Affiliate Program, You affirm and acknowledge that You have read this Agreement in its entirety and agree to be bound by all of its terms and conditions. If You do not wish to be bound by this Agreement, You should not submit an application to Affiliate Program. If an individual is accessing this Agreement on behalf of a business entity, by doing so, such individual represents that they have the legal capacity and authority to bind such business entity to this Agreement. This Agreement was last revised on 06-13-2018 (June 13, 2018).