

END USER LICENSE AGREEMENT

This End User License Agreement ("EULA") is an enforceable legal contract between You ("You" or "Customer"), as the end user of software and/or content described below, and EvolveMed, ("EvolveMed"). You should read this EULA carefully in order to understand your rights and obligations.

FreeChart.com, including all of its applications, services, programs, installers, utilities, contained files, databases, or integrated third-party programs (referred to herein collectively as "the System") is designed to facilitate efficient and affordable Internet-based electronic medical documentation. Your use of the System is conditional upon your acceptance of all of the terms and conditions of this EULA. By registering, accessing or using the System, You are consenting to be bound by the terms and conditions of this EULA as follows:

1. **Grant of License.** Subject to the terms and conditions of this EULA, EvolveMed grants to You a revocable, limited, non-exclusive, non-transferable licensed access to and use of the System. The System is clinically oriented and is intended to be used only by medically licensed providers who are physicians and/or other competent and duly authorized/licensed healthcare professionals who will rely upon their own discretion and professional judgment concerning medical diagnosis and treatment. You acknowledge EvolveMed does not directly or indirectly practice medicine or dispense medical services. Therefore, You assume full responsibility for appropriate use of the System in connection with medical documentation and the accuracy of the medical documentation created through the use of the System.

2. **Transfer of Rights and Obligations.** You are not permitted to sell, lend, assign, sublicense, lease or transfer in any other way licensed access to the System.

3. **Copyright.** The System and associated copyrights, trademarks and other intellectual property rights are and shall be the sole property of EvolveMed. No ownership rights in the System are transferred to You. The System is protected by copyright laws and international treaty provisions. However, any clinical data You compile using the System is owned by You and is not the property of EvolveMed.

4. **Application of HIPAA.**

(a) **HIPAA Compliance.** The Federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts

160-164) ("HIPAA") sets forth standards for protecting the privacy of individually identifiable health information (the "Privacy Rule"). The parties acknowledge that pursuant to this Agreement, EvolveMed is a "business associate" as defined by HIPAA and that EvolveMed is not a "covered entity" under HIPAA. To the extent that Customer or any of its affiliates is a "covered entity" for purposes of HIPAA (referred to in this Section 4 as the "Covered Entity"), Customer is required to enter into Business Associate Agreements with all of its contractors, agents and related and unrelated third parties that perform a function or activity on behalf of such Covered Entity that involves individually identifiable health information. This Section is intended to comply with the Covered Entity's requirements under HIPAA. For purposes herein, EvolveMed and Covered Entity shall be collectively referred to as the "Parties." Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA, which definitions are hereby incorporated by reference.

(b) **Use and Disclosure.** EvolveMed may use and disclose Protected Health Information received from, or received or created by EvolveMed on behalf of, Customer solely to perform the services required under this Agreement or as otherwise required under the Privacy Standards. EvolveMed may not use or disclose any such Information in any manner in which Customer is not entitled to do so, except as provided in the following provision. EvolveMed may use such Information for EvolveMed's own proper management and administration and, if within the scope of this Agreement, for data aggregation services relating to Customer to the extent allowed under the Privacy Standards, provided Customer obtains reasonable assurance from any person to whom any such Information is disclosed in connection therewith that such person shall keep such Information confidential and disclose such Information only for such purpose(s) or as otherwise required by law and such person notifies EvolveMed of any instances of which such person becomes aware in which the confidentiality of such Information has been breached. In all matters relating to this Agreement, EvolveMed shall use and disclose such Information only to the minimum extent necessary to accomplish the purposes allowed under the foregoing provisions of this Section.

(c) **Additional Obligations.** Notwithstanding any provision in the Agreement to the contrary, EvolveMed agrees to do the following with respect to all Protected Health Information received from, or received or created by EvolveMed on behalf of, Customer: (i) use appropriate safeguards (including administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any such Information stored in electronic form and other requirements subsequently promulgated under or in connection with the Privacy Standards) to prevent use or disclosure of such Information other than as provided in this Agreement, (ii) promptly report to Customer any use or disclosure of Protected Health

Information not provided for in this Agreement and, with respect to electronic Protected Health Information, any "Security Incident" (as that term is defined by the Section 164.304 of the Security Standards), (iii) ensure that any agents, including subcontractors, to whom Business Associate provides such Information agree to the restrictions and conditions set forth in this Agreement, (iv) mitigate, to the extent practicable, any harmful effect known to EvolveMed of any use or disclosure of such Information by EvolveMed or such agents in violation of this Agreement, (v) at the request of and in the time and manner designated by Customer, make such Information available and incorporate amendments thereto in order to satisfy the requirements under Sections 164.524 and 164.526 of the Privacy Standards, (vi) promptly provide to Customer information necessary or appropriate for Customer to provide accountings of disclosures in accordance with Section 164.528 of the Privacy Standards, (vii) make EvolveMed's internal practices, books and records relating to the use or disclosure of such Information available to Customer, the Secretary of Health and Human Services or their successor(s) or designee(s) in the time and manner designated thereby for purposes of determining EvolveMed's compliance with the Privacy Standards; (viii) make internal practices, books, and records, including policies and procedures and Private Health Information, relating to the use and disclosure of Private Health Information received from, or created or received by EvolveMed on behalf of, Customer available to Customer, in a prompt commercially reasonable manner for purposes of determining Customer's compliance with HIPAA and Health Information Technology for Economic and Clinical Health Act ("HITECH") privacy rules; and (ix) if a breach of Private Health Information occurs at or by EvolveMed, EvolveMed shall notify Customer following the discovery of the breach without unreasonable delay and, in all cases, no later than 60 days following the discovery of the breach.

(d) **Term.** The agreement set forth in this Section 4 as to HIPAA matters shall continue in effect as long as this EULA is in effect, and shall terminate automatically upon the termination of such Agreement. Notwithstanding any provision in this EULA, and in addition to any termination rights of Customer thereunder, Customer shall have the right to unilaterally terminate the agreement set forth in this Section 4 and this EULA if EvolveMed fails to cure a material breach hereof within a reasonable time, as determined by Customer, of notification of such breach by Customer to EvolveMed.

(e) **Effect of Termination.** Except as provided below, EvolveMed shall destroy or return to Customer, without retaining any copies, all Protected Health Information received from, or created or received thereby on behalf of, Customer and in the possession or control thereof upon termination of this Agreement. EvolveMed may retain such Information if and only to the extent that Customer determines that the return or destruction thereof is infeasible. In any event, all obligations of EvolveMed and its agents under this Agreement

shall continue to apply after termination of this Agreement, except to the extent that return or destruction of Protected Health Information renders such obligations inapplicable, and any use and disclosure of such Information after such termination shall be limited to those purposes that render the return or destruction thereof infeasible.

(f) **Savings Clause.** The agreement set forth in this Section 4 is intended to satisfy the requirements with respect to business associates under the Privacy Standards and the Security Standards, the provisions of which are hereby incorporated by this reference, and the agreement set forth in this Section 4 and the EULA, notwithstanding any other provisions hereof or thereof, shall be interpreted and applied in a manner so as to satisfy such requirements.

5. **Confidentiality.** You agree that You shall: (a) receive and maintain access to the System in confidence; (b) use the same degree of care with respect to the System as You employ to protect your own confidential information from unauthorized use, duplication and/or disclosure, being, in any event, a high degree of care; and (c) use and disclose the System solely in accordance with the provisions of this EULA. EvolveMed shall use the same degree of care to safeguard your confidential and proprietary information as it utilizes to safeguard its own confidential information. EvolveMed will keep your clinical data (including, but not limited to, medical care, prescribing habits, and other patient care data contained in your medical records) confidential.

6. **Disclaimer of Warranty.** You expressly acknowledge and agree that use of the System is at your sole risk and that the entire risk as to satisfactory quality, performance, accuracy, and effort is with You. The System is provided "AS IS", with all faults and without warranty or representation of any kind whatsoever, express or implied, and EvolveMed and its respective officers, directors, shareholders, employees, suppliers, agents, representatives and contractors hereby disclaim all representations, either express, implied, or statutory, including, but not limited to, the implied warranties of merchantability, of satisfactory quality, of fitness for a particular purpose, of accuracy, quiet enjoyment and of non-infringement of third-party rights. EvolveMed does not warrant that the System will meet your requirements, that the System is accessible or useable on your computer equipment, that the operation of the System will be uninterrupted or error-free, or that any defects in the System will be corrected. Further, no prior or contemporaneous advice or information obtained by You from agents or representatives of EvolveMed or its suppliers shall create any condition or warranty not expressly provided for in this EULA.

7. **Beta Software.** You acknowledge that all software designated as pre-release or beta software may contain bugs, may not operate properly or

perform all intended functions, may interfere with the functioning of other software applications, and may cause errors, data loss or other problems.

8. **Force Majeure.** EvolveMed shall have no liability nor be deemed to be in breach of any obligation under this Agreement for any failure or delay of performance resulting from any government action, fire, flood, insurrection, earthquake, power failure, network failure, riot, explosion, embargo, strikes (whether legal or illegal), terrorist act, labor or material shortage, transportation interruption of any kind or work slowdown or any other condition not reasonable within EvolveMed's control.

9. **Limitation of Liability.** In no event shall EvolveMed be liable to You or any third-party for personal injury, or any incidental, special, indirect or consequential damages whatsoever, including, without limitation, damages for loss of profits, loss of data, business interruption, or any other commercial damages or losses, arising out of or related to your use or inability to use the System, however caused, regardless of the theory of liability, even if EvolveMed has been advised of the possibility of such damage or loss.

10. **Use Limitations.** You agree to not use the System in any way which threatens or violates EvolveMed's copyright. This includes reproducing (other than for your own use), modifying, or making derivative products of any content contained in the System. All rights not expressly granted are reserved. Any print or copy of the System's content You are allowed to make, pursuant to this EULA, must retain the copyright information included with the original copy of the content. You agree that You will not, directly or indirectly, do any of the following: (i) use the System to design, develop or market a competing product or service; (ii) disassemble or reverse engineer the System; (iii) use the System for any illegal purpose; (iv) remove or alter any of the copyright notices or other proprietary markings on any copies of the content; or (v) sub-license or otherwise distribute, or give unauthorized access to the System.

11. **Termination.** This EULA is effective until terminated. You may terminate this EULA at any time by clicking the deactivate button under user settings. This EULA will terminate automatically following thirty (30) days of user login inactivity. Termination of this EULA will automatically delete all Protected Health Information from the System database. This EULA may also be terminated by EvolveMed upon your failure to comply with the terms and conditions set forth herein.

12. **Governing Law and Forum for Disputes.** The validity, interpretation, and performance of this EULA shall be controlled by and construed under the

laws of the State of Utah, as if performed wholly within the state of Utah and without giving effect to the principles of conflict of law. Any legal action by You against EvolveMed shall be brought in the state courts of Utah.

13. **Severability.** If any section, sentence, clause or phrase of this EULA shall be held to be illegal or unenforceable, such determination shall not affect the remaining portions of this EULA.

14. **Waiver.** Waiver of any provision of this EULA is not a waiver of future compliance, and that provision, as well as other provisions of this EULA, remains in full force and effect.

15. **Complete Agreement.** This EULA constitutes a final expression of all the terms of your agreement with EvolveMed and is a complete and exclusive statement of those terms.

You may contact EvolveMed support by using the contact information at <http://www.FreeChart.com>.