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6  
7 Proposed Attorneys for Debtor and Debtor in Possession

8 **UNITED STATES BANKRUPTCY COURT**  
9 **CENTRAL DISTRICT OF CALIFORNIA**  
**SAN FERNANDO VALLEY DIVISION**

10 In re: ) Case No.: 1:24-bk-10646-MB  
11 SYNAPSE FINANCIAL TECHNOLOGIES, )  
INC., ) Chapter 11  
12 ) **DECLARATION OF TRACEY**  
Debtor and Debtor in Possession. ) **GUERIN IN SUPPORT OF ALL OF**  
13 ) **THE DEBTOR'S MOTION TO**  
14 ) **APPROVE SETTLEMENT WITH**  
15 ) **EVOLVE BANK & TRUST PURSUANT**  
16 ) **TO RULE 9019 OF THE FEDERAL**  
17 ) **RULES OF BANKRUPTCY**  
18 ) **PROCEDURE**  
19 )  
20 ) Date: April 24, 2024  
21 ) Time: 2:00 p.m.  
22 ) Place: Courtroom  
23 ) 21041 Burbank Boulevard  
Woodland Hills, CA 91367

24 I, Tracey Guerin, hereby declare as follows:

25 1. I have personal knowledge of the facts set forth below and, if called to testify,  
26 would and could competently testify thereto.

27  
28



1 Debtor executed the Master Bank Services Agreement (“MBSA”) on September 23, 2022, and  
2 the predecessor Bank Services Agreement on April 18, 2017 (collectively, as amended, the  
3 “Agreements”).

4 8. Pursuant to the Agreements, Evolve provided the Bank Services to End Users  
5 and the Debtor (known as the “Program Manager” in the MBSA) provided Program Manager  
6 services and technology services to enable the provision of Evolve’s Bank Services to End  
7 Users.

8 9. Given the complexities of BaaS, the parties continued to learn and improve on  
9 the important cornerstones needed to make a successful Program.

10 10. As competition in the BaaS industry rose and became more lucrative, the Debtor  
11 contends that Evolve sought to cut the Debtor out from the revenue structure between it and the  
12 fintechs. Evolve denies this contention.

13 11. In any case, and independent of Debtor’s relationship with Evolve, Debtor sought  
14 to expand its bank partnerships and reduce dependencies on bank partners. Furthermore, as  
15 competition in the BaaS industry increased, Debtor prepared for increased regulatory scrutiny  
16 over bank fintech programs. Therefore, in 2019 and 2020, Debtor to pivot to a new strategy in  
17 which it brought its own regulated financial services in house with its subsidiary broker dealer  
18 and lending entity.

19 12. The Debtor contends that there have been difficulties in the Evolve/Debtor  
20 partnership that resulted in contractual disputes between the Debtor and Evolve over liability for  
21 potential damages. And, although the parties implemented technical updates, and conducted  
22 reviews and testing with Evolve’s Operations Team to develop and implement additional  
23 monitoring processes, these updates and processes did not necessarily resolve any prior  
24 contractual disputes.

25 13. Substantial disputes developed between the Debtor and Evolve, ultimately  
26 resulting in what Debtor contends were Evolve’s multiple breaches of the MBSA, including, but  
27 not limited to, Evolve allegedly: (a) diverting substantial sums for fees and compensation owed  
28 to Debtor to the Program Manager Reserve Account without proper right or justification; (b)

1 inflating the amount of the Program Manager Reserve Account Requirement to the sum of  
2 \$50,000,000 without regard to the formula set forth in the MBSA; (c) improperly debiting  
3 payment for Evolve’s alleged fees owing to itself or others; (d) withholding from the Debtor the  
4 transaction-level data necessary to perform an accounting and failing to participate in  
5 reconciliation efforts necessary to rectify issues identified by Synapse; (e) payment processing  
6 issues and lack of responsiveness and remediation; and (f) failing to cure ongoing administrative  
7 deficiencies that interfere with and impair the Debtor’s day-to-day business operations  
8 (collectively items (a) through (f) are referred to as “Evolve’s Alleged MBSA Breaches”), all of  
9 which Debtor contends have caused Debtor to sustain damages.

10       14. Evolve disputes that it engaged in any of the MBSA Breaches and contends both  
11 that it provided Debtor with all transaction-level data necessary for Debtor’s obligations under  
12 the MBSA, and that Debtor allegedly engaged in unremediated breaches of Debtor’s obligations  
13 under the MBSA as Program Manager, including related to account for certain transactions,  
14 maintain ledgers supporting the End User and fintech accounts, fund the FBO Account to equal  
15 supporting ledgers on a daily basis, and satisfy its reserve requirement, all of which Evolve  
16 contends have caused Evolve to sustain substantial damages (“Debtor’s Alleged MBSA  
17 Breaches”). Debtor disputes that it engaged in the Debtor’s Alleged MBSA Breaches and  
18 maintains that to the extent any losses exist, they are Evolve’s responsibility due to Evolve’s  
19 Alleged MBSA Breaches.

20       15. There were also accounting disputes between the parties. More specifically, the  
21 MBSA provides an obligation for Evolve to pay Debtor a certain percentage on Deposits in  
22 FBO Accounts. The Debtor alleges that Evolve failed to pay the Debtor the amount due and  
23 owing for such fees and compensation and failed to, *inter alia*, apply such percentage owed on  
24 all FBO Accounts, resulting in a significant underpayment to Debtor (the “Underpayment  
25 Claim”). Evolve denies such allegations and contends that Debtor failed to properly dispute such  
26 underpayment on a timely basis, resulting in waiver.

27       16. As part of the Bank Services provided pursuant to the Agreements, End User  
28 Deposits are held in omnibus custodial accounts owned by Evolve, in which Evolve pools the

1 funds held by all End Users, for their benefit (or in case of a Platform, for the benefit of a  
2 Platform’s End Users), if any (the “FBO Accounts”). Both the Debtor and Evolve contend that  
3 they have claims against the other relating to the funding and reconciliation of the FBO  
4 Accounts (the “FBO Account Claims”).

5 **TERMS OF SETTLEMENT AND BENEFIT TO ESTATE**

6 17. In an effort to resolve these aforementioned claims, I have been talking  
7 extensively with representatives of Evolve for over eight months about the FBO Account  
8 Claims, Evolve’s Alleged MBSA Breaches, Debtor’s Alleged MBSA Breaches, and Debtor’s  
9 Underpayment Claim. For quite some time, the Parties were at an impasse.

10 18. The Debtor believes that the estate’s various claims against Evolve have merit,  
11 and that there is a strong probability that its position as to these claims can ultimately be  
12 successful. In the Debtor’s view, the success of the estate’s FBO Account Claims (and therefore  
13 certain claims related to the Reserve Account and Reserve Funds) boil down to expert witness  
14 being able to independently reconcile the massive amounts of transactional data tied to the FBO  
15 Accounts for the years 2017 to date, which admittedly is not an easy or small task. To the extent  
16 that such independent audit were to be performed, the Debtor believes that it would be  
17 successful in proving up its position. However, gathering, analyzing and presenting all of the  
18 necessary transactional information and data for trial purposes would require vast amounts of  
19 financial resources, time, and manpower – all of which the Debtor does not have.

20 19. In addition to the aforementioned claims, the Debtor also has a claim against  
21 Evolve relating to Evolve’s underpayment of fees or compensation on End User Balances in  
22 FBO Accounts due and owing to Synapse under the Agreements for the years 2022 to date (the  
23 “Underpayment Claim”). Evolve denies such allegations and contends that Debtor failed to  
24 properly dispute such underpayment on a timely basis, resulting in waiver.

25 20. The salient terms of the Settlement Agreement are that Evolve Salient Terms of  
26 the Settlement Agreement:

- 27 a. FBO Account Funding. As a condition precedent to the Releases provided in  
28 Section 2 of this Agreement, no later than April 24, 2024 (“Funding Date”) (unless the Funding Date is extended by mutual agreement of Synapse and

1 Evolve, in their sole and absolute discretion), Evolve shall fund the FBO  
2 Accounts, shall ensure that all account balances of End-Users in FBO  
3 Accounts are fully funded, and shall provide reasonable evidence to Synapse  
4 of same (“Evolve Funding”). The Parties agree that Evolve is not obligated  
5 to fund any End User account balances maintained at other financial  
6 institutions. From the Execution Date until the close of the Taba Acquisition,  
7 (i) Synapse agrees to timely and comprehensively respond to reasonable  
8 information requests from Evolve related to current and historical End User  
9 account balances, End User transactions, and funding of the FBO Accounts  
10 and (ii) Evolve agrees to timely and comprehensively respond to reasonable  
11 information requests from Synapse to assist with completion of the Taba  
12 Funding Condition.

13  
14 b. Settlement Payment. Evolve shall pay to Synapse a cash payment of  
15 \$2,000,000.00 (the “Settlement Payment”), in exchange for the Synapse  
16 Release provided in Section 2. Such Settlement Payment shall be due on the  
17 later of the Effective Date or the Funding Date. For clarity, the Settlement  
18 Payment is not owed if the Evolve Funding shall not have been satisfied as  
19 set forth in Section 1(a) above, and the Releases set forth in Section 2 above  
20 shall not become effective. Such payment shall be made by wire transfer of  
21 immediately available funds as instructed by Synapse.

22 c. Releases: The Parties to exchange mutual releases.

23  
24 21. The Settlement Agreement was entered into in good faith and was negotiated at  
25 arm's length. The settlement of \$2 million is a substantial recovery for this estate and for  
26 creditors.

27  
28 22. The Settlement Agreement, if approved, preserves and protects the concurrent sale  
with TabaPay and is required in order to satisfy the express conditions to the closing which  
includes, among other things: (i) Evolve to ensure that all account balances of End-Users in  
FBO Accounts are fully funded to the Buyer’s satisfaction (“Taba Funding Condition”)<sup>1</sup>, (ii)  
Evolve to execute and deliver a letter agreement, in form and substance satisfactory to Buyer in  
its sole and exclusive discretion, pursuant to which, among other matters, Evolve  
unconditionally consents in all respects to the consummation of the transactions contemplated  
by the APA; and (iii) the Court’s approval of the Settlement Agreement between Evolve and the  
Debtor.

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<sup>1</sup> Under the APA, Evolve is required to ensure the FBO Accounts are fully funded as this is a critical component to the Buyer’s ongoing operation of the assets and business that it is acquiring.



# EXHIBIT "1"



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**SETTLEMENT AGREEMENT AND RELEASE**

This **Settlement Agreement and Release** (“Settlement Agreement”) is entered into as of the last date of execution set forth below (“Execution Date”), by and between Evolve Bank & Trust (“Evolve” or “Bank”) and Synapse Financial Technologies, Inc., on behalf of itself and its subsidiaries (“Synapse” or “Program Manager”) (collectively, as the “Parties”). Terms not otherwise defined herein shall have the meaning provided in the Parties’ Agreement, defined below.

**WHEREAS**, the Parties executed the Master Bank Services Agreement on September 23, 2022, and the predecessor Bank Services Agreement on April 18, 2017 (together, as amended, the “Agreements”);

**WHEREAS**, pursuant to the Agreements, the Parties established Programs under which Evolve offers Bank Services to End Users and Synapse services and supports such Programs;

**WHEREAS**, as part of the Bank Services provided pursuant to the Agreements, End User Deposits are held in omnibus custodial accounts owned by Evolve, in which Evolve pools the funds held by all End Users, for their benefit (or in case of a Platform, for the benefit of a Platform’s End Users) (the “FBO Accounts”);

**WHEREAS**, the Parties each have claims against the other relating to the funding and reconciliation of the FBO Accounts (the “FBO Account Claims”);

**WHEREAS**, the Parties each have claims against the other relating to the funding of the Program Manager Reserve Account (the “Reserve Balance Claims”), including Evolve’s funding, withdrawal and use of funds totaling \$43,225,506.73 in, to and from the Reserve Account (“Reserve Funds”).

**WHEREAS**, separate from the Reserve Balance Claims and unrelated to the Reserve Funds, Synapse has a claim against Evolve relating to Evolve’s underpayment of fees or compensation on End User Balances in the FBO Accounts due and owing to Synapse under the Agreements for the years 2022 to date (the “Underpayment Claim”);

**WHEREAS**, Synapse intends to enter into a transaction in which TabaPay Holdings LLC or its designated affiliate (“Taba”) seeks to acquire certain assets of Synapse (the “Taba Acquisition”), including certain rights related to the FBO Accounts. An express condition of the Taba Acquisition requires, *inter alia*, the Parties, to ensure that all account balances of End-Users in FBO Accounts are fully funded to Taba’s satisfaction (“Taba Funding Condition”);

**WHEREAS**, as part of the Taba Acquisition, Synapse will file a Chapter 11 bankruptcy case (the “Bankruptcy Case”) and seek the Bankruptcy Court’s approval of the Taba Acquisition pursuant to 11 USC §363 (the “Sale Motion”);

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**WHEREAS**, concurrently with the Sale Motion, Synapse will seek Bankruptcy Court approval for this Settlement Agreement pursuant to Federal Rule of Bankruptcy Procedure 9019 (the “9019 Motion”), the approval of which by the Bankruptcy Court is a condition to the consummation of this Settlement Agreement and the Taba Acquisition;

**WHEREAS**, the effective date of this Settlement Agreement shall be upon entry of a Bankruptcy Court Order approving the 9019 Motion (the “9019 Order”) in the Bankruptcy Case (the “Effective Date”) and the Parties waive the fourteen (14) day period for any appeal from such 9019 Order as provided in Federal Rule of Bankruptcy Procedure 8002, and the Bankruptcy Court approves such waiver as part of the 9019 Order;

**NOW, THEREFORE**, in consideration of the promises and agreements set forth below, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged after consultation with counsel, the Parties hereby agree as follows:

**TERMS OF RELEASE**

**1. Settlement Payment and Funding Requirements:**

- a. FBO Account Funding. As a condition precedent to the Releases provided in Section 2 of this Agreement, no later than April 24, 2024 (“Funding Date”) (unless the Funding Date is extended by mutual agreement of Synapse and Evolve, in their sole and absolute discretion), Evolve shall fund the FBO Accounts, shall ensure that all account balances of End-Users in FBO Accounts are fully funded, and shall provide reasonable evidence to Synapse of same (“Evolve Funding”). The Parties agree that Evolve is not obligated to fund any End User account balances maintained at other financial institutions. From the Execution Date until the close of the Taba Acquisition, (i) Synapse agrees to timely and comprehensively respond to reasonable information requests from Evolve related to current and historical End User account balances, End User transactions, and funding of the FBO Accounts and (ii) Evolve agrees to timely and comprehensively respond to reasonable information requests from Synapse to assist with completion of the Taba Funding Condition.
- b. Settlement Payment. Evolve shall pay to Synapse a cash payment of \$2,000,000.00 (the “Settlement Payment”), in exchange for the Synapse Release provided in Section 2. Such Settlement Payment shall be due on the later of the Effective Date or the Funding Date. For clarity, the Settlement Payment is not owed if the Evolve Funding shall not have been satisfied as set forth in Section 1(a) above, and the Releases set forth in Section 2 above shall not become effective. Such payment shall be made by wire transfer of immediately available funds as instructed by Synapse.

**Confidential Settlement Communication – FRE 408****2. Releases:**

- a. Evolve Release. On the later of the Funding Date or the Effective Date, Evolve, on its own behalf and on behalf of its affiliates, subsidiaries, heirs, agents, and assigns (together, the “Evolve Releasers”), will release and forever discharge Synapse and its subsidiaries, affiliates, shareholders, members, officers, directors, employees, insurers, representatives, predecessors, successors, agents, and assigns and any of them (together, the “Evolve Releasees”) of any and all claims, causes of actions, suits, obligations, debts, demands, liabilities, damages, losses, costs, expenses, and attorney’s fees of any nature whatsoever, whether known or unknown, which Evolve has or had as of the Execution Date against the Evolve Releasees, including, but not limited to, the FBO Account Claims and the Reserve Account Claims. Evolve further agrees that, unless required by law, it shall not file or cause to be filed any claims, complaints, affidavits, arbitrations, or proceedings with any federal, state, or local law enforcement, regulatory or administrative commission, agency, board, or person, whether public or private, regarding any alleged acts, failures to act, omissions, facts, events, transactions, occurrences, or other matters that relate to or arise from this Release. For the sake of clarity, the Evolve Release shall result in the release and discharge of Evolve Releasees of any and all claims, causes of actions, suits, obligations, debts, demands, liabilities, damages, losses, costs, expenses, and attorney's fees of any nature whatsoever, whether known or unknown, which Evolve has or had against Evolve Releasees as of the Execution Date. Evolve acknowledges and agrees that, as of the Execution Date, it has not filed or caused to be filed any claims, complaints, affidavits, arbitrations, or proceedings against the Evolve Releasees.
  
- b. Synapse Release. On the later of the Funding Date or the Effective Date, Synapse, on its own behalf and on behalf of its affiliates, subsidiaries, heirs, agents, and assigns (together, the “Synapse Releasers”), will release and forever discharge Evolve and its subsidiaries, affiliates, shareholders, members, officers, directors, employees, insurers, representatives, predecessors, successors, agents, and assigns and any of them (together, the “Synapse Releasees”) of any and all claims, causes of actions, suits, obligations, debts, demands, liabilities, damages, losses, costs, expenses, and attorney's fees of any nature whatsoever, whether known or unknown, which Synapse has or had as of the Execution Date against Synapse Releasees, including, but not limited to, the FBO Account Claims, the Reserve Account Claims, and the Underpayment Claim. Synapse further agrees that, unless required by law, it shall not file or cause to be filed any claims, complaints, affidavits, arbitrations, or proceedings with any federal, state, or local law enforcement, regulatory or administrative commission, agency, board, or person, whether public or private, regarding any acts, failures to alleged acts, omissions, facts, events, transactions, occurrences,

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or other matters which relate to or arise from this Release. For the sake of clarity, the Synapse Release shall result in the release and discharge of Synapse Releasees of any and all claims, causes of actions, suits, obligations, debts, demands, liabilities, damages, losses, costs, expenses, and attorney's fees of any nature whatsoever, including any claims arising under Chapter 5 of the Bankruptcy Code, whether known or unknown, which Synapse has or had against Evolve as of the Execution Date. Synapse acknowledges and agrees that, as of the Execution Date, it has not filed or caused to be filed any claims, complaints, affidavits, arbitrations, or proceedings against the Synapse Releasees.

3. **Recitals.** The foregoing recital paragraphs are incorporated herein by this reference.

4. **No Actions During Bankruptcy Case.** The Parties agree not to pursue any Claims that are the subject of the releases in Section 2 while the 9019 Motion is pending.

5. **Taba Letter Agreement.** Evolve agrees that to the extent requested by Taba pursuant to the Taba Acquisition, it will (i) not unreasonably withhold written consent to Synapse's assignment or transfer of any interest under the Agreements to Taba and (ii) not unreasonably withhold written consent to the Taba Acquisition.

6. **Waiver of Section 1542.** The Parties recognize, acknowledge, and waive the provisions of, and relinquish any rights and benefits afforded under, Section 1542 of the California Civil Code, which provides as follows:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

7. In waiving the provisions of Section 1542 of the California Civil Code, each Party acknowledges that it may discover facts in addition to or different than those which it now believes to be true with respect to the matters released in this Settlement Agreement, but agree that it has taken that possibility into account in reaching this settlement, and the releases given in this Settlement Agreement shall remain in effect as a full and complete release notwithstanding the discovery or existence of such additional or different facts, as to which each Party expressly assumes the risk. The Parties also expressly waive and relinquish any rights and benefits afforded under any other statutes or common law principles of similar effect of any other jurisdiction.

8. **Covenant Not to Sue.** Except to enforce the express obligations of the Parties under this Settlement Agreement, the Parties hereby irrevocably covenant, to the fullest extent permitted by law, to refrain from, directly or indirectly, asserting any claim or demand, or commencing or causing to be commenced, any action or proceeding of any kind against any of the

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Parties, as applicable, related to the matters released in Section 2 above unless the conditions precedent are not met.

9. **Representations and Warranties.** Each Party, severally and not jointly, represents and warrants to the other Parties that the following statements are true, correct, and complete as of the date hereof:

9.1 **Power and Authority.** Such Party is validly existing and in good standing under the laws of its jurisdiction of incorporation or organization, and has all requisite corporate, partnership, limited liability company or similar authority to enter into this Settlement Agreement and carry out the transactions contemplated hereby and perform its obligations contemplated hereunder, and the execution and delivery of this Settlement Agreement and the performance of such Party's obligations hereunder have been duly authorized by all necessary corporate, limited liability company, partnership or other similar action on its part.

9.2 **No Conflict.** The execution, delivery and performance by such Party of this Settlement Agreement does not and will not: (i) violate any provision of law, rule or regulation applicable to it or any of its subsidiaries or its charter or bylaws (or other similar governing documents) or those of any of its subsidiaries, or (ii) conflict with, result in a breach of or constitute (with due notice or lapse of time or both) a default under any material contractual obligation to which it or any of its subsidiaries is a party.

9.3 **No Consent or Approval.** No consent or approval is required by any other person or entity in order for each of the Parties respectively to effectuate the transactions contemplated by, and perform their respective obligations under, this Settlement Agreement.

9.4 **Enforceability.** This Settlement Agreement is the legally valid and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws relating to or limiting creditors' rights generally by equitable principles relating to enforceability.

9.5 **No Assignment.** Such Party owns and has not assigned, transferred or conveyed, in whole or in part, to any other person or entity, any and all rights, claims or causes of action against any other Party that are released by this Settlement Agreement.

9.6 **Investigation.** Such Party has made such investigation as it deems necessary or desirable of all matters contained in or related to this Settlement Agreement.

9.7 **Knowledge of Terms of Settlement Agreement.** In entering into this Settlement Agreement, such Party is relying solely upon its own judgment, belief and knowledge and, as applicable, on that of any attorney it has retained to represent it in this matter. Such Party is not relying on any representation or statement made by any other Party or any person representing such other Party except for the representations and warranties expressly set forth in this Settlement Agreement. By signing this Settlement Agreement, such Party hereby confirms and states that (a) it has carefully read this Settlement Agreement, (b) it knows the content of this Settlement Agreement and (c) it has been represented by independent legal counsel in connection with the negotiation of this Settlement Agreement. The discovery by any Party, subsequent to the Execution Date, of any facts not heretofore known to that Party, or that the facts or law upon which

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any Party relied upon in executing this Settlement Agreement were not as that Party believed it to be, shall not constitute grounds for declaring this Settlement Agreement void, avoidable, or otherwise unenforceable in whole or in part. This Section 7.7 is intended to preclude any claim by any Party that it was fraudulently induced to enter this Settlement Agreement, or was induced to enter this Settlement Agreement by a mistake of fact or law.

10. **Confidentiality.** The Parties acknowledge and agree that the terms and conditions of this Settlement Agreement are confidential and shall not be disclosed except to the extent required by applicable law or in connection with the 9019 Motion and the Sale Motion to be filed in the Bankruptcy Case. However, the Parties may respond to any inquiry by stating that any dispute has been resolved to their mutual satisfaction. The Parties may disclose the matters subject to this confidentiality provision if compelled by court order, subpoena, or other legal requirement, and in that situation, will take steps to obtain an appropriate protective order to safeguard the confidentiality of the terms of this Settlement Agreement. Further, the Parties may discuss the matters subject to this confidentiality provision with their respective board members, members, attorneys, accountants, financial advisors, tax preparers, service providers, regulators, and other persons who are subject to an independent duty to maintain the confidentiality of such information. Notwithstanding the foregoing, the Parties may disclose the terms of this Settlement Agreement with Taba, provided that Taba agrees to keep such information confidential.

11. **General Provisions.**

11.1 **Governing Law and Venue; Jurisdiction.** Any matter concerning the interpretation or enforcement of this Settlement Agreement shall be governed by and construed under the laws of the State of Tennessee, without regard to conflicts-of-law principles that would require the application of any other law.

11.2 **No Admission of Liability.** It is expressly understood and agreed that entry into this Settlement Agreement does not constitute an admission of liability, fault, wrongdoing, or any fact by any of the Parties; rather, each of the Parties acknowledges and agrees that all claims held by each of them against the other are disputed and subject to dispute.

11.3 **Attorneys' Fees.** In the event of any dispute between the Parties relating to the interpretation or implementation of this Settlement Agreement, each Party shall bear its own attorneys' fees and costs.

11.4 **Full Satisfaction.** This Settlement Agreement and the rights and benefits provided thereby, including the Payments, are acknowledged by the Parties to be in full and complete settlement and satisfaction of the claims and causes of actions that are to be released hereby.

11.5 **Integration.** This Settlement Agreement contains the entire and only understanding among the Parties regarding the subject matter hereof and supersedes any and all prior and/or correspondence oral or written negotiations, agreements, representations and understandings. The Parties and each of them represent and warrant that no promise, statement or inducement has been made to cause them to execute this Settlement Agreement, other than those expressly set forth in this Settlement Agreement.

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11.6 **Modification.** This Settlement Agreement may not be modified, except by a writing which expressly refers to this Settlement Agreement and is signed subsequent to the date of this Settlement Agreement by duly authorized representatives of all Parties. The ability to modify or amend this agreement includes, without limitation, the ability to amend the Funding Date specified in Section 1 of this Settlement Agreement.

11.7 **Survival.** All representations, warranties, covenants, releases, waivers, agreements and obligations in this Settlement Agreement will survive the execution and delivery of, and the consummation of the transactions contemplated by, this Settlement Agreement.

11.8 **Successors and Assigns.** This Settlement Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties; provided, however, that this Settlement Agreement shall not be assignable or transferable by any Party without the prior written consent of all of the other Parties hereto, and any assignment or transfer not in compliance with the above shall be null and void.

11.9 **No Third-Party Beneficiaries.** Except for the Parties, each of the Evolve Releasees and the Synapse Releasees, this Settlement Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein expressed or implied shall give or be construed to give any individual or entity, other than the Parties hereto and their respective successors and permitted assigns, any legal or equitable rights, remedies, or claims hereunder.

11.10 **Counterparts.** This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Electronic, scanned and facsimile signatures shall be of the same force and effect as if in original ink.

11.11 **Headings.** The headings and captions used in this Settlement Agreement are for convenience only and shall not be deemed to affect in any way the language of the provisions to which they refer.

11.12 **Interpretation.** This Settlement Agreement shall be interpreted as if jointly drafted by the Parties, and no provision shall be interpreted against any Party because such provision was drafted by that Party.

11.13 **Severability.** If any term of this Settlement Agreement is found invalid or unenforceable for any reason, that portion, that term may be severed from the Settlement Agreement and shall not affect the validity of the remainder of the Settlement Agreement.

11.14 **No Waiver.** The delay or failure of a Party to assert a right in this Settlement Agreement or to insist upon compliance with any term or condition of this Settlement Agreement will not constitute a waiver of that right or excuse a similar subsequent failure to perform any term or condition by any other Party. A valid waiver must be executed in writing and signed by the Party granting the waiver.

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**IN WITNESS WHEREOF**, the Parties hereto have executed this Settlement Agreement on the respective dates set forth below.

**PROGRAM MANAGER:**

**SYNAPSE FINANCIAL TECHNOLOGIES, INC.**

**By:** sankaet pathak

**Name:** Sankaet Pathak

**Title:** CEO

**Date:** 04 / 19 / 2024

**BANK**

**EVOLVE BANK & TRUST**

**By:** Scot Lenoir

**Name:** Scot Lenoir

**Title:** Chairman

**Date:** 4/17/2024



## PROOF OF SERVICE OF DOCUMENT

I am over the age of 18 and not a party to this bankruptcy case or adversary proceeding. My business address is:  
2818 La Cienega Avenue, Los Angeles, California 90034

A True And Correct Copy Of The Foregoing Document Entitled (*Specify*): **DECLARATION OF TRACEY GUERIN IN SUPPORT OF ALL OF THE DEBTOR'S MOTION TO APPROVE SETTLEMENT WITH EVOLVE BANK & TRUST PURSUANT TO RULE 9019 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE** will be served or was served **(a)** on the judge in chambers in the form and manner required by LBR 5005-2(d); and **(b)** in the manner stated below:

1. **TO BE SERVED BY THE COURT VIA NOTICE OF ELECTRONIC FILING (NEF)**: Pursuant to controlling General Orders and LBR, the foregoing document will be served by the court via NEF and hyperlink to the document. On (*date*) **April 22, 2024**, I checked the CM/ECF docket for this bankruptcy case or adversary proceeding and determined that the following persons are on the Electronic Mail Notice List to receive NEF transmission at the email addresses stated below:

- Ron Bender rb@lnbyg.com
- Russell Clementson russell.clementson@usdoj.gov
- United States Trustee (SV) ustpregion16.wh.ecf@usdoj.gov

2. **SERVED BY UNITED STATES MAIL**: On (*date*) **April 22, 2024**, I served the following persons and/or entities at the last known addresses in this bankruptcy case or adversary proceeding by placing a true and correct copy thereof in a sealed envelope in the United States mail, first class, postage prepaid, and addressed as follows. Listing the judge here constitutes a declaration that mailing to the judge will be completed no later than 24 hours after the document is filed.

Service information continued on attached page

3. **SERVED BY PERSONAL DELIVERY, OVERNIGHT MAIL, FACSIMILE TRANSMISSION OR EMAIL** (*state method for each person or entity served*): Pursuant to F.R.Civ.P. 5 and/or controlling LBR, on (*date*) **April 22, 2024**, I served the following persons and/or entities by personal delivery, overnight mail service, or (for those who consented in writing to such service method), by facsimile transmission and/or email as follows. Listing the judge here constitutes a declaration that personal delivery on, or overnight mail to, the judge will be completed no later than 24 hours after the document is filed.

**SERVED BY OVERNIGHT MAIL ON SECURED CREDITORS, THE 20 LARGEST UNSECUREDS, ALL KNOWN POTENTIAL BIDDERS, ANY STALKING HORSE BIDDER, ANY REGULATORY AGENCY WITH AN INTEREST IN THE ASSETS TO BE SOLD, & THE UNITED STATES TRUSTEE**

Service by **OVERNIGHT MAIL/FEDEX** information continued on attached page

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

April 22, 2024  
Date

Lourdes Cruz  
Printed Name

/s/ Lourdes Cruz  
Signature

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