



## LICENSE AGREEMENT

### Wayk® Now

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This End User License Agreement applies to the Wayk® Now software.

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This Agreement is entered into between You and Devolutions and establishes the terms and conditions under which we agree to grant You and Your Active End Users a license to install, access and use the Software. The individual purchasing a Software subscription for and on behalf of an Organization is deemed to represent and warrant that he/she is an authorized representative of such Organization with the authority to bind it for the purposes herein.

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#### **1. Definitions**

The following terms shall have the following meanings:

**Active End User:** means each individual authorized by You under the License to install and use the Software for the purpose of remotely accessing Passive End Users' Computers.



**Affiliate:** means any entity that controls, is controlled by, or is under common control with the subject entity. For purposes of this definition, “control” means ownership of more than fifty percent (50%) of the outstanding shares or beneficial ownership of such subject entity.

**Agreement:** has the meaning given to such term in the preamble of this Agreement.

**Computer:** means any computer hardware or device, including personal computers, laptops, electronic tablets, personal digital assistants, smart phones, mobile phones, hand-held devices, computer servers and networks, and any other computer or electronic devices on which the Software is installed, accessed or used by an End User.

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**End Users:** means the Active End Users and the Passive End Users, collectively.

**Enterprise Edition:** means the Software with access to all its features.

**Feedback:** means any suggestion, recommendation, feedback or idea related to the Software which is communicated to us by You or a User.

**Free Edition:** means the Software with limited access to certain of its features.

**Improvement:** means any enhancement, improvement, upgrade, translation, feature, add-on, tool or functionality that is incorporated into the Software or the Documentation.

**License:** has the meaning given to such term in Section 2(a) of this Agreement.

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**Updates:** means any new version of the Software and any updates, upgrades, improvements, patches, revisions, supplements, modifications, enhancements, maintenance or fixes developed and incorporated into the Software by DEVOLUTIONS from time to time.

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### **3. License Restrictions**

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- (vi) publicly disclose or display, distribute, share, rent, lease, sublicense, assign, sell, transfer or make publicly available the Software, except as authorized herein;
- (vii) modify, translate, alter or improve the Software or the Documentation, incorporate or combine the Software into/with other software, or create derivative works from the Software;



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#### **4. Payment and Renewal (Enterprise Edition)**

- (a) **Payment.** The grant of the License for the Enterprise Edition is conditional upon Your payment of the subscription fees specified on the Purchase Order within the applicable payment period. Devolutions reserves its right to suspend or terminate Your subscription if payment is overdue. Except as expressly provided herein, subscription and license fees are non-refundable. If You pay with a credit card through our website, You authorize our third-party processor to charge such credit card for the total amount indicated on the Purchase Order. You are responsible for providing us with complete and accurate billing and contact information and to notify us of any changes.
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#### **5. Updates and Customer Support**

- (a) **Updates.** Updates applicable to the Enterprise Edition may be downloaded and installed without additional fees during Your subscription period and Updates applicable to the Free Edition may be installed without cost at any time. You acknowledge that the failure to install an Update may impair or limit the use of certain features of the Software or limit our ability to properly address Your technical support requests.
- (b) **Customer Support.** Customer support is available to Active End Users only. The applicable level of support will vary depending on Your customer support plan selected or purchased with Your Licence. No customer support will be offered after the expiration of Your subscription period (Enterprise Edition). Please refer to the terms of the Support Level Addendum for further details, which terms are incorporated into this Agreement by this reference.

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## **6. License Keys and Security**

It is Your responsibility to maintain the security and confidentiality of the License keys issued to You. We are not under any obligation to verify the actual identity or authority of any person using a License key or seeking to communicate with us on Your behalf, but we may, at our sole discretion, require proof of the identity of any such person. You agree to notify us immediately of any unauthorized use of Your License keys. Devolutions will not be liable for any losses caused by such unauthorized access. All License keys issued to You remain the property of Devolutions and may be cancelled or suspended at any time without any notice or liability in case of any default by You or an Active End User to comply with this Agreement.

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## 10. Verification

Upon our written request, You will confirm to us in writing that the Software is being used in conformity with this Agreement and confirm that the number of Active End Users using or having access to the Software does not exceed the authorized limit under Your License. We may, at our expense, during regular business hours and upon a prior notice of at least 72 hours, audit Your use of the Software without unreasonably interfering with Your activities or operations. You will cooperate with the audit, including by giving access to any computers, records or other information that relate or may relate to the use of the Software. If we discover unauthorized use, reproduction, distribution or other exploitation of the Software, You will pay the reasonable costs incurred by us for conducting the audit to the extent the value of the subscription that would have applied to such unauthorized uses exceeds 10% of the subscription fees actually paid for Your then-current subscription, in addition to such other rights and remedies as we may have. Without limiting the foregoing, if we discover unauthorized use, distribution or reproduction of the Software, we may, at our sole option, direct You to cease any unauthorized use or require payment of additional subscription fees for the remaining of Your subscription period. In either case, You will also pay: (i) the subscription (including customer support fees) that would have applied to such unauthorized use for the period during which it occurred (or, if not possible to determine, from the starting date of Your then-current subscription period); and (ii) an interest at the rate of 1% per month (12% annually), calculated and compounded monthly from the date any payment would have been due until the date such payment is completely and irrevocably made.

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- (c) Refund upon Termination. If this Agreement is terminated by You in accordance with Section 15(b) ("Termination"), we will refund You any prepaid fees covering the remainder of Your subscription term after the effective date of termination. If this Agreement is terminated by us in accordance with the same Section 15(b), fees already paid in respect of your current subscription term will not be refundable.
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- (e) Surviving Provision. Sections 3 ("License Restrictions"), 8 ("Title, Retention of Rights and Intellectual Property"), 9 ("Open Source Software"), 12 ("Representations and Indemnification"), 13 ("Limited Warranty"), 14 ("Limitations of Liability"), 15 ("Term and Termination") and 17 ("General Provisions") shall survive the termination of this Agreement, in addition to any other provision of this Agreement that must necessarily survive to fulfill its essential purpose and to give full effect to the parties' intents expressed herein.

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## 16. Amendments

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## 17. General Provisions

- (a) Governing Law; Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the Province of Quebec, Canada, without reference to its conflict of laws principles. The application of the United Nations Convention on Contracts for the International Sale of Goods to this Agreement is expressly excluded.
- (b) Dispute Resolution – MANDATORY ARBITRATION CLAUSE. In the event Devolutions has not been able to resolve a dispute with You after attempting to do so informally, the parties shall mandatorily resolve any claim, dispute, or controversy (excluding any claims for injunctive relief) arising out of or in connection with or relating to



this Agreement, or the breach or alleged breach thereof, under the exclusive auspices of arbitration by the Canadian Commercial Arbitration Centre, by means of arbitration and to the exclusion of courts of law, in accordance with its General Commercial Arbitration Rules then in force. Such arbitration shall be held in front of a sole arbitrator in Montreal, Province of Quebec, in the English language. The decision of the arbitrator shall be final, binding and non-appealable. Each party will share equally the costs of arbitration (other than the costs and fees of their respective attorneys). Notwithstanding the foregoing, nothing herein shall be deemed as preventing a party from seeking injunctive relief or provisional or ancillary remedies from the courts as necessary to protect any of its proprietary interests, including to prevent the actual or threatened infringement, misappropriation or violation of its intellectual property rights, and the parties agree to submit exclusively to the courts having jurisdiction within the judicial district of Montreal, Province of Quebec, for any such proceedings. Each party hereby waives all defenses of lack of personal jurisdiction and *forum nonconveniens* in connection with any action brought in the foregoing courts.

- (c) Personal Data. Except as described in Devolutions' Privacy Policy available at <https://devolutions.net/legal>, the relevant provisions of which are hereby incorporated and made part of this Agreement by reference, Devolutions does not collect, use or otherwise process Your Personal Data or the Personal Data of Users through or in connection with the use of the Software or access thereto. To the extent You use the Software to collect, use or process Personal Data, You shall remain solely responsible to take all appropriate measures and safeguards to comply with applicable laws relating to privacy and the protection of Personal Data in general.
- (d) Severability. If any provision of this Agreement is declared unlawful, void or unenforceable by a court having competent jurisdiction, then that provision shall be enforced to the maximum extent permissible so as to give effect to the intent of the parties and the remainder of this Agreement shall continue to be in full force and effect.
- (e) Export Administration. The Software may be subject to export laws and regulations of Canada and other jurisdictions, including those of Your originating country. You agree to comply fully with such export laws and regulations to ensure that the Software is not: (i) used or exported, directly or indirectly, in violation thereof; or (ii) used or intended to be used for any purposes prohibited by such laws and regulations, including without limitation nuclear, chemical, or biological weapons proliferation. Without limiting the generality of the foregoing, You represent that You are not named on any Canadian or U.S. government denied-party list, and that You will not permit any third party to access, use or export the Software in a country subject to an embargo from Canada, the United States or Your originating country.
- (f) Force Majeure. Neither party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement (other than payment obligations) by reason of any event of force majeure or any other unforeseeable cause which is beyond the reasonable control of such party.
- (g) Failure to Exercise Rights. The failure of either party to exercise any of its rights under this Agreement shall not be deemed to be a waiver of such rights. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement. In order to be valid, a waiver must be given explicitly in writing by an authorized representative of the party accepting to waive its right.
- (h) Election of Remedies. All rights and remedies, whether evidenced hereby or by law shall be cumulative and may be exercised singularly or concurrently unless otherwise stated herein. Failure of either party to enforce any provision hereof shall not prevent enforcement on any other occasion.
- (i) Successors and Assigns. This Agreement will enure to the benefit of and be binding upon each of the parties and their respective successors and permitted assigns.
- (j) Entire Agreement. Each party has read this Agreement, has had the opportunity to obtain independent legal advice, agrees to be bound by it, and agrees that it constitutes the entire agreement between the parties with respect to the use of the Software and the other subject matters covered herein, superseding all proposals, negotiations, and communications, oral or written, between the parties with respect to the subject matters hereof, unless otherwise expressly agreed in writing. Any terms or conditions appearing on any purchase order,



acknowledgment, invoice or confirmation (including any document or agreement entered into with a reseller from which You obtained the Software) that are different from or inconsistent with those set forth in this Agreement shall not be binding on the parties, even if signed and returned, unless it is expressly stated that such other terms and conditions take precedence over conflicting terms of this Agreement.

- (k) Language. The parties have expressly requested and required that this Agreement and all other related documents be drawn up in the English language. *Les parties conviennent et exigent expressément que cette Convention et tous les documents qui s'y rapportent soient rédigés en anglais.*

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