



## MASTER ONLINE SERVICES AGREEMENT

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**IMPORTANT LEGAL NOTICE TO ALL USERS:** CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT BEFORE YOU START USING THE SERVICES. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION CLAUSE.

BY ACCEPTING THIS AGREEMENT, BY CLICKING A BOX INDICATING YOUR ACCEPTANCE; BY EXECUTING OR CONFIRMING A PURCHASE ORDER THAT REFERENCES THIS AGREEMENT, OR BY USING A SERVICE COVERED BY THIS AGREEMENT, YOU CONSENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU; IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, YOU AGREE THAT YOU SHALL REFRAIN FROM USING THE SERVICES. YOU CONFIRM AND ACKNOWLEDGE THAT YOU HAVE BEEN PROVIDED THE OPPORTUNITY TO READ THE AGREEMENT BEFORE USING THE SERVICES. A COPY OF THIS AGREEMENT IS MADE AVAILABLE AND MAY BE DOWNLOADED FROM DEVIOLUTIONS' WEBSITE.

This Agreement is entered into between You and Devolutions and establishes the terms and conditions under which You and Users may access and use the Services. If a subscription is purchased or obtained by an individual for and on behalf of an Organization, such individual 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:

**Addendums:** means the Support Level Addendum, the Data Processing Addendum and any other addendum that may be issued by Devolutions from time to time in respect of a Service.

**Affiliates:** 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:** means this Master Online Services Agreement, as same may be amended, modified, restated or supplemented from time to time, together with its schedules, the Addendums, Your Purchase Orders and the Documentation.

**Beta Service:** means a service or functionality that may be made available to You to try at Your option at no additional charge which is clearly designated as beta, pilot, limited release, developer preview, non-production, evaluation, or by a similar description.

**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 from which the Services are accessed or used by a User.

**Customer Portal:** means the online portal allowing a User to log in to his or her Devolutions Cloud account (<https://cloud.devolutions.net/login>) and to access and use the Services.

**Data:** means electronic data and information submitted by or for You to the Services.

**Data Processing Addendum or DPA:** refers to Devolutions' Data Processing Addendum (as amended, replaced or supplemented from time to time) accessible at <https://devolutions.net/legal>, which Addendum forms an integral part of this Agreement as applicable.

**Devolutions ("We", "Us", "Our"):** refers to Devolutions inc.

**Documentation:** means the user manuals, guides, policies and other technical documentation and specifications published or developed by Devolutions in respect of the Services (as amended or updated from time to time) and which are made available on Devolutions' website at <https://helpcloud.devolutions.net>.

**Free Services:** means Services that Devolutions makes available free of charge.

**Feedback:** means any suggestion, recommendation, feedback or idea for modifying or improving the Services which is communicated by You or a User to Us from time to time.

**General Data Protection Regulation or GDPR:** means Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC.

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

**Limited Warranty:** has the meaning given to such term in Section 12(a) of this Agreement.

**Organization:** means, without limitation, any partnership, limited liability company, corporation, association, trust, joint venture, organization (incorporated or not), governmental authority or other legal entity.

**Personal Data:** means any information relating to an identified or identifiable natural person, i.e. a natural person who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to the physical, physiological, genetic, mental, economic, cultural or social identity of that natural person.

**Purchase Order:** means Our generated ordering document or online order approved by You with respect to Your subscription to a Service, including any related invoice or addenda issued by Us, which may detail, among other things, the Services to which You have subscribed, the number of Users authorized to use the Service under Your subscription and Your selected maintenance and support plans.



**Purchased Services:** means the Services in respect of which a subscription fee needs to be paid for their use and access.

**Services:** means the products and services listed in Schedule A attached hereto which are made available online by Us, as further described in the Documentation.

**Support Level Addendum:** refers to Devolutions' Support Level Addendum (as amended, replaced or supplemented from time to time) accessible at <https://devolutions.net/legal>, which Addendum forms an integral part of this Agreement as applicable.

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

**User:** means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or, in the case of an Organization, an individual who is authorized by such Organization to use a Service in accordance with the Agreement and the applicable Purchase Order. Users may include, for example, the Organization's employees, consultants, contractors and agents who have been authorized to use the Services.

**Works and Content:** means collectively the Services, their Updates, the Documentation, all Improvements thereto and all derivative works therefrom (whether originating from or developed by Us, You or a User), and all configurations, features, functionalities, interfaces, content, graphics, button icons, logos, marks, scripts, artworks, pictures, computer codes, designs, applications, data, texts or files integrated into the Services, as well as any presentation, arrangement, coordination, enhancement and selection thereof within the Services.

**You / Your:** means, in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of an Organization, the Organization for which this Agreement is accepted and which has entered into a Purchase Order.

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## **2. Free Trial and Free Services**

- (a) **Free trial.** If You request a free trial of a Service through Our website, We will make one or more Services available to You on a trial basis free of charge until the earlier of (a) the end of the free trial period for which You registered to use the applicable Service(s), or (b) the start date of any Purchased Service subscriptions ordered by You for such Service(s), or (c) termination by Us in our sole discretion. Additional trial terms and conditions may appear on the trial registration web page. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. ANY DATA YOU ENTER INTO THE SERVICES, AND ANY CUSTOMIZATIONS MADE TO THE SERVICES BY OR FOR YOU DURING YOUR FREE TRIAL WILL BE PERMANENTLY LOST UNLESS YOU PURCHASE A SUBSCRIPTION TO THE SAME SERVICES AS THOSE COVERED BY THE TRIAL OR EXPORT SUCH DATA BEFORE THE END OF THE TRIAL PERIOD.
- (b) **Free Services.** We may make Free Services available to You. Use of Free Services is subject to the terms and conditions of this Agreement. Please note that Free Services are provided to You without charge up to certain limits as described in the Documentation. Usage over these limits may require the purchase of other Services.
- (c) **Disclaimers and Exclusion of Liability.** NOTWITHSTANDING SECTIONS 11(c) ("INDEMNIFICATION BY US") AND 12 ("LIMITED WARRANTY"), THE FREE SERVICES AND THE SERVICES USED DURING A TRIAL PERIOD ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY AND DEVOLUTIONS SHALL HAVE NO INDEMNIFICATION OBLIGATIONS WITH RESPECT TO YOUR USE OF SUCH SERVICES, AND YOU AGREE TO WAIVE (AND YOU ARE HEREBY DEEMED TO HAVE WAIVED) THE EXERCISE OF ANY RIGHT, CLAIM, RECOURSE OR REMEDY AGAINST DEVOLUTIONS IN CONNECTION WITH SUCH USE. WITHOUT LIMITING THE FOREGOING, DEVOLUTIONS DOES NOT REPRESENT OR WARRANT TO YOU THAT YOUR



USE OF THE FREE SERVICES OR OF THE SERVICES DURING A FREE TRIAL PERIOD (A) WILL MEET YOUR REQUIREMENTS, AND (B) WILL BE UNINTERRUPTED, TIMELY, SECURE OR FREE FROM ERROR. NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, DEVOLUTIONS SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING OUT OF YOUR USE OF THE FREE SERVICES OR OF SERVICES DURING A FREE TRIAL PERIOD, OR RESULTING FROM A BREACH BY YOU OF THIS AGREEMENT. IN THE EVENT OF A CONFLICT BETWEEN THIS SECTION 2(C) ("DISCLAIMERS AND EXCLUSION OF LIABILITY") AND ANY OTHER PROVISION OF THIS AGREEMENT, THIS SECTION SHALL CONTROL.

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**3. Provision of Services**

- (a) Right to Use Services. During Your subscription term, as applicable, and subject to compliance by You and Users with this Agreement, You have the limited, non-exclusive and revocable right to access and use the Services for Your internal purposes. Unless expressly agreed otherwise, Your subscription to a Service does not allow the use of the Service by Your Affiliates.
- (b) General Obligations. We will (a) make the Services available to You and Users in accordance with this Agreement, the Documentation and any applicable Purchase Order, (b) provide applicable standard support for the Services at no additional charge, and/or upgraded support if purchased, as further detailed in the Support Level Addendum, (c) use commercially reasonable efforts to make the Services available 24 hours a day, 7 days a week, except for: (i) planned downtime (of which We shall give advance electronic notice), and (ii) any unavailability caused by a force majeure event or unforeseeable circumstances beyond Our reasonable control.
- (c) Protection of Your Data. We will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, as described in the Documentation and in the Data Processing Addendum. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification or disclosure of Your Data by Our personnel except (a) to provide the Services and prevent or address service or technical problems, (b) as compelled by law in accordance with Section 8(c) ("Compelled Disclosure") below, or (c) as You expressly permit in writing. We never sell, rent, or lease Your Data to any third party and We do not share Your Data with any third party (unless required to provide You the Services). To the extent that We process on Your behalf any Personal Data contained in Your Data, or that you submit any such Personal Data to the Services, the terms of the DPA, which are hereby incorporated by reference, shall apply and the parties agree to comply with such terms. For the purposes of the Standard Contractual Clauses attached to the DPA, when and as applicable, You are the data exporter and Your signing of this Agreement shall be treated as signing of the Standard Contractual Clauses and their Appendices. Without limiting the foregoing, You agree that Devolutions and the third-party service providers that are utilized by Devolutions to assist in providing the support services to You shall have the right to access Your account or the account of Your end users and to use, modify, reproduce, distribute, display and disclose Your Data to the extent necessary to provide or improve the Services, including, without limitation, in response to Your support requests, in conformity with the provisions of the DPA.
- (d) Our Personnel. We will be responsible for the performance of Our personnel (including Our employees and contractors) and their compliance with Our obligations under this Agreement, except as otherwise specified herein.
- (e) Beta Service. From time to time, We may make Beta Services available at no charge, which You may choose to try in Your sole discretion. Beta Services are intended for evaluation purposes only, are not supported under our support plans, and may be subject to additional terms. Beta Services are not considered "Services" under this Agreement, but remain subject to the same restrictions and obligations as those applicable to the Services as provided in the Agreement. The Beta Services may contain unknown or unpredictable errors and defects which may impair the ability to use them or some of their features until such error or defect is corrected. We do not guarantee that an error or a defect identified or reported in the Beta Services will be corrected within a specific time or at all. You agree to waive (and You are hereby deemed to have waived) the exercise of any right, claim,



recourse or remedy against Us in connection with the use of the Beta Services. We may discontinue Beta Services at any time in Our sole discretion and may never make them generally available.

- (f) Software Requirements. The use of certain Services may require the installation of one of Our software on Your Computers. Therefore, in addition to the payment of Your subscription fee for the use of a Service, You may also be required to purchase a software license or subscription in order to be able to use the Service. Please refer to the Documentation for further details and software requirements. To the extent applicable, You will be required to enter into separate end-user license agreements in connection with Your purchase, installation and use of such software, and nothing in this Agreement should be construed to alter or modify these other agreements.

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#### **4. Your Use of the Services**

- (a) Subscriptions. Unless otherwise provided in the applicable Purchase Order or Documentation, (a) Purchased Services are purchased on a subscription basis, (b) subscriptions may be added or upgraded during a subscription term at the prices then applicable, prorated to the remaining term of Your subscription, and (c) any added subscriptions will terminate on the same date as the underlying subscriptions. You acknowledge that We may modify the features and functionality of a Service during your subscription term, provided that such modification does not materially affect Your capacity to use such Service.
- (b) Limitations. Services may be subject to certain limitations based on the type of subscription purchased as indicated on the Purchase Order or the Documentation, including, for example, limitations as to the number of authorized Users, entries or data sources. Unless otherwise specified, (a) the Services may not be accessed by a number of Users in excess of the authorized limits, (b) a User's password may not be shared with any other individual, and (c) a User identification may only be reassigned to a new individual replacing one who will no longer use the Services. If You exceed a contractual usage limit, You will be requested to reduce Your usage so that it conforms to that limit or, alternatively, to modify Your subscription accordingly and pay the additional subscription fees as applicable.
- (c) Your Responsibilities. You will (a) be responsible for Users' compliance with this Agreement, Documentation and applicable Addendums, (b) be responsible for the legality of Your Data, the means by which You acquired Your Data and Your use of Your Data with our Services, (c) use commercially reasonable efforts to maintain the security and confidentiality of Your accounts with Us and to prevent unauthorized access to or use of Services, and notify Us promptly of any such unauthorized access or use, (d) use Services only in accordance with this Agreement, Documentation, Purchase Orders, applicable Addendums and applicable laws and government regulations, and (e) comply with terms and conditions of any third-party applications with which You use the Services.
- (d) Usage Restrictions. Your right to use the Services are subject to the restrictions set forth below. You will not (and will not permit any User or third party to):
  - (i) make any Service available to anyone other than Users, permit direct or indirect access to or use of any Service in a way that circumvents a contractual usage limit, or use any Service for the benefit of anyone other than You;
  - (ii) sell, resell, license, assign, share, sublicense, distribute, make available, rent or lease any Service, or otherwise exploit a Service for commercial purposes, except as authorized by Us;
  - (iii) use a Service to store or transmit infringing, libelous, or otherwise unlawful or tortious data, or to store or transmit data in violation of third-party privacy rights or in violation of applicable laws;



- (iv) reverse engineer, disassemble, compile or decompile a Service, or otherwise attempt to derive, reconstruct or discover the source code, algorithms, file formats, programming or interfaces of the Services, by any means whatsoever;
  - (v) use or access a Service to develop or build competitive products or services;
  - (vi) use a Service in a way that interferes with or disrupts the integrity or performance of any Service or its related systems or networks, or in a way that impedes the use of the Services by a third-party or the access to its data, including by means of storage or transmission of malicious codes, files, scripts, agents or programs intended to do harm, including, for example, viruses, worms, time bombs and Trojan horses;
  - (vii) attempt to gain unauthorized access to any Service or any related systems or networks; or
  - (viii) modify, copy, translate, alter, improve or create derivative works based on a Service or any part, feature, function or user interface thereof.
- (e) Devolutions® Cloud Account. Each User will be required to create a Devolutions® Cloud account to be able to access the Customer Portal and use the Services. The information provided by Users to create their account must be complete and accurate and must be updated in a timely manner. You will be solely responsible, and Devolutions will not be liable, for any loss, damage or additional cost incurred as a result of the submission of any false, incorrect or incomplete Users' information or the failure to update such information when required. Users are solely responsible for the activity that occurs on their account and to keep their account username and password secure and confidential. You agree to notify Devolutions immediately of any breach or suspected breach of security or of any unauthorized use of a User account or password. Devolutions® Cloud accounts may be cancelled or suspended at any time without any notice or liability in case of any default by You or a User to comply with the terms of this Section. Devolutions may, at its sole discretion and at any time, require proof of the identity of any person using a specific User account and has the right to deny such use or access in case of any reasonable doubt or for any security concern.
- (f) Our Website's Terms of Use and Privacy Policy. Users will be required to access Our website in order to log in to their Devolutions® Cloud account and to use the Services through their Customer Portal. The Customer Portal also allows Users to access our online forums and to interact under their account username. The rights, obligations and general behavior of each User while being on Our website, logging into their Devolutions® Cloud account or using Our online forums are governed by the Terms of Use and the Privacy Policy displayed on Our website (as amended from time to time), which are incorporated herein by this reference, as applicable. By agreeing to the terms of this Agreement, You therefore agree to also comply (and ensure that Users comply) with those Terms of Use and you consent to the collection, use and processing of Your Personal Data (and Users' Personal Data) in accordance with Our Privacy Policy.
- (g) Suspension or Termination of Services. Any use of the Services in breach of this Agreement or the Documentation by You or Users or that otherwise threatens the security, integrity or availability of Our Services, networks or systems, may result in Our immediate suspension or termination of the Services; however We will use commercially reasonable efforts to provide You with an advance notice and to give You the opportunity to correct the situation prior to such suspension or termination.

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## 5. Payment

- (a) Subscription Fees. Access to Purchased Services is subject to the payment of all fees specified on the Purchase Orders. Except as otherwise specified herein or in a Purchase Order, (i) fees are based on Services subscriptions purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities, maintenance plans and support plans purchased cannot be decreased or downgraded during the relevant subscription term. You agree that Your purchases are not contingent on the



delivery of any future functionality or features, or dependent on any oral or written public comments made by Us regarding future functionality or features of the Services.

- (b) Invoicing and Payment. We will issue a Purchase Order in connection with your subscription to a Purchased Service. Payment of subscription fees shall be made in advance for the whole subscription period. If You pay with a credit card through our website, You authorize Our third-party processor to charge the amount specified on Your Purchase Order on such credit card. Unless otherwise stated on Your Purchase Order, payment of fees is due net 30 days from the invoice date. You are responsible for providing complete and accurate billing and contact information to Us and notifying Us of any changes to such information.
- (c) Suspension of Purchased Service. If any amount owing by You is 30 or more days overdue, We may, without limiting Our other rights and remedies, suspend Our Services to You until such amounts are paid in full, unless You are disputing the applicable fees reasonably and in good faith and are cooperating diligently to resolve the dispute. We will give You at least 10 days' prior notice that Your account is overdue before suspending Services to You.
- (d) Taxes. Our fees as displayed do not include any taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever. Applicable taxes will be added to Your subscription fees and You remain responsible to pay them as indicated on Your Purchase Order.

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## **6. Updates and Customer Support**

- (a) Updates. Updates to Purchased Services are available without additional fees during Your subscription term, whereas Updates to Free Services are available at any time at no cost.
- (b) Customer Support. The applicable level of support will vary depending on the customer support plan selected or purchased with the Services. To the extent You subscribed to a Purchased Service, no customer support will be offered to You or the Users after the expiration of your subscription term. Please refer to the terms of the Support Level Addendum for further details, which terms shall be deemed to form an integral part of this Agreement.

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## **7. Proprietary Rights and Licenses**

- (a) Reservation of Rights. Subject to the limited rights expressly granted hereunder, We reserve all of Our/their right, title and interest in and to the Works and Content, including all of Our/their related intellectual property rights. No rights are granted to You or to any User hereunder other than the non-exclusive, limited and revocable right to use the Services as expressly set forth herein. You agree that the Works and Content are protected by copyright, trademark, patent and other intellectual property laws and that any misappropriation or violation thereof by You or any User will entitle Us to claim damages and be indemnified by You pursuant to those laws.
- (b) Feedbacks. You grant Us a perpetual, irrevocable, worldwide, royalty-free, sublicensable and transferable license to use and exploit in any and every way any Feedback communicated to Us, without compensation, any reporting obligation or any other restriction. To the greatest extent permitted by applicable law, You hereby forever waive and agree never to assert any and all moral rights that You may have in or with respect to any Feedback, as the case may be. To the extent We use a Feedback to create or develop an Improvement, any such Improvement (including all intellectual property rights therein) shall be Our sole and exclusive property.

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## 8. Confidentiality

- (a) Definition of Confidential Information. "Confidential Information" means all information disclosed by a party ("Disclosing Party") to the other party ("Receiving Party"), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.
- (b) Confidentiality Obligations. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) to (i) not use any Confidential Information of the Disclosing Party for any purpose other than as contemplated in this Agreement or the performance of Receiving Party's obligations hereunder and (ii) limit access to Confidential Information of the Disclosing Party to those of its employees who need such access for purposes consistent with this Agreement and who are bound to confidentiality obligations with the Receiving Party at least as protective as the confidentiality obligations provided herein. Notwithstanding the foregoing, We may disclose the terms of any applicable Purchase Order to a subcontractor to the extent necessary to perform Our obligations to You under this Agreement, under terms of confidentiality materially as protective as set forth herein.
- (c) Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law or a judicial order to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. In the event of any conflict or inconsistency between the provisions of this Section 8(c) and the provisions of the Data Processing Addendum, the provisions of the Data Processing Addendum shall prevail in respect of any Personal Data included in the Confidential Information to be disclosed.

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## 9. Verification

Upon Our written request, You will confirm to Us in writing that the Services are being used in conformity with this Agreement and provide reasonable cooperation, information and documents in support of Your confirmation. You agree that We may at Our expense, during regular business hours and upon a prior notice of at least 72 hours, audit Your use of the Services but without unreasonably interfering with Your activities or operations. Should We discover unauthorized use or exploitation of the Services, You agree to pay the reasonable costs incurred by Us for conducting the audit to the extent the value of the subscription fees that would have applied to such unauthorized uses exceeds 10% of the subscription fees actually paid by You for the then-current subscription period, in addition to such other rights and remedies that We may have. Without limiting the foregoing, You agree to pay: (i) the subscription fees (including applicable 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 beginning of the then-current subscription term); and (ii) interest at the rate of 1% per month (12% annually), compounded on a monthly basis from the date any such payment would have been due until the date it is completely and irrevocably paid.

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## 10. Authorization

You hereby consent and authorize Us to display and reproduce on Our website Your tradename, trademark and/or logo for the sole purpose of disclosing the fact that You are using Our Services. You also expressly authorize Us to use Your logo displayed on Our website as an external link to Your website. These authorizations granted to Us may be cancelled and revoked by You at any time by sending Us an email request at [infos@devolutions.net](mailto:infos@devolutions.net). We will make all





reasonable efforts to remove Your tradename, trademark and/or logo and any external link to Your website within a reasonable time following the receipt of Your withdrawal request.

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## 11. Representations and Indemnification

- (a) Mutual Representations. Each party represents and warrants that it has the power, capacity and authority to enter into this Agreement and to perform its obligations hereunder and that it has validly entered into this Agreement.
- (b) Specific Representation. You covenant and warrant that You (and Your Users) will use the Services in compliance with all applicable laws and regulations, including but not limited to laws relating to privacy and the protection of Personal Data.
- (c) Indemnification by Us. Subject to the limitations of liability provided in Section 13 (“Limitations of Liability”), We will indemnify You from any damages, attorney fees and costs finally awarded against You by a court of competent jurisdiction as a result of, or for amounts paid by You under a settlement approved by Us in writing of, a claim, demand, suit or proceeding made or brought against You by a third party alleging that any Purchased Service infringes or misappropriates such third party’s intellectual property rights (a “**Claim Against You**”), provided You (a) promptly give Us written notice of the Claim Against You, (b) give Us sole control of the defence and settlement of the Claim Against You (except that We may not settle any Claim Against You unless it unconditionally releases You of all liability), and (c) give Us all reasonable assistance, at Our expense. If We receive information about an infringement or misappropriation third-party claim related to a Service, We may in Our discretion and at no cost to You (i) modify the Services so that they are no longer claimed to infringe or misappropriate, without breaching Our Limited Warranty, (ii) obtain a license for Your continued use of that Service in accordance with this Agreement, or (iii) terminate Your subscriptions for that Service and refund You any prepaid fees covering the remainder of the term of the terminated subscriptions. The above indemnification obligations do not apply if (1) the allegation does not state with specificity that our Services are the basis of the Claim Against You; (2) a Claim Against You arises from the use or combination of our Services with software, hardware, data, or processes not provided by Us, if our Services or use thereof would not infringe without such combination; (3) a Claim Against You arises from a Free Service or Services under a Purchase Order for which there is no charge; or (4) a Claim Against You arises from Your use of the Services in violation of this Agreement, the Documentation, applicable Addendums or applicable laws.
- (d) Indemnification by You. Subject to the limitation of liability provided in Section 13(b) (“Exclusion of Indirect and Consequential Damages”), You will defend Us and Our officers, directors, shareholders, employees, agents, representatives and Affiliates against any claim, demand, suit or proceeding made or brought against Us by a third party (a) alleging that any of Your Data or Your use of the Services infringes or misappropriates such third party’s rights (including such party’s intellectual property rights), or (b) otherwise arising from Your use of the Services in an unlawful manner or in violation of the Agreement, the applicable Addendums or the Documentation (each a “**Claim Against Us**”). Without limiting the foregoing, You will indemnify Us and Our officers, directors, shareholders, employees, agents, representatives and Affiliates from any damages, losses, expenses, liabilities, costs (including, without limitation, legal costs and reasonable attorneys’ fees) (i) finally awarded against Us by a court of competent jurisdiction as a result of, or for any amounts paid by Us under a settlement approved by You in writing of, a Claim Against Us (provided We (1) promptly give You written notice of the Claim Against Us, (2) give You sole control of the defense and settlement of the Claim Against Us (except that You may not settle any Claim Against Us unless it unconditionally releases Us of all liability), and (3) give You all reasonable assistance, at Your expense), or (ii) arising out of or related to Your breach of any representations, warranties or other obligations set forth in this Agreement.

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## 12. Limited Warranty

- (a) Limited Warranty. We warrant that during Your subscription term (a) the Purchased Services to which You will have subscribed will perform materially in accordance with the specifications, features and operations described in the applicable Documentation, (b) this Agreement and the Documentation will accurately describe the applicable administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Your Data, and (c) We will not decrease the overall security of the Services (collectively the "**Limited Warranty**").
- (b) Exclusions. The Limited Warranty shall not apply (and You hereby waive any related right or claim against Us) if the warranty default occurs by reason or in the course of any of the following situations: (i) Computers deficiencies; (ii) malfunctions, defects, or failures resulting from misuse, abuse, accident, neglect, improper installation, operation or maintenance, theft, vandalism, acts of God, acts of terrorism, power failures or surges, battery failures, internet or wi-fi failures or insufficient internet or wi-fi network; (iii) any acts or omissions by You, Users or third parties, including hacking or other wrongful, malicious or illegal acts, or any other causes beyond Our reasonable control; (iv) any defect not made known to Us within Your Limited Warranty period; (v) malfunction caused by defective hardware or other software components installed on Your Computers or resulting from Your failure to use up-to-date virus detection and prevention tools; (vi) the Services are not used in accordance with the Documentation, this Agreement or any written recommendation or instruction issued by Us; or (vii) any use of the Services with incompatible or non-supported technologies, hardware or software. Minor discrepancies in the Documentation shall not be treated as errors in the Services.
- (c) Remedies. Our sole liability and Your sole and exclusive remedies for a breach of the Limited Warranty shall be, at Our exclusive option, to either (i) use reasonable commercial efforts to make such corrections, additions, modifications or adjustments to the Services as may be necessary to ensure that they will perform in accordance with the specifications, features and operations described in the Documentation; or (ii) terminate this Agreement and refund the subscription fees paid by You for the defective Service on a pro rata basis, based on the date on which You reported the warranty breach to Us.
- (d) Disclaimers. EXCEPT FOR THE EXPRESS LIMITED WARRANTY SPECIFIED ABOVE AND ANY OTHER EXPRESSED WARRANTY SET FORTH IN AN ADDENDUM, THE SERVICES ARE PROVIDED "AS IS" AND DEVOLUTIONS EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED (WHETHER ARISING BY STATUTE, COMMON LAW, CUSTOM, USAGE OR OTHERWISE) AS TO ANY MATTER, INCLUDING, WITHOUT LIMITATION, WARRANTY OF TITLE OR NONINFRINGEMENT OF THIRD PARTY RIGHTS (INCLUDING INTELLECTUAL PROPERTY RIGHTS), IMPLIED WARRANTY OF MERCHANTABILITY, SATISFACTORY QUALITY, INTEGRATION, OR FITNESS FOR A PARTICULAR PURPOSE, IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. YOU ASSUME THE ENTIRE RISK AND RESPONSIBILITY AS TO PERFORMANCE AND FOR SELECTING THE SERVICES TO ACHIEVE YOUR INTENDED RESULTS AND OBJECTIVES (INCLUDING ANTICIPATED REVENUES OR PROFITS DERIVED FROM THE USE OF THE SERVICES), WHETHER OR NOT DISCLOSED TO DEVOLUTIONS. DEVOLUTIONS MAKES NO REPRESENTATION AND GIVES NO WARRANTY THAT THE SERVICES WILL BE ERROR-FREE, VIRUS-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES.

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## 13. Limitations of Liability

- (A) Limitation of Liability. IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DEVOLUTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OF THE SERVICES EXCEED YOUR SUBSCRIPTION FEES PAID FOR THE SUBSCRIPTION PERIOD DURING WHICH THE EVENT LEADING TO SUCH LIABILITY OCCURRED. YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL PURPOSE OF THIS SECTION 13(a) IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE SUBSCRIPTION FEES, WHICH WOULD HAVE BEEN



SUBSTANTIALLY HIGHER IF WE WERE TO ASSUME ANY FURTHER LIABILITY OTHER THAN AS SET FORTH HEREIN. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT, TORT OR BREACH OF STATUTORY DUTY, BUT WILL NOT LIMIT YOUR PAYMENT OBLIGATIONS PURSUANT TO THIS AGREEMENT. IN THE EVENT THAT ANY DISCLAIMER, EXCLUSION OR LIMITATION IN THIS AGREEMENT CANNOT BE EXCLUDED OR LIMITED ACCORDING TO APPLICABLE LAW, THEN ONLY SUCH DISCLAIMER, EXCLUSION OR LIMITATION SHALL NOT APPLY AND ALL THE REMAINING DISCLAIMERS, EXCLUSIONS AND LIMITATIONS PROVIDED HEREIN SHALL REMAIN VALID AND ENFORCEABLE. WITHOUT LIMITING THE FOREGOING, DEVOLUTIONS SHALL NOT BE LIABLE IN RESPECT OF ANY DAMAGE CAUSED BY YOUR FAILURE TO PERFORM REGULAR BACKUPS OF YOUR DATA, TO TEST SUCH BACKUPS ON A REGULAR BASIS AND TO IMPLEMENT EFFICIENT SECURITY PRACTICES AND PROCEDURES FOR YOUR COMPUTERS.

- (b) Exclusion of Indirect and Consequential Damages. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL A PARTY BE LIABLE TO THE OTHER PARTY FOR (i) ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE OR SPECIAL DAMAGES, (ii) DAMAGES FOR OR RELATED TO BUSINESS INTERRUPTION OR LOSS OF INCOME, GOODWILL OR PROFITS, (iii) DAMAGES RELATED TO PRIVACY OR SECURITY BREACHES OR LOSS OR CORRUTION OF DATA, FILES OR COMPUTER PROGRAMS, WHETHER ARISING OUT, IN EACH CASE, OF THE USE OF OR THE INABILITY TO USE THE SERVICES, THE PROVISION OF OR THE FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, OR ANY BREACH OF CONTRACT, ANY TORT, OR ANY BREACH OF STATUTORY DUTY, EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

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#### 14. Term and Termination

- (a) Term of the Agreement. This Agreement commences on the date You first accept its terms or that You start using a Service, as applicable, and continues until You cease to use the Services or until the expiration or termination of Your subscription, as applicable.
- (b) Term of Purchased Subscriptions. The term of each subscription shall be as specified in the applicable Purchase Order. Subscription terms will not automatically renew. You may renew Your subscription prior to its expiration by paying applicable renewal fees, which may differ from the fees that You paid for Your previous subscription term.
- (c) Termination of a Free Service. You agree that Devolutions, in its sole discretion and for any or no reason, may terminate Your access to a Free Service without prior notice or any liability. You will be solely responsible for retrieving and exporting Your Data from such Services within the reasonable time period that will be allocated to You for such purpose.
- (d) Termination of Agreement. A party may terminate this Agreement for cause (i) upon 30 days written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party ceases its operations or becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.
- (e) Refund or Payment upon Termination. If this Agreement is terminated by You in accordance with Section 14(d) ("Termination of Agreement"), We will refund You any prepaid fees covering the remainder of Your subscription term. If this Agreement is terminated by Us in accordance with the same Section 14(d), You will pay any unpaid fees covering the remainder of Your subscription term (as applicable) and fees already paid will not be refundable.
- (f) Data Portability and Deletion. Within 60 days after the effective date of termination or expiration of this Agreement, You will be able to access, export, download and delete Your Data, but You will no longer have the ability to add or upload new Data to the Services or to modify Your Data. After such 60-day period, We will have



no obligation to maintain or provide any of Your Data and We will delete or destroy all copies of Your Data in Our systems or otherwise in Our possession or control, unless legally prohibited.

- (g) Surviving Provisions. Notwithstanding anything to the contrary herein, Section 2(c) (“Disclaimers and Exclusion of Liability”), Section 5(a) (“Payment of Fees”), Section 7 (“Proprietary Rights and Licenses”), Section 8 (“Confidentiality”), Section 11 (“Representations and Indemnification”), Section 12 (“Limited Warranty”), Section 13 (“Limitations of Liability”), Section 14(e) (“Refund or Payment upon Termination”), Section 14(f) (“Data Portability and Deletion”), Section 14(g) (“Surviving Provision”) and Section 15 (“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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**15. General Provisions**

- (a) Notices. Except as otherwise specified in this Agreement, all notices related to this Agreement will be in writing and will be effective upon (a) personal delivery, (b) the second business day after sending by first class mail or courier, or (c) the day of sending by email.
- (b) Amendments to the Agreement. Devolutions reserves the right to amend or update the Agreement from time to time and to publish any updated version on its website. To the extent We consider, in Our sole discretion, that a modification is material as regards your rights and obligations, We may notify You directly or post a notice on Our website informing that the Agreement has been modified. If You do not agree to the revised terms of the Agreement, You may terminate Your subscription within 30 days of receiving the amendment notice, failing which You will be deemed to have agreed to such amendments. The Agreement may not be amended in any other way except through a written agreement executed by authorized representatives of each party.
- (c) Entire Agreement and Order of Precedence. This Agreement (together with its schedules, the Addendums, Your Purchase Orders and the Documentation) constitutes the entire agreement between You and Us regarding Your use of Services and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. You agree that any other terms or conditions stated in documents submitted by You when ordering or purchasing the Services will not apply and are null and void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the Purchase Order, (2) the Agreement (with the Addendums) and (3) the Documentation.
- (d) Assignment. You may not assign, transfer or sublicense any of Your rights or obligations hereunder, whether by contract, operation of law or otherwise, without Our prior written consent. Notwithstanding the foregoing, You may transfer your rights and obligations hereunder without Our prior written consent in the context of a transfer of all or substantially all of Your business and assets, subject to the following conditions: (i) the transfer must be made in favor of the transferee of Your business and assets; and (ii) the transferee must agree in writing to be bound by the terms of this Agreement prior to such transfer. We have the right to assign at any time Our rights and obligations hereunder (subject to providing a notice to You) and to perform all or any part of Our obligations hereunder through third party subcontractors or sub-processors (subject to the terms of the DPA). Subject to the foregoing, this Agreement will enure to the benefit of and be binding upon each of the parties and their respective successors and permitted assigns.
- (e) Export Administration. The Services 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 Services are 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 or use the Services in a country subject to an embargo from Canada, the United States or Your originating country.



- (f) 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.
- (g) 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.
- (h) 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.
- (i) 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.
- (j) Dispute Resolution – MANDATORY ARBITRATION CLAUSE. In the event We have 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.
- (k) 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.
- (l) 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*. In case of a disparity, incoherence or incompatibility between the provisions of the English language version of this Agreement and its version in any other languages, the provisions of the English language version shall prevail.

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## SCHEDULE A

### Services

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The following Services are subject to the terms of this Agreement:

#### Free Services

- Devolutions® Customer Portal
- Devolutions® Custom Installer
- Devolutions® Online Drive
- Devolutions® Online Backup

#### Purchased Services

- Devolutions® Online Database – Basic Edition
- Devolutions® Online Database – Professional Edition
- Devolutions® Online Database – Enterprise Edition
- Devolutions® Password Hub
- Wayk® Den

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