



DEVOLUTIONS RESELLER AGREEMENT

This Devolutions Reseller Agreement, together with the Reseller Guide and the terms, conditions and documents incorporated by reference herein (together, the “**Agreement**”) form a legally binding contract between you (“**Reseller**”) and Devolutions inc. (“**Devolutions**”) in relation to the resale and distribution of Software Product Licenses (as defined below) (together and as further defined below, the “**Software Products**”). In order to resell Software Product Licenses under the Reseller Program (as defined below), you must first agree to the terms and conditions of the Agreement.

This Reseller Agreement does not have to be signed in order to be binding. Reseller indicates its assent to the terms of the Agreement by clicking on the “I Agree” (or similar button) that is presented when enrolling in the Reseller Program.

1. Definitions

In this Agreement, the following terms and expressions shall have the following meanings:

Breach: has the meaning ascribed to it in Section 7.4.3.

Change in Control: means, in relation to a party: (i) the occurrence of a material change in control of that party having regard to any matter which relates to control of a corporation, including legal or beneficial ownership of shares, voting rights, and rights to appoint directors; or (ii) the disposal by such party of all or substantially all of its assets.

Confidential Information: has the meaning ascribed to it in Section 10.1.

Devolutions Support Program: means Devolutions’ standard maintenance and support programs for Software Products as described in the Devolutions Service Level Addendum, the terms of which are available at <https://devolutions.net/legal>.

Devolutions’ Trademarks: has the meaning ascribed to it in Section 8.1.

Documentation: means the user manuals, guides, policies and other technical documentation and specifications published or developed by Devolutions in respect of the Software Products (including any amendments, addendums or supplements thereto and any new versions thereof) and which are made available on Devolutions’ website.

Effective Date: means the date on which Reseller agrees to the terms of the Agreement.

Eligibility Criteria: means the eligibility criteria and requirements that Devolutions may impose from time to time for being appointed as a reseller under the Reseller Program, as set forth in the Reseller Guide.

End User: means a licensee of Software Products who acquires a Software Product License for its own use rather than distribution and excludes, for greater clarity, distributors, resellers, third party vendors, systems integrators, or other parties who have licensed the Software Products from Devolutions for distribution or resale.

EULA: means Devolutions’ then current Software Product End User license agreements for the relevant Software Products, that are included with each Software Product generally in electronic form as part of a product installer, and which may be accessed and downloaded at <https://devolutions.net/legal>.

Intellectual Property: means all intellectual property rights of whatever nature anywhere in the world, including all rights conferred under statute, common law or equity, including trade mark rights, service mark rights, patents rights, copyrights, design rights and trade secrets, any rights to apply for registration (to the extent registrable) of any of the foregoing rights.



Loss: means, in relation to any person, any damage, loss, cost, expense or liability incurred by the person or a claim, action, proceeding or demand made against the person, however arising and whether present or future, fixed or unascertained, actual, threatened or contingent.

Membership Level: means the membership level under which Reseller is classified within the Reseller Program, as further described in the Reseller Guide.

New Licensing Programs: has the meaning ascribed to it in Section 4.2.

New Licensing Program Terms: has the meaning ascribed to it in Section 4.2.

Notice: has the meaning ascribed to it in Section 15.1.

Personal Information: 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.

Reseller Guide: means Devolutions' program guide for resellers issued under the Reseller Program, as same may be amended from time to time, and which is hereby incorporated by reference into this Agreement.

Reseller Program: means the program under which Reseller is authorized to resell Software Products Licenses, as more particularly described in the Reseller Guide, and includes, for greater clarity, New Licensing Programs.

Reseller Program Benefits: means the benefits provided by Devolutions to Reseller under the Reseller Program (based on its Membership Level), subject to Reseller fulfilling the Eligibility Criteria and complying with the terms and conditions of this Agreement and of the Reseller Program.

Software Products: means Devolutions' software, products and services displayed and described on Devolutions' website (<https://devolutions.net>).

Software Product License: means a license, subscription or right granted to an End User by Devolutions to install, access and/or use a Software Product in accordance with a EULA.

Term: has the meaning ascribed to it in Section 14.1.

Trademark Usage Guidelines: has the meaning ascribed to it in Section 8.2.

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

Works and Content: means collectively the Software Products, their Updates, the Documentation, all improvements thereto and all derivative works therefrom, 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 Software Products, as well as any presentation, arrangement, coordination, enhancement and selection thereof within the Software Products.

2. General Conditions

2.1 Conditions for Appointment as Reseller

Reseller represents and warrants to Devolutions that it meets and will continue to meet the Eligibility Criteria during its participation to the Reseller Program. Reseller acknowledges and agrees that the Reseller Program Benefits are being



made available to Reseller subject to Reseller continuously meeting and fulfilling the Eligibility Criteria and in consideration of Reseller complying with the terms and conditions of this Agreement.

2.2 Removal from Reseller Program

In the event or at any time that (a) Reseller does not meet the Eligibility Criteria or fails to perform any other obligations set forth in this Agreement, or (b) Devolutions reasonably determines that Reseller does not qualify for its then Membership Level under the Reseller Program or qualifies for a different Membership Level, Devolutions shall be entitled, at its option, to (i) remove, suspend, withhold or refuse payment of any Reseller Program Benefit; (ii) change Reseller's Membership Level (if applicable) by written notification pursuant to Section 13 (Modifications by Devolutions); or (iii) terminate this Agreement pursuant to Section 14.3 (Termination with Cause), without prejudice to all its other rights and remedies.

3. License to Reseller

3.1 Grant of License

Subject to the terms and conditions set forth herein, Devolutions hereby grants Reseller, and Reseller hereby accepts, a non-exclusive, non-transferable and non-sublicensable license to resell Software Product Licenses to End Users under the Reseller Program. Reseller shall advise End Users to whom Reseller resells Software Product Licenses that Reseller has a license to supply and sell Software Product Licenses and that the Software Products have not been sold.

3.2 Reserved Rights

Devolutions reserves the right to: (a) sell Software Product Licenses directly to End Users, via Internet distribution or otherwise, and to generally disclose or publish on its website or other marketing documentation suggested prices for Software Product Licenses; (b) license other distributors and resellers to distribute and resell Software Product Licenses; (c) communicate with End Users by any means, including to provide technical support or to renew Software Product Licenses; and (d) enter into arrangements or agreements with third parties (including End Users and other resellers and distributors) in connection with the foregoing.

3.3 Changes to Software Products

Devolutions reserves the right, in its sole discretion, to update, improve, replace, discontinue, modify or alter the Software Products or any feature thereof from time to time, or to remove any Software Product from the Reseller Program.

4. Reseller Program

4.1 Reserved Rights

Devolutions reserves the right at any time to (a) update, revise or modify the Reseller Program, the Reseller Guide and the Reseller Program Benefits, or (b) withdraw or cancel the Reseller Program or any Reseller Program Benefits, by giving written notice to Reseller.

4.2 New Licensing Programs

From time to time, Devolutions may make available Software Products to Reseller under new or modified licensing programs, arrangements or schemes (together, the "**New Licensing Programs**"), in respect of which additional or different terms and conditions may apply ("**New Licensing Program Terms**"). Devolutions will notify Reseller of the New Licensing Programs and the New Licensing Program Terms, which terms are hereby incorporated into this Agreement by reference. Reseller's placement of orders with Devolutions under New Licensing Programs shall be deemed Reseller's unequivocal acceptance of the New Licensing Program Terms. Reseller acknowledges and accepts



that, save as expressly modified by the New Licensing Program Terms, the terms and conditions of this Agreement shall continue to apply to Reseller's resale of Software Product Licenses under the New Licensing Programs. Devolutions, in its sole discretion, may also require Reseller to acknowledge in writing Reseller's acceptance of the New Licensing Program Terms.

5. License Restrictions

Reseller's appointment under this Agreement is subject to the following restrictions:

5.1 General Restrictions

Reseller:

- i) may only acquire and resell Software Product Licenses under the Reseller Program, and shall not acquire Software Product Licenses directly or indirectly from anyone other than Devolutions;
- ii) shall not supply Software Products Licenses to other Devolutions resellers or to any unauthorized End Users (as indicated in this Agreement or in writing by Devolutions). It is the responsibility of Reseller to verify the status of any particular End User or reseller wishing to purchase Software Products Licenses;
- iii) shall not resell the Software Product Licenses by rental, lease or other sharing schemes;
- iv) shall ensure that the Software Products are not used or intended to be used for any purposes prohibited by U.S. and Canadian export laws, including, without limitation, nuclear, chemical, or biological weapons proliferation.

5.2 Application of EULA

Reseller acknowledges and accepts that each Software Product is to be licensed to End Users in accordance with the terms and conditions of the EULA applicable to such Software Product, at the exclusion of any other terms. The terms of the EULA are not negotiable and shall not be amended, modified or supplemented by Reseller for any End User. Reseller is responsible for ensuring that each End User enters into the EULA in a manner that is legally binding upon the End User. This may require Reseller to (a) notify each End User that Software Products are subject to the applicable EULA and that by placing an order with Reseller the End User agrees to the terms of the EULA, (b) include either a copy of or link to the EULA in each quotation and order form issued to the End User, and/or (c) obtain from each End User written confirmation of acceptance of the EULA. Reseller must provide evidence of such acceptance by the End User to Devolutions upon request.

5.3 No Alteration

Reseller shall not alter or remove any of Devolutions' trademarks or copyright notices or other designations that appear or may appear in or on the Software Products and related Documentation.

5.4 Restrictions on Decompiling, etc.

Reseller agrees that it will not reverse engineer, disassemble, compile or decompile the object code of the Software Products, or otherwise attempt to derive, reconstruct or discover the source code of the Software Products or any underlying algorithms, file formats, programming or interfaces of the Software Products, by any means whatsoever.

5.5 Unauthorized Uses

Reseller may not use a Software Product License for its own internal business use except pursuant to a separate EULA for such purpose, and shall not use the Software Products for the purpose of developing commercially competitive products or services.



5.6 No Assignment

Reseller hereby agrees that it will not, directly or indirectly, assign or subcontract its rights or obligations hereunder, or authorize or grant to any third party the right to resell, distribute or license the Software Products without the prior written consent of an authorized representative of Devolutions.

6. Quotations and Orders

6.1 Quotation Requests

Reseller shall send quotation requests to Devolutions' Inside Sales Team (sales@devolutions.net) or through Devolutions' Reseller Portal (<https://store.devolutions.net/store/reseller>). All quotation requests must include information regarding the applicable Software Products, the number and type of Software Product Licenses, the End User for whom the quotation is requested (name and contact information), and any other information that Devolutions may request to issue the quotation. All quotations are denominated in US Dollars. Devolutions will use commercially reasonable efforts to respond to Reseller's quotation requests within a reasonable time but will not be liable to Reseller or any third party for any delay or failure to issue a quotation within a specific time.

6.2 Reseller Orders

Before placing any purchase order with Devolutions for a Software Product License, Reseller shall ensure that it has received a corresponding purchase order from the End User. The type and number of Software Product Licenses indicated on the purchase order issued by Reseller cannot exceed or differ from the type and number of Software Product Licenses ordered by the End User. Reseller shall maintain records of all orders made under the Reseller Program and shall provide upon request by Devolutions any documentary proof confirming that Reseller has complied with this Section 6.2.

6.3 Invoicing and Payment

Upon receipt of a valid purchase order, Devolutions will issue the related invoice to Reseller with Reseller's applicable discount based on its Membership Level, plus applicable taxes. Reseller is responsible for providing Devolutions with complete and accurate billing and contact information and to notify Devolutions of any changes. If Reseller fails to pay the invoice within the applicable payment period, Devolutions shall be entitled to disable or terminate the related Software Product Licenses without any liability to Reseller. Software Product Licenses ordered by Reseller may not be returned, refunded or credited; provided, however, that nothing contained in this Agreement shall prejudice any right of an End User to terminate a Software Product License under its EULA.

6.4 End User Pricing and Payment; Refunds

Reseller may independently set its own pricing to each End User. Reseller bears all risk of non-payment by End Users, and is solely responsible for all of its costs and expenses. Reseller may not terminate an order or receive any refunds due to non-payment by an End User. If Devolutions provides any refund to an End User, Devolutions, at its option, will refund the applicable amounts either directly to the End User or to Reseller for distribution to the End User. Reseller agrees to cooperate with Devolutions in connection with any such refund.

6.5 Delivery and Transmission of License Keys

Devolutions will deliver to Reseller the applicable license keys or other information necessary for End Users to use or access the applicable Software Products. Reseller shall, in turn, deliver them directly to the End User specified in the Reseller order. Reseller must either delete all license keys promptly thereafter or maintain them in confidence.



7. Reseller's Obligations

7.1 Notification of Infringement

Reseller shall immediately inform Devolutions if it becomes aware of any facts indicating that any person or entity is or may be infringing any Intellectual Property rights of Devolutions and/or its licensors, dealing in illegal copies of Software Products, or engaging in unauthorized distribution of any Software Product Licenses.

7.2 Records and Inspections

During the Term and for at least two (2) years after the expiry or termination of this Agreement: (a) Reseller agrees to maintain a complete, clear and accurate record of all matters pertaining to the resale of Software Products Licenses and its participation in the Reseller Program, including but not limited to records pertaining to Reseller's obligations under Section 6 (Quotations and Orders) and Section 7 (Reseller's Obligations); and (b) Reseller shall permit an independent third party who is nominated by Devolutions (and bound by reasonable confidentiality undertakings) to audit and inspect its books, records and all other relevant information and documents (wherever located) pertaining only to Reseller's resale of Software Product Licenses and participation in the Reseller Program, to ensure compliance by Reseller of the obligations contained in this Agreement. Any such inspection and audit shall be conducted during regular business hours upon fourteen (14) days' prior written notice to Reseller, and in such a manner as not to interfere with the normal business activities of Reseller. Devolutions shall bear the expense of such audit, unless Reseller is found to be non-compliant with this Agreement, in which case the audit shall be at the expense of Reseller.

7.3 Consent

Reseller shall ensure that it has all necessary consents from End Users, including all necessary consents under applicable data protection, electronic communications and privacy laws, for Devolutions to collect and process Personal Information provided by Reseller on behalf of End Users, including consents for the use of such data by Devolutions for communications with End Users relating to Software Products, customer service and security matters.

7.4 Data Protection and Privacy

- 7.4.1 In collecting, processing and transferring End Users data (including Personal Information), Reseller shall comply fully with any applicable privacy protection regulations, data protection regulations and other applicable laws, and shall only do so, directly or indirectly, if required to perform its obligations under this Agreement.
- 7.4.2 Reseller acknowledges and agrees that, as between Reseller and Devolutions, Personal Information collected by Reseller from End Users and transferred to Devolutions shall be considered Confidential Information and that Devolutions and Reseller shall be considered as joint controllers of such Personal Information under applicable privacy laws and regulations.
- 7.4.3 Reseller shall develop, implement, maintain and monitor a comprehensive, written information security program that contains administrative, technical and physical safeguards to protect against anticipated threats or hazards to the security, confidentiality or integrity of Confidential Information, including the unauthorized or accidental acquisition, destruction, loss, alteration or use of, and the unauthorized access to, such Confidential Information ("**Breach**"). Reseller shall be responsible for any information security incident involving Confidential Information that is handled by, or on behalf of, Reseller. Reseller shall notify Devolutions' Director of Privacy and Legal Affairs (privacy@devolutions.net) immediately (and in any event within forty-eight (48) hours) whenever Reseller reasonably believes that there has been a Breach. After providing such notice, Reseller will investigate the Breach, take all necessary steps to eliminate or contain the exposures that led to such Breach, and, within seven (7) days of identifying the Breach, provide Devolutions with a written report detailing mitigation steps taken by Reseller in response to the occurrence.



7.4.4 Reseller shall indemnify and hold Devolutions harmless against any and all Losses (including legal fees on a solicitor-and-client basis) arising from, in connection with, or based on allegations of, any of the following: (i) any violation of the requirements of Section 7.4 (Data Protection and Privacy); (ii) any Breach; (iii) any negligence or willful misconduct of Reseller or any third party to whom Reseller provides access to Confidential Information, with respect to security or confidentiality of such Confidential Information; (iv) remedial action taken by Devolutions as the result of a Breach; and (v) any other costs incurred by Devolutions with respect to Devolutions' rights in Section 7.4 (Data Protection and Privacy). Reseller's obligation of indemnification shall survive the expiration or termination of this Agreement.

7.5 Representations and Warranties

Reseller warrants and represents to Devolutions that:

- i) it will comply with all laws that are related in any way to the performance of its obligations under this Agreement;
- ii) it will not make any representations or warranties to End Users with respect to the Software Products which exceed the limited warranties made by Devolutions in the EULA;
- iii) all information which Reseller has provided to Devolutions in connection with this Agreement or Reseller's application to the Reseller Program, is true, correct, complete and accurate in every respect and is not misleading or deceptive (including by omission), and Reseller will update or correct (via email to Devolutions at sales@devolutions.net), in a timely manner, any information that it previously submitted that it knows has changed or is no longer true, correct, complete and accurate;
- iv) its activities, materials and websites associated with the Software Products will not incorporate Restricted Content. "Restricted Content" means images or content that are in any way unlawful, offensive, profane, harmful, threatening, defamatory, libelous, slanderous, obscene, harassing or racially, ethically or otherwise objectionable; facilitates illegal activity, promotes or depicts sexually explicit images, obscene or pornographic images; promotes or depicts violence; promotes discrimination based on race, sex, religion, nationality, disability, sexual orientation or age; incorporates any materials that infringe or assist others to infringe on any Intellectual Property rights; or contains or promotes politically sensitive or controversial issues; and
- v) it will not represent that it is, or hold itself out as, authorised to act on behalf of Devolutions.

7.6 Ethical Conduct and Compliance

Reseller shall conduct its business in a manner that does not adversely affect the reputation and goodwill of the Software Products and Devolutions. Reseller warrants and represents, and will so certify if requested by Devolutions, that neither Reseller nor any of its officers, directors, employees, agents or other representatives has provided or will provide, directly or indirectly through any third party, to any government official, employee of any government entity or instrumentality, or any candidate for political or public office, anything of value for the purpose of: (i) influencing any act or decision of such person in their official capacity; (ii) inducing such person to use their influence with such governmental agency or instrumentality to affect or influence any act or decision thereof; or (iii) securing any improper advantage. If Reseller breaches any of the covenants set forth in this Section 7.6: (i) at the election of Devolutions, this Agreement shall become void; (ii) Devolutions shall have a right of action against Reseller for the amount of any Reseller Program Benefits granted to Reseller under the Reseller Program arising from any transaction in violation of this Section 7.6; and (iii) all Reseller Program Benefits shall cease immediately.



7.7 Conflict of Interest

Reseller shall refrain from (i) making any direct or indirect payments or (ii) granting anything of value which is unlawful and/or outside the ordinary course of business and not in accordance with generally accepted international industry practices to an officer, director, member of staff of Devolutions or anyone closely related to them.

7.8 Export Compliance

7.8.1 Reseller acknowledges that the Software Products are subject to and must be exported in accordance with export laws and regulations of Canada and U.S. Export Administration Regulations (EAR, 15 CFR 730-774). Reseller agrees not to transfer, resell or divert any of the Software Products, or to provide services using the Software Products, directly or indirectly: (i) in violation of those export laws and regulations, including without limitation for any purposes related to nuclear, chemical, or biological weapons proliferation, rocket systems, space launch vehicles, sounding rockets, or unmanned air vehicle systems unless authorized by regulation or specific governmental license; and (ii) to those countries that may be embargoed from time to time by the Canadian or U.S. government (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria).

7.8.2 Further, Reseller represents that its export privileges have not been suspended, revoked or denied by relevant Canadian or U.S. governmental agencies and that Reseller will not provide any of the Software Products to any entity that is prohibited from participating in the Canadian or U.S. export transactions by any federal agency of the Canadian or U.S. government.

7.8.3 Additionally, Reseller acknowledges that the Software Products may be subject to export control regulations in countries in which they operate, and Reseller hereby declares and agrees that it will not directly or indirectly export, import, transmit or use the Software Products contrary to the laws or regulations of any other governmental entity that has jurisdiction over such export, import, transmission or use. Reseller acknowledges that Devolutions may be prohibited from providing maintenance and support for Software Products, if Devolutions has knowledge that a violation of the applicable export regulations has occurred. The parties agree to cooperate with each other with respect to any application for any required licenses and approvals, however, Reseller acknowledges it is Reseller's ultimate responsibility to comply with any and all export and import laws and that Devolutions has no further responsibility after the initial sale to Reseller within the original country of sale.

7.9 No Anti-Trust Arrangements

Reseller is not aware of and has not participated in (a) any business arrangements or deal allocation arrangements that could restrict free trading, competition and independent pricing of Software Products among Devolutions' distributors and resellers, or (b) practices that restrict free trading or lead to the promotion of monopolistic or anti-competitive business practices to the detriment of Devolutions' customers.

7.10 Fair Dealing; No False Representation

Reseller has not made and shall not make false representations to Devolutions with respect to any transactions, including, but not be limited to, the promotion or utilization of false documentation such as invalid purchase orders, fake or forged contracts, forged letters of destruction and/or inaccurate reporting to facilitate any Reseller transactions.

7.11 Reporting of Violations

Should Reseller know of any acts or omissions (including by Devolutions' employees or representatives) which violate any provisions of Sections 7.6 to 7.10 of this Agreement, or suspect any such violations, Reseller should contact Devolutions at privacy@devolutions.net for an anonymous reporting of such a violation or suspected violation.



7.12 Indemnity by Reseller

Reseller indemnifies Devolutions, its officers, employees and agents against any Losses (including legal costs on a solicitor and client basis) relating to or arising out of:

- i) a breach by Reseller of this Agreement;
- ii) any misrepresentations made by Reseller or Reseller's officers, employees, representatives or agents ("Reseller Personnel");
- iii) any claims, warranties and representations made by Reseller or Reseller Personnel which differ from the warranties provided by Devolutions in the relevant EULA;
- iv) any wrongful (including unlawful, fraudulent or negligent) acts or omissions made by Reseller or Reseller Personnel;
- v) any breach of any law by Reseller (including without limitation, privacy or data protection laws); and
- vi) any claims asserted by any of Reseller's Personnel.

8. Marketing and Use of Trademarks

8.1 Devolutions Trademark License and Use of Devolutions Trademarks

Devolutions grants to Reseller, and Reseller accepts, a non-exclusive, non-transferable, non-sublicensable, paid-up, revocable limited license during the Term to use "Devolutions", both the name and in the stylized form used by Devolutions, and the applicable Software Product trademarks (together, the "**Devolutions Trademarks**"), solely for and in connection with its resale, marketing, advertising and promotion of the Software Products in accordance with the Reseller Program and the terms of this Agreement. Devolutions reserves all rights not expressly granted herein.

8.2 Ownership of Intellectual Property Rights in the Devolutions Trademarks

Reseller acknowledges that all Intellectual Property and other rights in the Devolutions Trademarks belong to Devolutions. Reseller's use of Devolutions Trademarks shall be in accordance with applicable Intellectual Property laws and Devolutions' policies regarding advertising and trademark usage as established from time to time, as posted on Devolutions' website at <https://devolutions.net/company/media> and incorporated into this Agreement by reference ("**Trademark Usage Guidelines**"). Reseller agrees to promptly correct and remedy any deficiencies in its use of the Devolutions Trademarks and conformance to the Trademark Usage Guidelines upon reasonable notice from Devolutions.

8.3 Reseller's Acknowledgements

Reseller agrees:

- i) that Devolutions is the exclusive owner of the Devolutions Trademarks and all associated goodwill, and retain all right, title and interest in the Devolutions Trademarks; any unauthorized use of the Devolutions Trademarks will be deemed an infringement of the Intellectual Property rights of Devolutions;
- ii) that Reseller acquires no right, title or interest in the Devolutions Trademarks, and any and all goodwill associated with the Devolutions Trademarks inures exclusively to the benefit of Devolutions;
- iii) to comply with the Devolutions Trademark Usage Guidelines;



- iv) not to use the Devolutions Trademarks in any manner or take any action that will adversely affect the ownership or validity of the Devolutions Trademarks, or that will diminish, damage or otherwise adversely affect the value of the goodwill attached to the Devolutions Trademarks or Devolutions;
- v) not to attach any additional trademarks, logos or trade designations to the Software Products or to use any additional trademarks, logos or trade designations to promote and/or distribute the Software Products;
- vi) not to adopt, use or apply to register any corporate name, trade name, trade mark, domain name, service mark or certification mark, or other designation similar to or containing, in whole or in part, the Devolutions Trademarks or any other trade mark of Devolutions; and
- vii) to notify Devolutions of any suspected violation of, or challenge to, Devolutions' rights in the Devolutions Trademarks of which Reseller becomes aware, and acknowledges that Devolutions shall have the sole right to, and in its sole discretion may, control any action concerning the Devolutions Trademarks.

8.4 Termination of Trademark License

Devolutions may at any time terminate the license granted in Section 8.1 (Devolutions Trademarks License and Use of Devolutions Trademarks) or withdraw any approval given thereunder by giving written notice to Reseller. Upon termination or expiry of this Agreement, termination or withdrawal of the license in Section 8.1 or withdrawal of Devolutions' approval hereunder, Reseller must immediately cease using the Devolutions Trademarks and destroy all materials in its possession or control which contain the Devolutions Trademarks.

8.5 Reseller Trademark License and Use of Reseller Trademark

Subject to the terms of this Agreement, and only during the Term, Reseller grants Devolutions a non-exclusive, non-transferable, non-sublicensable, paid-up, revocable limited license to use Reseller Trademarks, solely to exercise Devolutions rights and fulfill its obligations under this Agreement. For the purposes of this Agreement, "Reseller Trademarks" means the artwork, logos, and/or other images, trademarks, service marks, trade names or other identifying element of Reseller. Reseller may revoke Devolutions' license to Reseller Trademarks at any time in its sole discretion. Upon such notice, Devolutions will use commercially reasonable efforts to remove Reseller Trademarks from Devolutions properties.

8.6 No Endorsement of Reseller Products

Devolutions does not, and will not, endorse, warrant or guarantee the performance of any Reseller product. Reseller shall not represent to any third party that Devolutions: (i) has endorsed, warranted or guaranteed the performance of any Reseller product; (ii) implied the merchantability or fitness for a particular purpose of any Reseller product; or (iii) intends to do either (i) or (ii).

8.7 Publicity and Consent

Except as expressly set forth in this Agreement or the Reseller Guide, neither party may issue any press releases, publicity, marketing or sales materials, or other materials developed by or on behalf of either party that refer to this Agreement or the relationship between the parties, or otherwise use the name or trademark of the other party without prior review and written approval by the other party. Notwithstanding the foregoing, Reseller agrees that the fact that it has entered into this Agreement and is licensed to distribute Software Products Licenses is not Confidential Information, and Devolutions shall be entitled to (a) include Reseller's details on any website that Devolutions maintains for its customers in connection with the Software Products; and (b) supply details of Reseller's name, address, telephone and email address to parties seeking information concerning Devolutions' resellers.



9. Ownership of Intellectual Property Rights

Reseller acknowledges that the Works and Content are proprietary to, and are the Intellectual Property and Confidential Information of, Devolutions and its licensors. Devolutions and its licensors retain exclusive ownership of the Intellectual Property rights vested in the Works and Content. Reseller shall take all reasonable measures to protect the Intellectual Property rights of Devolutions and its licensors in the Works and Content, including providing such assistance and taking such measures as are reasonably requested by Devolutions from time to time. Except as expressly provided in this Agreement, Reseller is not granted any rights to any Intellectual Property or any other rights, franchises or licenses with respect to the Software Products. Reseller shall not at any time have title to the physical property or the Intellectual Property in the Software Products.

10. Confidentiality Obligations

10.1 Definition of Confidential Information

“**Confidential Information**” means any of the following, whether disclosed in oral, graphic, written, electronic, or machine readable form, before or after the effective date of this Agreement:

- i) all information of a party (such party disclosing the relevant information being the “Discloser”) (i) that are directly or indirectly disclosed to the other party (such party receiving the relevant information being the “Recipient”), or (ii) that the Recipient otherwise becomes aware of under this Agreement, which, in either case, is declared or marked by the Discloser as being confidential at the moment of disclosure, or that can reasonably be inferred to be confidential from the circumstances in which it is disclosed, or that is expressly identified as being confidential in this Agreement;
- ii) without restricting the foregoing, any of the following information: (a) Personal Information, (b) Intellectual Property, (c) information concerning any research, experimental work or other development undertaken by the Discloser, and (d) any design details and specifications, engineering, financial information, pricing, manufacturing, customer lists, business forecasts, sales and merchandising, and marketing plans and information, that belongs to the Discloser;
- iii) the terms of this Agreement; or
- iv) any notes and other records prepared by the Recipient that are based on or incorporating the information referred to in any of the paragraphs 10.1 i) or ii) above.

Confidential Information shall not include information which can be demonstrated: (i) to have been rightfully in the possession of the Recipient from a source other than the Discloser prior to the time of disclosure of said information to the Recipient (“**Time of Receipt**”); (ii) to have been in the public domain prior to the Time of Receipt; (iii) to have become part of the public domain after the Time of Receipt by a publication or by any other means except an unauthorized act or omission or breach of this Agreement on the part of the Recipient or its representatives; (iv) to have been supplied to the Recipient after the Time of Receipt without restriction by a third party who is under no obligation to the Discloser to maintain such information in confidence; or (v) to have been independently developed by the Recipient.

10.2 Obligation to Keep Information Confidential

Where the Discloser discloses Confidential Information to the Recipient, the Recipient must: (i) use the Confidential Information solely for the purposes of performing its obligations under this Agreement; and (ii) keep all Confidential Information confidential and not disclose, circulate or disseminate it in any way except as expressly permitted under this Agreement or to the extent necessary to fulfil its obligations under this Agreement, or as otherwise expressly agreed to in writing by the Discloser. Without limiting the foregoing, the Recipient may disclose Confidential Information only to those of its officers, directors, employees, consultants or agents who have a need to know such Confidential Information for the purposes provided above, and provided that the Recipient ensures that any party receiving such



disclosure, circulation or dissemination are under an obligation to keep the Confidential Information confidential under terms at least as restrictive as those in this Section 10.2.

10.3 Requirement to Disclose

Where the Recipient is required to disclose Confidential Information to comply with applicable laws or regulations or following an order of a court, tribunal, or regulatory authority of competent jurisdiction, the Recipient must (a) give the Discloser prior notice of such compelled disclosure in order to afford the Discloser an opportunity to seek a protective order or such other limitations on the compelled disclosure as it may be lawfully entitled to receive, (b) thereafter cooperate in good faith with the Discloser's efforts to obtain such protection, and (c) not disclose any more Confidential Information than is expressly required to be disclosed pursuant to the applicable law, regulation, or order.

10.4 Degree of Care and Security Measures

The Recipient shall use the same degree of care to keep confidential all Discloser's Confidential Information as it uses to protect its own confidential information of same or similar nature (but in any event no less than a reasonable degree of care) and shall establish and maintain appropriate security measures to safeguard the Discloser's Confidential Information from unauthorized access or use.

10.5 Remedies

The Recipient acknowledges and agrees that the threatened or actual unauthorized disclosure of Confidential Information hereunder will cause the Discloser irreparable harm and, accordingly, the Discloser shall be entitled to injunctive relief or such other equitable remedy as a court of competent jurisdiction may impose in order to prevent or cure such unauthorized disclosure, together with legal costs and expenses relating to the application for, and enforcement of, such equitable relief.

10.6 Assistance

Each party shall use reasonable efforts to assist the other party in identifying and preventing any unauthorized use or disclosure of any Confidential Information. Without limiting the foregoing, the Recipient shall immediately advise the Discloser in the event that it learns or has reason to believe that any person who has had access to Confidential Information has violated or intends to violate the terms of this Agreement.

10.7 Survival

The confidentiality obligations of the parties set forth in this Section 10 (Confidentiality Obligations) shall survive the termination of this Agreement. Unless expressly provided otherwise in herein, upon termination of this Agreement for any reason, the parties shall each immediately cease to use the other party's Confidential Information and shall return or destroy all copies of Confidential Information in its possession and control and, in either case, shall provide to the other party a certificate, signed by an authorized officer of the receiving party, confirming that it has satisfied its obligations to destroy or return all such Confidential Information. Notwithstanding the foregoing, the Recipient may keep a copy of the Confidential Information for archival purpose or to comply with its legal obligations under applicable laws.

11. No Warranty

Devolutions warrants the Software Products to End Users only pursuant to the terms and conditions of the EULA, and no express or implied warranty or guarantee in relation to the Software Products or any other matter is extended in any way to Reseller under this Agreement. Without limiting the foregoing, all express or implied guarantees, warranties, representations, or other terms and conditions relating to this Agreement or its subject matter, not contained in this Agreement, are excluded from this Agreement to the maximum extent permitted by law.



12. Limitation of Liability

12.1 Liability Cap

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND SUBJECT TO SUBSECTION 12.2 BELOW, THE MAXIMUM AGGREGATE LIABILITY OF DEVOLUTIONS UNDER OR RELATING TO THIS AGREEMENT OR ITS SUBJECT MATTER, WHETHER ARISING OUT, IN EACH CASE, OF ANY BREACH OF CONTRACT, ANY TORT (INCLUDING NEGLIGENCE, MISREPRESENTATION OR STRICT LIABILITY), ANY BREACH OF STATUTORY DUTY, EQUITY OR ANY OTHER BASIS, SHALL NOT EXCEED (I) THE AMOUNT ACTUALLY PAID BY RESELLER TO DEVOLUTIONS IN RESPECT OF THE RESELLER ORDER BEING THE OBJECT OF THE CLAIM, OR (II) IF THE CLAIM IS NOT RELATED TO A SPECIFIC RESELLER ORDER, THE AMOUNT OF FIVE THOUSAND UNITED STATES DOLLARS (US\$5,000), AS APPLICABLE.

12.2 Exclusion of Indirect and Consequential Damages

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL DEVOLUTIONS BE LIABLE TO RESELLER 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 CORRUPTION OF DATA, FILES OR COMPUTER PROGRAMS, WHETHER ARISING OUT, IN EACH CASE, OF ANY BREACH OF CONTRACT, ANY TORT (INCLUDING NEGLIGENCE, MISREPRESENTATION OR STRICT LIABILITY), ANY BREACH OF STATUTORY DUTY, EQUITY OR ANY OTHER BASIS, AND WHETHER OR NOT SUCH LOSS OR DAMAGE WAS FORESEEABLE AND EVEN IF ADVISED OF THE POSSIBILITY OF THE LOSS OR DAMAGE.

12.3 Shared Liability

The liability of a party for any Loss suffered or incurred by the other party under this Agreement (including under any indemnity) will be reduced proportionately to the extent that any wrongful (including negligent) act or omission of the other party or its representatives directly caused or contributed to the Loss.

12.4 Obligation to Mitigate

A party that has suffered or is likely to suffer Losses as a result of any event giving rise to liability of the other party under this Agreement (including under any indemnity), must take all reasonable steps to mitigate the Losses. If the party suffering or likely to suffer Losses does not do so, then the other party's liability will be reduced accordingly.

13. Modifications by Devolutions

Upon fourteen (14) days' notice to Reseller, Devolutions, in its sole discretion, reserves the right at any time to modify the terms of this Agreement, including but not limited to:

- i) updating, revising or modifying all or parts of the Reseller Guide or the Reseller Program;
- ii) withdrawing or cancelling the Reseller Program;
- iii) changing any of the Eligibility Criteria required of Reseller;
- iv) changing or terminating any of the Reseller Program Benefits made available to Reseller or attributed to a specific Membership Level, or adding additional terms, restrictions, and conditions applicable to Reseller Program Benefits or Membership Levels made available by Devolutions to Reseller; and
- v) changing Reseller's Membership Level as described in Subsection 2.2 (Removal from Reseller Program).



These modifications will become effective immediately at the end of the notice period specified above and will be deemed to modify and supplement the terms of this Agreement. Reseller's continued participation in the Reseller Program or resale of Software Products Licenses following such notice will constitute Resellers' binding acceptance of the modifications. If any modification is unacceptable to Reseller, Reseller's only recourse is to terminate this Agreement within ten (10) days of such notice, without any recourse for damages or compensation of any form from Devolutions. In such event, membership within the Reseller Program shall be cancelled.

14. Term and Termination

14.1 Term of the Agreement.

The term of this Agreement shall commence on the Effective Date and expire upon the termination of the Agreement made in accordance with the terms of Sections 14.2 or 14.3 ("**Term**").

14.2 Termination Without Cause

Without prejudice to Section 13 (Modifications by Devolutions), either party may terminate this Agreement for convenience at any time, upon thirty (30) days' prior written notice to the other party.

14.3 Termination With Cause

14.3.1 Either party may terminate this Agreement upon ten (10) days' written notice to the other party if the other party is in material breach of this Agreement and such material breach is not remedied within such ten (10)-day period.

14.3.2 Notwithstanding Section 14.3.1 above, either party may terminate this Agreement immediately upon written notice to the other party if:

- i) the other party ceases to carry on its business;
- ii) there is a Change in Control of the other party; or
- iii) the other party is or becomes subject to insolvency (including bankruptcy, filing for moratorium on payments of its debts or seeking any other like relief), any other proceeding or form of voluntary or involuntary insolvency administration or liquidation, including where it has an administrator, receiver, liquidator or examiner appointed to it, its property and assets or its affairs, or any assignment for the benefit of its creditors (including any events in the nature of or analogous to any of the foregoing).

14.3.3 Notwithstanding Section 14.3.1 above, Devolutions may terminate this Agreement immediately, upon written notice to Reseller:

- i) for Reseller's breach of: Section 5 (License Restrictions); Section 7.5 (Representations and Warranties); Section 7.6 (Ethical Conduct and Compliance); Section 7.7 (Conflict of Interest); Section 7.8 (Export Compliance); 7.9 (No Anti-Trust Arrangement); 7.10 (Fair Dealing; No False Representation); Section 9 (Ownership of Intellectual Property Rights); Section 10 (Confidentiality Obligations); Section 15.2 (Assignment);
- ii) upon being advised by Reseller that Reseller has become aware of information that would alter any warranty or representation made by Reseller pursuant to Section 7.5 (Representations and Warranties); or
- iii) upon occurrence of a Breach under Section 7.4 (Data Protection and Privacy).



14.4 Rights Upon Termination or Expiration

The termination or expiration of this Agreement shall be without prejudice to the rights and obligations of the parties that have accrued as of the date of termination or expiration. Upon termination or expiration of this Agreement:

- i) All licenses granted to Reseller hereunder shall cease;
- ii) Reseller shall: (a) discontinue all representations that it is a reseller under the Reseller Program; (b) immediately cease using the Devolutions Trademarks; (c) as directed by Devolutions, return, destroy or delete all copies of the Confidential Information or other Devolutions materials (such as marketing collaterals) that is in Reseller's possession or under its control in accordance with Section 10.7 (Survival); and
- iii) provide to Devolutions written confirmation that Section 14.4 ii) above has been complied with.

14.5 Survival

The termination or expiration of this Agreement does not extinguish or otherwise affect any provisions of this Agreement which by their nature survive termination or expiration. For the avoidance of doubt, the following is a non-exclusive list of clauses which will survive the termination or expiration of this Agreement: Section 7.2 (Records and Inspections); Section 7.4 (Data Protection and Privacy); Section 7.5 (Representations and Warranties); Section 7.6 (Ethical Conduct and Compliance); Section 7.8 (Export Compliance); Section 7.12 (Indemnity by Reseller); Section 10 (Confidentiality Obligations); Section 12 (Limitation of Liability); Section 14 (Term and Termination); and relevant provisions of Section 15 (Miscellaneous).

15. Miscellaneous

15.1 Notices

All notice required to be given under this Agreement ("**Notice**") must be given in writing and delivered either in hand with receipt obtained, by certified mail, return receipt requested, postage pre-paid, or by any recognized delivery service, all delivery charges pre-paid, and addressed, email (with confirmation of delivery) or facsimile (with confirmation of delivery):

- i) If to Devolutions: 1000 Notre-Dame, Lavaltrie, Quebec, Canada, J5T 1M1
sales@devolutions.net
Attention : VP Sales & Marketing
- ii) If to Reseller : Address and email provided by Reseller in its reseller application

A Notice is taken to have been received: (a) if delivered by hand or courier to the receiver, at the time of delivery; (b) if posted within the same country, 3 days after the date of posting; (c) if posted to a different country, 10 days after the date of posting; and (d) if emailed, upon the earlier of (i) the sender receiving an automated message confirming delivery; or (ii) 3 hours after the time sent (as recorded on the device from which the sender sent the email) unless the sender receives an automated message that the email has not been delivered.

15.2 Assignment

Reseller may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of Devolutions. Devolutions may, at its sole discretion, assign this Agreement or its rights and obligations hereunder without the prior written consent of Reseller. Devolutions shall be entitled to terminate this Agreement pursuant to Section 14.3 (Termination With Cause) without prejudice to all its other rights and remedies, if Reseller breaches any of the provisions in this Section 15.2.

15.3 No Agency

Nothing in this Agreement is intended to constitute a fiduciary relationship or an agency, partnership or trust between the parties. No party has authority to bind any other party.

15.4 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.

15.5 Dispute Resolution

Any dispute arising out of or in connection with this Agreement shall be referred to and finally resolved by arbitration under the exclusive auspices of the Canadian Commercial Arbitration Centre, 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.

15.6 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.

15.7 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.

15.8 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.

15.9 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.

15.10 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.



15.11 Entire Agreement

Each party agrees that this Agreement constitutes the entire agreement between the parties with respect to the subject matters covered herein, superseding all prior proposals, negotiations, and communications, oral or written, between the parties about such subject matters, unless otherwise expressly agreed in writing.

15.12 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.*