



END USER LICENSE AGREEMENT

Wayk® Bastion

IMPORTANT LEGAL NOTICE TO ALL USERS: CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT BEFORE YOU INSTALL, ACCESS OR START USING THE SOFTWARE. THIS AGREEMENT CONTAINS A MANDATORY ARBITRATION CLAUSE.

BY INSTALLING, ACCESSING OR USING THE SOFTWARE FOR THE PURPOSES PERMITTED HEREIN, YOU CONSENT TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT AND REPRESENT THAT YOU HAVE THE LEGAL CAPACITY TO ENTER INTO THIS AGREEMENT OR THE AUTHORITY TO BIND YOUR ORGANIZATION TO THESE TERMS. IF YOU DO NOT AGREE TO THESE TERMS, IN ALL OR IN PART, PLEASE DO NOT INSTALL OR USE THE SOFTWARE.

This Agreement is entered into between Devolutions inc. (“**Devolutions**”, “**us**”, “**we**”, “**our**”) and the person or Organization (“**you**”, “**your**”) purchasing a Client License.

1. Definitions

The following terms shall have the following meanings:

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

Agreement: means this End User License Agreement, as same may be amended, modified, restated or supplemented from time to time, together with its schedules, the Addendums, your Order and the Documentation.

Client Computer: means a Computer on which Wayk Client is installed and from which Technicians may connect remotely to Managed Computers through the Software.

Client License: means any type of client license described in Section 2(b).

Computer: means any computer hardware, mobile device, server, network or other electronic device.

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

End Users: means collectively the Technicians and the Managed End Users.

Feedback: means any suggestion, recommendation, feedback or idea for modifying or improving the Software which is communicated to us from time to time.

Managed Computer: means a Computer on which Wayk Agent is installed and which may be remotely accessed by Technicians through the Software.

Managed End Users: means any person allowing a Technician to connect remotely to his/her/its Managed Computer through the Software.



Open Source Software: refers to the open source software that is provided with, or embedded in, the Software, in all or in part, in accordance with applicable Public Licenses.

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.

Public Licenses: means the public licenses granting the right to use, reproduce and distribute the Open Source Software in conjunction with the Software.

Software: refers collectively to Wayk Bastion, Wayk Client and Wayk Agent in object code form, including their Updates.

Subscription Term: means the term of a Client License subscription.

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.

Technician: means any individual authorized or designated by you under a Client License to make remote desktop connections to Managed Computers through the Software.

Updates: means any new version of the Software or of any part thereof, and any update, upgrade, improvement, patch, revision, supplement, modification, enhancement, translation, feature, add-on, tool, functionality, maintenance or fix developed and incorporated into the Software by Devolutions from time to time.

Works and Content: means collectively the Software, its Updates, the Documentation and all derivative works therefrom (whether originating from or developed by us, you or a Technician), including 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, as well as any presentation, arrangement, coordination, enhancement and selection thereof within the Software, but excludes any Open Source Software.

2. Grant of License

- (a) General License. Subject to your subscription to a Client License, the payment of applicable license fees and your compliance with the terms and conditions of this Agreement, Devolutions hereby grants a non-exclusive, limited and revocable license (the "**License**") allowing you and End Users: (i) to install, access and use the Software during the term of your Subscription Term for the purpose of making remote desktop connections between Client Computers and Managed Computers; (ii) to download, save, print, copy and use the Documentation solely as a support to the use of the Software; and (iii) to make a copy of the Software for archival, emergency back-up or recovery purposes. You acknowledge that the Software is licensed and not sold, and that you or End Users receive no title to, or ownership of, the Software itself.
- (b) Client License. A valid Client License subscription is required to activate the License and to access and use the Software. Once activated, the License allows the installation of the Software on an unlimited number of Managed Computers, but the number of Technicians authorized to access and use the Software on a Client Computer will vary according to the type of Client License purchased, as described below:
 - i) *Single User Client License:* allows a single designated Technician of an Organization to access and use the Software to connect remotely to Managed Computers. A Single User Client License may be reassigned to a different designated Technician as needed but may not be used on a concurrent or floating basis.



- ii) *Site Client License*: allows an unlimited number of Technicians primarily located, based or attached to a single physical site or office of an Organization to access and use the Software to connect remotely to Managed Computers.
- iii) *Country Client License*: allows an unlimited number of Technicians primarily located, based or attached to any physical sites or offices of an Organization within a single country to access and use the Software to connect remotely to Managed Computers.
- iv) *Global Client License*: allows an unlimited number of Technicians located, based or attached to any physical sites or offices of an Organization worldwide to access and use the Software to connect remotely to Managed Computers.

(each a “**Client License**”)

Devolutions reserves its right to limit a Site Client License, Country Client License or Global Client License to a specific business unit (or a certain number of business units) of an Organization, depending on its needs, size and structure.

- (c) Trial and Beta Versions. Devolutions may, in its sole discretion and at any time, offer you to install and use a trial version of the Software for trial or evaluation purposes. We reserve the right to limit, modify or terminate your trial at any time and for any reason at our sole discretion, without liability to you. If you are using the Software on a trial basis (“**Free Trial**”), your Free Trial will terminate (i) at the end of the Free Trial period stated in your Order or, if no date is specified, 90 days after the grant of your Free Trial, or (ii) upon the purchase of a Client License. You may be required to provide limited contact information in order to sign up for a Free Trial. Devolutions may also from time to time offer you free access to a beta version of the Software prior to its official release (“**Beta Software**”). You understand and agree that a Beta Software is still under development, may be inoperable or incomplete, or may contain unknown bugs, errors or other defects. You acknowledge that your decision to use a Beta Software is made at your sole option and own risk, and that we have no obligation to provide technical support. We do not guarantee that any bug, error or other defect will be corrected, and you acknowledge that we may discontinue at any time the provision of a Beta Software or never make it generally available. To the maximum extent permitted by applicable law, Section 11(a) (“Limited Warranty”) of this Agreement does not apply to Free Trials or the use of a Beta Software, which are provided “AS-IS”, and we disclaim any liability, indemnities or warranties, whether express, implied, statutory or otherwise. You hereby waive the exercise of any right, claim, recourse or remedy against Devolutions in connection with your Free Trials or your use of a Beta Software.
- (d) Wayk® Bastion Public. To the extent the Software is used in combination with Wayk® Bastion Public, our Terms of Online Service (available at <https://devolutions.net/legal>) will apply to such use in addition to the terms of this Agreement.

3. License Restrictions

The License granted to you is subject to the restrictions set forth below. You agree not to (and you shall not permit any End User or third party to): (i) allow the use of the Software or access thereto by a number of Technicians that exceeds the limit of Technicians allowed under the Client License; (ii) reverse engineer, disassemble, compile or decompile the object code of the Software, or otherwise attempt to derive, reconstruct or discover the source code of the Software or any underlying algorithms, file formats, programming or interfaces of the Software, by any means whatsoever; (iii) use an unauthorized or self-modified version of the Software; (iv) use the Software for the purpose of developing commercially competitive products or services; (v) engage in any conduct that may disrupt or impede the use of the Software by a third-party; (vi) publicly disclose or display, distribute, share, rent, lease, sublicense, assign, sell, transfer, exploit or make publicly available the Software, except as authorized herein; (vii) modify, translate, alter or improve the Software or the Documentation, incorporate or combine the Software into/with other software, or create derivative works from the Software; (viii) use the Software in any way that is contrary to, or in violation of, applicable laws or the rights of third parties, including without limitation any laws, regulations or rights relating to intellectual



property, privacy and protection of Personal Data. You are responsible for ensuring that your Technicians always comply with the License and the provisions of this Agreement when using the Software and the Documentation. You remain responsible towards Devolutions for all actions and omissions committed by your Technicians in violation of this Agreement and you shall defend and hold Devolutions harmless from any claim or damage incurred in connection with any such actions and omissions.

4. **Fees and Payment**

- (a) **Orders.** You agree that your purchase orders (“**Orders**”) are not contingent on the delivery of any future features, or dependent on any oral or written public comments made by us regarding potential features that may be added to the Software. Unless otherwise specified, all amounts on the Orders and related invoices are expressed in US Dollars.
- (b) **Fees and Payment.** The grant of the License is conditional upon your timely payment of the Client License fees specified on your Order. Except as otherwise specified herein, payment obligations are non-cancelable and payments made for a Client License are non-refundable. A valid payment method is required to process your payments. If you pay with a credit card, you agree that your credit card information and related personal data be processed by our third-party payment processor. You are responsible for providing complete and accurate billing and contact information to us and to keep such information current. By submitting such payment information, you automatically authorize us or our third-party payment processor, as applicable, to charge you for all fees stated on your invoice through your selected payment instrument. You are responsible to pay any transaction fees and currency conversions charged by your financial institution or intermediaries.
- (c) **Resellers.** If you confirm an Order or purchase a License through an authorized reseller (a “**Reseller**”), you will pay the applicable fees to the Reseller as agreed between you and the Reseller, instead of paying us. The Order will state the details of your transaction with us as communicated by the Reseller to us on your behalf, and we are not responsible for any inaccuracy or error committed by the Reseller when confirming your Order. You hereby authorize the Reseller to communicate your information to us for the purpose of processing your Order, which may include your personal name or the name of your Organization, your email address, your physical address and/or your phone number. Your information will be processed in conformity with our Privacy Policy available at <https://devolutions.net/legal>. Resellers are not authorized to modify the terms of this Agreement or to make any promises or commitments on our behalf, and we are not bound by any obligations to you other than as set forth in this Agreement. If you are entitled to a refund under the present terms, then unless we otherwise specify, we will refund any applicable fees to the Reseller directly and the Reseller will be solely responsible for refunding the appropriate amounts to you.
- (d) **Payment Default.** We reserve our right to suspend or terminate your License without advance notice or liability if at any time we determine that your payment information is not current or accurate or if your payment is overdue (including if the payment obligation rests with your Reseller). You agree to reimburse us for all overdraft charges and other reasonable costs and expenses incurred in connection with the collection of your overdue or returned payments.
- (e) **Fee Changes.** We may at our sole discretion and at any time change or update our Client License fees, and any such change will become effective as of your next applicable Client License renewal. We will notify you in advance of any such fee changes.
- (f) **Taxes.** Our prices as displayed on our website do not include any taxes, levies, duties or similar fees imposed by any governmental entity or collecting agency in connection with the purchase of a Client License, including, for example, value-added, sales, use or withholding taxes. Applicable taxes will be added on your Order and invoice, and you agree to pay any such amounts to us in full without any right of set-off or deduction.



5. Updates, Renewals and Customer Support

- (a) Updates. Updates may be installed without additional fees during your Subscription Term. It is your responsibility to install available Updates. You acknowledge that the failure to install an Update may impair or limit the use of certain features of the Software, may affect its optimal level of security, or may limit our ability to properly address your technical support requests.
- (b) Renewal. You may renew your Subscription Term prior to its expiration by paying the then-applicable renewal fees. If your Subscription Term expires and is not renewed, Technicians will no longer be able to use the Software and remotely access Managed Computers.
- (c) Customer Support. Customer support is available to Technicians only and your level of support will be based on the support plan selected with the purchase of your Client License. Please refer to the terms of the Support Level Addendum for further details, which terms are incorporated into this Agreement by this reference. You should contact our customer support (ticket@devolutions.net) for any security-related questions on Software deployment, configuration and best practices, and promptly contact our security team (security@devolutions.net) for any security-related concerns, bugs or vulnerabilities. Please refer to our Commitment to Security available at <https://devolutions.net/legal> for more details.

6. Security and Privacy

- (a) Security. It is your responsibility to maintain the security and confidentiality of the License keys issued to you. You agree to notify us immediately of any unauthorized use of your License keys and we will not be liable for any losses caused by such unauthorized use. All License keys issued to you and your Technicians remain the property of Devolutions and may be cancelled or suspended at any time without any notice or liability in case of any default by you or a Technician to comply with this Agreement.
- (b) Personal Data. Except as described in Devolutions' Privacy Policy available at <https://devolutions.net/legal>, the relevant provisions of which are hereby incorporated and made part of this Agreement by reference, Devolutions does not collect or process your Personal Data or the Personal Data of End Users through the Software. Devolutions may however collect anonymized data relating to operating systems, types of device and usage statistics. To the extent you use the Software to collect, access or process Personal Data stored on Managed Computers or relating to Managed End Users, you remain solely responsible to take all appropriate measures and safeguards to comply with applicable laws relating to privacy and the protection of Personal Data in general, and you agree to defend and indemnify Devolutions in connection with any third-party claim resulting from your failure to comply with these obligations.

7. Proprietary Rights and Licenses

- (a) Reservation of Rights. Subject to the limited rights expressly granted hereunder, we reserve all of our right, title and interest in and to the Works and Content, including any and all related intellectual property rights. No rights in the Works and Content are granted to you or to any End User hereunder other than 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 Technician will entitle us to claim damages and be indemnified by you pursuant to those laws.
- (b) Feedback. You grant us, for yourself and on behalf of your Technicians, a perpetual, irrevocable, worldwide, sublicensable and transferable license to freely use, copy, disclose, license, distribute, exploit and commercialize in any manner any and all Feedback that you or your Technicians communicate to us, without any compensation or restriction. To the extent we use a Feedback to create or develop an Update, you acknowledge and agree that any such Update (including all related intellectual property rights) shall be our sole and exclusive property, and that no Feedback will be considered your confidential information.



8. Open Source Software

You acknowledge and agree that: (i) the Software may incorporate Open Source Software components which are licensed under Public Licenses; (ii) each Open Source Software is governed by the terms of its respective Public License; (iii) this Agreement does not and is not intended to restrict your rights under the Public Licenses; and (iv) all warranty disclaimers and limitations (or exclusions) of liability set forth in the Public Licenses shall apply to you and to End Users in respect of the Open Source Software (as applicable), and Devolutions does not offer, and shall not be deemed to offer, any warranty, expressed or implied, or any indemnity in respect of the Open Source Software which is not expressly offered in the Public Licenses.

9. 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 Software. 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. 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, as applicable.

10. Indemnification

- (a) Indemnification by Us. We will defend you against any claim brought against you by a third party alleging that the Software, when used as authorized under this Agreement, infringes such third party's intellectual property rights (a "**Claim Against You**"), and we will indemnify you and hold you harmless against any damages and costs finally awarded on the Claim Against You by a court of competent jurisdiction or agreed to via settlement executed by us (including reasonable attorneys' fees), provided that you (a) promptly give us written notice of the Claim Against You, (b) give us sole control of the defense 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 determine that such actions are reasonably necessary to avoid material liability, we may in our discretion and at no cost to you (i) procure the right for your continued use of the Software in accordance with the Agreement, (ii) substitute a substantially functionally similar Software obtain a license for your continued use of the Software in accordance with this Agreement, or (iii) terminate the License and refund the prepaid fees for the terminated portion of your Subscription Term. The above indemnification obligations do not apply (1) if the Software is modified by any party other than us, but solely to the extent the alleged infringement is caused by such modification; (2) if your use of the Software is made in violation of this Agreement, the Documentation, applicable Addendums or applicable laws; or (3) if you settle or make any admissions with respect to a Claim Against You without our prior written consent. The foregoing remedies are Devolutions' sole and exclusive liability and your sole and exclusive remedies for any potential or actual intellectual property infringement by the Software.
- (b) Indemnification by You. You will defend, indemnify and hold us harmless from and against any and all costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) resulting from any claims, demands, suits or proceedings arising from or related to your (or any Technician) breach of the Agreement or your (or any Technician) use of the Software in violation of this Agreement (a "**Claim**"). We will (i) promptly give you written notice of the Claim, (ii) give you all reasonable assistance and collaboration at your request and your sole expense, and (iii) give you sole control of the defense and settlement thereof, except that you may not settle any Claim unless it unconditionally releases us of all liability and that we may join in the defense with our own attorneys, at our sole option and our sole expense.

11. Limited Warranty

- (a) Limited Warranty. Except as provided below, Devolutions warrants that the Software will perform materially in accordance with the specifications, features and operations described in the Documentation for the term of your Subscription Term (the "**Limited Warranty**").



- (b) **Exclusions.** The Limited Warranty does not apply to Free Trials and the use of a Beta Software or if the defect results from 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, non-permitted alterations, modifications or repairs; (iii) any acts or omissions by you, End Users or third parties, including hacking or other wrongful, malicious or illegal acts, or any other causes beyond Devolutions' reasonable control; (iv) any defect not made known to Devolutions within your Limited Warranty period; (v) malfunction caused by defective hardware or other software components installed on your Computers; (vi) the Software is not installed, updated, used or configured in accordance with the Documentation, this Agreement or any recommendation or security guidelines issued by Devolutions; or (vii) any use of the Software with incompatible or non-supported technologies, hardware or software. Without limiting the foregoing, Devolutions does not represent or warrant that the Software is or will be compatible with all technologies, platforms, software environments or devices (other than those specifically mentioned in the Documentation), and subject to the Limited Warranty above, you acknowledge and agree that Devolutions may at any time cease or suspend the support or integration of a specific technology, tool, protocol, software or application through or by the Software without liability to you, to the extent it is legally required to do so or if the technology, tool or protocol is outdated or no longer available or used. Minor discrepancies in the Documentation shall not be treated as errors in the Software.
- (c) **Remedies.** Our sole liability and your sole and exclusive remedies under 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 Software as may be necessary to ensure that it will perform in accordance with the Limited Warranty; (ii) replace the Software with a compliant software of substantially similar functionality; or (iii) terminate the License and refund the prepaid fees for the terminated portion of your Subscription Term. Devolutions does not guarantee that all reported errors or defects will be corrected within a specific time period or at all.
- (d) **Disclaimers.** EXCEPT FOR THE EXPRESS LIMITED WARRANTY SPECIFIED ABOVE, THE SOFTWARE IS PROVIDED "AS IS" AND WE EXPRESSLY DISCLAIM 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 SOFTWARE TO ACHIEVE YOUR REQUIREMENTS OR INTENDED RESULTS AND OBJECTIVES, WHETHER OR NOT DISCLOSED TO US. WE MAKE NO REPRESENTATION AND GIVE NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE, VIRUS-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES. WE PROVIDE NO WARRANTIES, EXPRESS OR IMPLIED, WITH REGARD TO THIRD-PARTY COMPONENTS INCORPORATED INTO OR INTERACTING WITH THE SOFTWARE. THE FOREGOING WARRANTY DISCLAIMERS ARE IN ADDITION TO, AND NOT IN REPLACEMENT OF, ANY OTHER WARRANTY DISCLAIMER APPLYING TO OPEN SOURCE SOFTWARE AS PROVIDED IN APPLICABLE PUBLIC LICENSES, WHICH DISCLAIMERS ARE INCORPORATED INTO THIS AGREEMENT BY REFERENCE AND ARE DEEMED TO APPLY TO YOU AND EACH USER FOR THE BENEFIT OF US AND ALL OPEN SOURCE SOFTWARE CONTRIBUTORS (AS APPLICABLE).

12. **Limitations of Liability**

- (a) **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND EXCEPT FOR OUR INDEMNIFICATION OBLIGATION SET FORTH IN SECTION 10(a), IN NO EVENT SHALL THE AGGREGATE LIABILITY OF DEVOLUTIONS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR USE OF THE SOFTWARE EXCEED THE FEES WE RECEIVED WITH RESPECT TO YOUR SOFTWARE SUBSCRIPTION IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT LEADING TO SUCH LIABILITY. YOU ACKNOWLEDGE AND AGREE THAT THE ESSENTIAL



PURPOSE OF THIS SECTION 12(a) IS TO ALLOCATE THE RISKS UNDER THIS AGREEMENT BETWEEN THE PARTIES AND LIMIT POTENTIAL LIABILITY GIVEN THE LICENSE FEES PAID, 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 (INCLUDING NEGLIGENCE, MISREPRESENTATION OR STRICT LIABILITY) 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 DEVOLUTIONS BE LIABLE TO YOU OR ANY END USER 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 THE USE OF OR THE INABILITY TO USE THE SOFTWARE, THE PROVISION OF OR THE FAILURE TO PROVIDE SUPPORT OR OTHER SERVICES, OR ANY BREACH OF CONTRACT, ANY TORT (INCLUDING NEGLIGENCE, MISREPRESENTATION OR STRICT LIABILITY), ANY BREACH OF STATUTORY DUTY, OR ANY BREACH OF WARRANTY, EVEN IF DEVOLUTIONS HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Term and Termination

- (a) Term of the Agreement. This Agreement becomes effective on the date your Order is confirmed and continues until the termination or expiration of your Subscription Term, as applicable.
- (b) Termination. 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) immediately if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Notwithstanding the foregoing, we may terminate the Agreement (including all related Licenses) without prior notice if you breach any of your obligations under Section 3 (“Restrictions”) or Subsection 14(h) (“Export Administration”).
- (c) Refund upon Termination. If you terminate this Agreement in accordance with Subsection 13(b) (“Termination”), we will refund you any prepaid fees for the terminated portion of your Subscription Term. If this Agreement is terminated by us in accordance with the same Subsection 13(b), or if you elect to terminate your Subscription Term for any other reason or no reason, you will not be entitled to a refund of any prepaid fees.
- (d) Effect of Termination. Upon termination of this Agreement for any cause, the License will automatically terminate and you will immediately discontinue the use of the Software and destroy all copies thereof in your possession or control. Upon written request by Devolutions, you will deliver a certificate executed by an authorized officer stating that you have complied with all your obligations provided in this Subsection.
- (e) Surviving Provision. Notwithstanding anything to the contrary herein, any and all provisions of this Agreement that must necessarily survive to fulfill its essential purposes and to give full effect to the parties’ intents expressed herein shall survive the termination of this Agreement.



14. Miscellaneous

- (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. We reserve the right to amend or update the Agreement from time to time and to publish any updated version on our website. Modifications to our Agreement will apply to you only upon the renewal of your Client License and will not apply to your then-current Subscription Term. Unless we consider, in our sole discretion, that a modification is material as regards your rights and obligations under this Agreement, we will not notify you when we update or modify the Agreement but will indicate its last revision date on our website. If you do not agree to the modified terms of our Agreement, in whole or in part, you may elect not to renew your Subscription Term and cease using the Software. By renewing your Subscription Term or continuing to use the Software after the modified Agreement becoming effective to you, you agree to be bound by the Agreement as then modified and to comply therewith.
- (c) 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, except if the assignment is made to an Affiliate or as part of a corporate reorganization, consolidation, merger, acquisition or sale of all or substantially all of your business and assets. 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. Subject to the foregoing, this Agreement will bind and inure to the benefit of each party's successors and permitted assigns.
- (d) Verification. Upon our written request, you will confirm to us in writing that the Software is being used in conformity with this Agreement and provide reasonable cooperation, information and documents in support of your confirmation. Should we discover any use of the Software in violation of this Agreement, we reserve the right to terminate it together with all related Licenses, in addition to such other rights and remedies that we may have herein or under applicable law.
- (e) 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.
- (f) Dispute Resolution – MANDATORY ARBITRATION CLAUSE. The parties acknowledge and agree that any unresolved claim, dispute, or controversy (excluding any claims for injunctive relief) arising out of or in connection with this Agreement, or the breach or alleged breach thereof, will be treated 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 or any other language as may be mutually agreed. 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.
- (g) 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.



- (h) Export Administration. The Software may be subject to export laws and regulations of Canada, the United States and other jurisdictions, including those of your originating country. You agree to comply fully with such export laws and regulations to ensure that the Software is not: (i) used or exported, directly or indirectly, in violation thereof; or (ii) used or intended to be used for any purposes prohibited by such laws and regulations, including without limitation nuclear, chemical, or biological weapons proliferation. Without limiting the generality of the foregoing, you represent that you are not named on any Canadian or U.S. government denied-party list, and that you will not permit any third party to access, use or export the Software in a country subject to an embargo from Canada, the United States or your originating country.
- (i) 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.
- (j) 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.
- (k) 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.
- (l) Entire Agreement. Each party agrees that this Agreement constitutes the entire agreement between the parties with respect to the use of the Software and the other subject matters covered herein, superseding all proposals, negotiations, and communications, oral or written, between the parties with respect to the subject matters hereof, unless otherwise expressly agreed in writing. Any terms or conditions appearing on any purchase order, acknowledgment, invoice or confirmation (including any document or agreement entered into with a reseller from which you obtained the Software) that are different from or inconsistent with those set forth in this Agreement shall not be binding on the parties, even if signed and returned, unless it is expressly stated that such other terms and conditions take precedence over conflicting terms of this Agreement. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the Order, (2) the Agreement, (3) the Addendums, and (4) the Documentation.
- (m) 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.*