



NOT FOR RESALE LICENSE AGREEMENT Remote Desktop Manager

This Not For Resale License Agreement (the “**Agreement**”) is entered into between Devolutions inc. (“**Devolutions**”) and the Organization (the “**Partner**”) regarding Partner’s access to, and use of, Devolutions’ Remote Desktop Manager software (as more fully defined below, the “**Software**”) for the purposes authorized herein.

Devolutions and Partner mutually agree that following the execution of this Agreement Devolutions will allow Partner to access, copy and use the Software to create, configure, test and/or demonstrate interoperability between its products and the Software (in the case of a Technology Partner), or for internal demonstration, testing or evaluation purposes (in the case of a Business Partner). Both parties shall abide by the terms and conditions contained herein.

1. Definitions

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

Ancillary Agreement: means the partnership, technical, cooperation, services or other agreement entered into between Partner and Devolutions, as applicable.

Business Partner: means a partner that provides support services to Users on behalf of Devolutions or with whom Devolutions has executed an Ancillary Agreement for business purposes (excluding resellers).

Computer: means any computer hardware or electronic device on which the Software is installed, accessed or used by Partner, including without limitation personal computers, laptops, electronic tablets, personal digital assistants, smart phones, mobile phones, hand-held devices, computer servers and networks.

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

Feedback: means any suggestion, recommendation, feedback or idea relating to the Software or its modification, correction or improvement which is communicated by Partner to Devolutions from time to time.

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

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

License Agreement: means Devolutions’ standard license agreement granting Users the right to install and use the Software.

License Period: means a period of twelve (12) months unless agreed otherwise in writing by Devolutions in its sole discretion.

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) or governmental authority.

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 to Devolutions’ Remote Desktop Manager software, in object code form, including its Updates and Improvements.

Technology Partner: means a technology and/or alliance partner that desires (or with whom Devolutions desires) to achieve product interoperability between its products and the Software, subject to the terms of its Ancillary Agreement.

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

Users: means the persons authorized and licensed to use the Software in accordance with Devolutions’ License Agreement.

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

2. Grant of License

Provided Partner is in compliance with the terms and conditions contained herein, Devolutions hereby grants Partner a royalty-free, non-exclusive, revocable, non-sublicensable, non-transferable, limited license (the “**License**”) to install, copy and use the Software and the Documentation for the earlier of (i) the License Period or (ii) the term of the applicable Ancillary Agreement:

(i) In the case of a Technology Partner, for the sole purposes of creating, configuring, testing, evaluating and/or demonstrating interoperability between Partner’s products and the Software or for other authorized development purposes; or

(ii) In the case of a Business Partner, for internal evaluation purposes and/or to provide technical and customer support services to Users.

(collectively the “**Purposes**”).

The License is granted to Partner exclusively for the Purposes. Partner may download, install and use the number of copies of the Software that are

necessary to accomplish the Purposes, as authorized by Devolutions. Partner may also make a copy of the Software for archival, emergency back-up or recovery purposes, provided that such back-up copy is not used for any other purposes. To the extent that the Software is used by a Partner's Affiliate, Partner shall ensure that such Affiliate complies with the terms and conditions of this Agreement and it shall be responsible towards Devolutions for any breach of this Agreement by any such Affiliate. Any rights not expressly granted herein are deemed withheld and Partner shall make no use of the Software other than as expressly permitted in this Section 2.

3. License Restrictions

Except as specifically allowed under this Agreement or any Ancillary Agreement or to the extent required to accomplish the Purposes, Partner shall not (and shall not permit any third party to): (i) publicly disclose or display, distribute, share, rent, lease, license, sublicense, assign, sell, transfer, exploit or make publicly available the Software (including through timesharing or subscription services) to any third party; (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 the Software in a business production mode, as an end-use product, or for the purpose of developing commercially competitive products or services; (iv) modify, translate, alter or improve the Software or the Documentation, incorporate or combine the Software into/with other software, products or services, or create derivative works from the Software; (v) disclose the results of any benchmark, functionality or performance tests run on the Software to any competitors of Devolutions. Without limiting the foregoing, Partner shall not use the Software in any way that is contrary to, or in violation of, applicable laws, including without limitation any laws or regulations relating to intellectual property, privacy and personal data protection legislation. Partner shall also ensure that each authorized copy of the Software and Documentation always contains all original trademarks, copyright notices, legends and other proprietary notices, marking and disclaimers. Partner is responsible for ensuring that its employees and representatives using the Software in connection with the Purposes always comply with the License restrictions set forth in this Section 3, and shall indemnify, defend and hold harmless Devolutions, its affiliates, officers, directors and employees from and against any claims arising from any actions or omissions committed by any of them in violation of this Agreement.

4. Reservation of Rights

Except for the limited License set forth herein, Devolutions owns all title and proprietary rights, including without restriction all intellectual property rights, in and to the Works and Content, all copies thereof, and any Improvements made by Partner in violation of this Agreement. Should Partner (including its employees or representatives) provide any Feedback, it hereby grants Devolutions a perpetual, irrevocable, worldwide, royalty-free and fully paid-up license in and to any and all intellectual property rights in the Feedback, including the right to sublicense to Devolutions' licensees and customers (with the right to grant further sublicenses), the right to use, exploit and disclose such Feedback in any manner Devolutions choose, and to display, perform, copy, have copies, make, use, sell, offer to sell, export and otherwise distribute or dispose of the Software and all Improvements embodying such Feedback but without any obligation to compensate or to reference or disclose the source of such Feedback. Without limiting the generality of the foregoing, any Improvement embodying a Feedback shall be the sole and exclusive property of Devolutions. The License granted herein is not a sale of the Software or any copy of it, nor is it a waiver of the rights of Devolutions under applicable copyright, trademark, patent and other intellectual property laws. Any

misappropriation or violation of Devolutions' intellectual property rights will entitle Devolutions to claim damages and be indemnified under these laws.

5. Updates and Support

Partner is eligible to install Updates and to access Devolutions' standard support services during the License Period only. Support services will be provided in accordance with the terms set forth in Devolutions' Support Level Addendum available at <https://devolutions.net/legal>.

6. License Transfer

Partner may not transfer, assign or sublicense the License or any rights or obligations under this Agreement without the prior written consent of Devolutions. Devolutions may assign at any time its proprietary rights, title and interests into the Software, the License or its rights and obligations under this Agreement.

7. Open Source Software

Partner acknowledges and agrees 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 Partner's 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 Partner (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.

8. Warranty Disclaimer

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED FOR IN THIS AGREEMENT, PARTNER ACKNOWLEDGES AND AGREES THAT THE SOFTWARE IS FOR THE LIMITED PURPOSES SET FORTH HEREIN AND THAT THE SOFTWARE IS PROVIDED "AS IS". DEVOLUTIONS EXPRESSLY DISCLAIMS ANY AND ALL 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. DEVOLUTIONS MAKES NO REPRESENTATION AND GIVES NO WARRANTY THAT THE SOFTWARE WILL BE ERROR-FREE, VIRUS-FREE OR FREE FROM INTERRUPTIONS OR OTHER FAILURES, AND PROVIDES 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 PARTNER FOR THE BENEFIT OF DEVOLUTIONS AND ALL OPEN SOURCE SOFTWARE CONTRIBUTORS (AS APPLICABLE).

9. Limitation of Liability

EXCEPT FOR LIABILITY ARISING FROM PARTNER'S BREACH OF SECTIONS 3, 4, AND/OR 11 OF THE AGREEMENT, AND PARTNER'S

OBLIGATIONS OF INDEMNIFICATION SET FORTH HEREIN, NEITHER PARTY SHALL BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT EVEN IF SUCH PARTY HAS BEEN NOTIFIED AS TO THE POSSIBILITY OF THE SAME. PARTNER'S SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIM OF ANY TYPE WHATSOEVER, REGARDLESS OF FORM, ARISING OUT OF THIS AGREEMENT OR IN CONNECTION WITH THE SOFTWARE, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY DEVOLUTIONS'S SOLE NEGLIGENCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL DEVOLUTIONS' LIABILITY FOR DAMAGES HEREUNDER EXCEED US\$1,000. PARTNER SHALL NOT BRING ANY CLAIM ARISING UNDER THIS AGREEMENT MORE THAN EIGHTEEN (18) MONTHS AFTER SUCH CLAIM HAS ACCRUED.

10. Indemnification by Partner

Provided that Devolutions gives prompt notice to Partner of any such claim and cooperates with Partner, at Partner's expense, in defending or settling such claim, Partner agrees to defend, indemnify, and hold harmless Devolutions, its officers, directors, employees and agents from and against any and all claims, liabilities, damages, losses or expenses, including reasonable attorneys' fees and costs, arising out of or in any way connected with: (i) the use of the Software not in accordance with the Documentation or other than as permitted herein; (ii) the use of the Software in violation of any third-party right, including without limitation any privacy right or intellectual property rights, or of any applicable law, rule or regulation; (iii) any technology owned or licensed by Partner from third parties; (iv) the use of any older version of the Software when use of a newer version made available to Partner would have avoided the claim; or (v) any negligent act or omission committed by Partner, its employees or representatives while using the Software.

11. Confidentiality

Partner acknowledges that the Software constitutes Devolutions' confidential and trade secret information ("**Confidential Information**"). Confidential Information will also include any information disclosed by a party ("**Disclosing Party**") to the other party ("**Receiving Party**") in connection with Partner's use of the Software, provided that such information should be reasonably understood by the Receiving Party as being confidential or proprietary. The Receiving Party will keep the Confidential Information in confidence, in the same manner as the Receiving Party maintains its own confidential information, and in no event with less than a reasonable degree of care. The Receiving Party will use the Confidential Information only for the purposes described in this Agreement. The Receiving Party will limit the disclosure of Confidential Information solely to those employees and consultants having a need-to-know, provided that each such employee and consultant is under a written confidentiality agreement containing confidentiality obligations no less protective than those contained in this Agreement. The Receiving Party will make no written or electronic copies of the Confidential Information, except as reasonably necessary to perform its obligations under this Agreement. The Receiving Party may disclose the Confidential Information to the extent required by a court of law or government regulatory body, but first the Receiving Party will give the Disclosing Party prompt notice to allow the Disclosing Party reasonable opportunity to obtain a protective order against such disclosure. Notwithstanding the foregoing, Confidential Information shall not include information that (i) is or becomes a part of the public domain through no act or omission by the Receiving Party; (ii) was in the Receiving Party's lawful possession prior to the disclosure and had not been obtained by the Receiving Party either directly or indirectly from the Disclosing Party without a

confidentiality obligation; (iii) is lawfully disclosed to the Receiving Party by a third party without restriction on disclosure; or (iv) is independently developed by the Receiving Party without use of or reference to Confidential Information.

12. Termination

This Agreement shall automatically terminate at the expiration of the License Period, unless Devolutions agrees in its sole discretion to renew or extend the term of the License and the Agreement. Devolutions may also terminate this Agreement at any time if Partner is in breach of any of the material terms or conditions provided herein, and such breach remains uncured more than thirty (30) days following receipt of Devolutions' written notice of such breach. In addition, Devolutions may terminate this Agreement immediately if Partner (i) has materially breached Sections 3, 4 and/or 11 of the Agreement, (ii) no longer has a valid Ancillary Agreement with Devolutions, or (iii) becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. Upon any termination of this Agreement, Partner shall immediately cease using the Software and destroy all copies thereof (and its accompanying Documentation). Upon Devolutions' request, Partner shall provide Devolutions a certificate evidencing compliance with the foregoing with respect to the Software and the Documentation. Sections 3 ("License Restrictions"), 4 ("Reservation of Rights"), 7 ("Open Source Software"), 8 ("Warranty Disclaimer"), 9 ("Limitations of Liability"), 10 ("Indemnification by Partner"), 11 ("Confidentiality"), 15 ("Termination") and 13 ("General Provisions") shall survive the termination of this Agreement, in addition to any other provision of this Agreement that must necessarily survive to fulfill its essential purpose and to give full effect to the parties' intents expressed herein.

13. General Provisions

- 13.1 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.
- 13.2 Dispute Resolution. The parties shall mandatorily resolve any claim, dispute, or controversy (excluding any claims for injunctive relief) arising out of or in connection with or relating to this Agreement, or the breach or alleged breach thereof, under the exclusive auspices of arbitration by the Canadian Commercial Arbitration Centre, by means of arbitration and to the exclusion of courts of law, in accordance with its General Commercial Arbitration Rules then in force. Such arbitration shall be held in front of a sole arbitrator in Montreal, Province of Quebec, in the English language. The decision of the arbitrator shall be final, binding and non-appealable. Each party will share equally the costs of arbitration (other than the costs and fees of their respective attorneys). Notwithstanding the foregoing, nothing herein shall be deemed as preventing a party from seeking injunctive relief or provisional or ancillary remedies from the courts as necessary to protect any of its proprietary interests, including to prevent the actual or threatened infringement, misappropriation or violation of its intellectual property rights, and the parties agree to submit exclusively to the courts having jurisdiction within the judicial district of Montreal, Province of Quebec, for any such proceedings. Each party hereby waives all defenses of lack of personal jurisdiction and forum nonconveniens in connection with any action brought in the foregoing courts.
- 13.3 Independent Contractors. The relationship of Devolutions and Partner is that of independent contractors. There is no relationship of agency, partnership, joint venture, employment or franchise between the parties.

Neither party has the authority to bind the other or to incur any obligation on the other's behalf or to represent itself as the other's agent or in any way that might result in confusion as to the fact that the parties are separate and distinct entities.

Agreement provided by Devolutions to its customers shall be superseded by this Agreement. Devolutions may amend or modify this Agreement from time to time and shall provide notice thereof to Partner. If any amendment or modification is unacceptable to Partner, Partner's sole and exclusive recourse and remedy shall be to terminate this Agreement within thirty (30) days of its receipt of notice from Devolutions. Notwithstanding the foregoing, Devolutions may amend the terms and conditions of any other documents and policies referenced herein at any time, including without limitation by posting such revised terms on its website (devolutions.net). Such amended terms and conditions shall be binding on Partner on the effective date of such change.

13.4 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.

13.5 Export Administration. The Software may be subject to export laws and regulations of Canada, the United States and other jurisdictions, including those of Partner's originating country. Partner agrees 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, Partner represents that it is not named on any Canadian or U.S. government denied-party list, and that it 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 Partner's originating country.

13.6 Force Majeure. Neither party shall be deemed in default or otherwise liable for any delay in or failure of its performance under this Agreement by reason of any event of force majeure or any other unforeseeable cause which is beyond the reasonable control of such party.

13.7 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.

13.8 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.

13.9 Notices. All notices under this Agreement are required to be sent either via electronic delivery or by commercial overnight courier with written verification of delivery. All notices so given will be deemed received upon the date of receipt if by electronic delivery or two (2) days after dispatch for courier deliveries. If to Partner, all notices shall be sent to the address indicated to Devolutions. If to Devolutions, all notices shall be sent to infos@devolutions.net or to 1000 Notre-Dame, Lavaltrie, Quebec, Canada, J5T 1M1; Attention: Director of Legal Affairs.

13.10 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.

13.11 Entire Agreement. Each party agrees that the 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. The terms and conditions of the License

13.12 Counterparts. If applicable, this Agreement may be executed in two (2) counterparts, both of which taken together shall constitute one (1) single agreement between the parties. The parties may execute this Agreement by electronic signature which shall be deemed an original signature for all purposes. The parties agree that a version of this Agreement transmitted by means of electronic message or electronic record (electronic mail, electronic data interchange), once duly signed by the authorized representatives of each party, shall constitute a binding agreement and shall have the same force and effect as a document bearing original signatures.

13.13 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.*