

**EC America Rider to Product Specific License Terms and Conditions
(for U.S. Government End Users)**

1. **Scope.** This Rider and the attached DevonWay, Inc. (“Manufacturer”) product specific license terms establish the terms and conditions enabling EC America (“Contractor”) to provide Manufacturer’s information technology products and services to Ordering Activities under EC America’s GSA MAS contract number GS-35F-0511T (the “Schedule Contract”). Installation and use of the information technology shall be in accordance with this Rider and Manufacturer Specific Terms attached hereto, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid delivery order placed pursuant to the Schedule Contract.
2. **Applicability.** Whereas GSA and EC America agreed at the time of Schedule Contract award upon a base set of terms and conditions applicable to all manufacturers and items represented on the Schedule Contract; and Whereas, the parties further agreed that all product specific license, warranty and software maintenance terms and conditions would be submitted at the time each new manufacturer was to be added to the Schedule Contract; Now, Therefore, the parties hereby agree that the product specific license, warranty and software maintenance terms set forth in Attachment A hereto (the “Manufacturer Specific Terms” or the “Attachment A Terms”) are incorporated into the Schedule Contract, but only to the extent that they are consistent with Federal law, including but not limited to GSAR 52.212-4 Contract Terms and Conditions-Commercial Items. To the extent any Attachment A Terms are inconsistent with Federal law (See, FAR 12.212(a)), such inconsistent terms shall be superseded, unenforceable and of no legal force or effect in all resultant orders under the Schedule Contract, including but not limited to the following provisions:
 - a) **Contracting Parties.** The GSA Customer (“Licensee”) is the “Ordering Activity”, defined as the entity authorized to order under GSA MAS contracts as set forth in GSA Order OGP 4800.2I, as may be revised from time to time.
 - b) **Changes to Work and Delays.** Subject to GSAR Clause 52.238-81, Modifications (Federal Supply Schedule) (April 2014) (Alternate I – JUN 2016) and (Alternate II – JUN 2016), and 52.212-4(f) Excusable Delays (JUN 2010) regarding which the GSAR and the FAR provisions take precedence.
 - c) **Contract Formation.** Subject to FAR 1.601(a) and FAR 43.102, the GSA Customer Purchase Order must be signed by a duly warranted Contracting Officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.
 - d) **Termination.** Clauses in the Manufacturer Specific Terms referencing termination or cancellation are superseded and not applicable to any GSA Customer order. Termination shall be governed by the FAR, the underlying GSA Schedule Contract and the terms in any applicable GSA Customer Purchase Orders. If the Contractor believes the GSA Customer to be in breach, it must file a claim with the Contracting Officer and continue to diligently pursue performance. In commercial item contracting under FAR 12.302(b), the FAR provisions dealing with disputes and continued performance cannot be changed by the Contracting Officer.
 - e) **Choice of Law.** Subject to the Contracts Disputes Act, the validity, interpretation and enforcement of this Rider shall be governed by and construed in accordance with the Federal laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar Federal laws or regulations are enacted, to the extent allowed by Federal law, they will not apply to this Rider or the underlying Schedule Contract.
 - f) **Equitable remedies.** Equitable remedies are generally not awarded against the Government absent a statute providing therefore. In the absence of a direct citation to such a statute, all clauses in the Manufacturer Specific Terms referencing equitable remedies are superseded and not applicable to any GSA Customer order.
 - g) **Unilateral Termination.** Unilateral termination by the Contractor does not apply to a GSA Customer Purchase Order and all clauses in the Manufacturer Specific Terms referencing unilateral termination rights of the Manufacturer are hereby superseded.
 - h) **Unreasonable Delay.** Subject to FAR 52.212-4(f) Excusable delays, the Contractor shall be liable for default unless the nonperformance is caused by an occurrence beyond the reasonable control of the Contractor and without its fault or negligence such as, acts of God or the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, unusually severe weather, and delays of common carriers. The Contractor shall notify the Contracting Officer in writing as soon as it is reasonably possible after commencement of any excusable delay, setting forth the full particulars in connection therewith, shall remedy such occurrence with all reasonable dispatch and shall promptly give written notice to the Contracting Officer of the cessation of such occurrence.
 - i) **Assignment.** All clauses regarding the Contractor’s assignment are subject to FAR 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements (Sep. 2013). All clauses governing the Contractor’s assignment in the Manufacturer Specific Terms are hereby superseded.
 - j) **Waiver of Jury Trial.** Waivers of Jury Trials are subject to FAR 52.233-1 Disputes (JULY 2002). The Government will not agree to waive any right that it may have under Federal law. All clauses governing a waiver of jury trial in the Manufacturer Specific Terms are hereby superseded.

- k) **Government Indemnities.** This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered. The Interim FAR Rule dated June 21, 2013 and the Office of Legal Counsel opinion dated March 12, 2012 prohibit such indemnifications. All Manufacturer Specific Terms referencing customer indemnities are hereby superseded.
- l) **Contractor Indemnities.** All Manufacturer Specific Terms that violate DOJ's jurisdictional statute (28 U.S.C. § 516) by requiring that the Government give sole control over the litigation and/or settlement to the Contractor are hereby superseded. Nothing contained in the Manufacturer's Specific terms shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute.
- m) **Renewals.** All Manufacturer Specific Terms that provide for automatic renewals violate the Anti-Deficiency Act and are hereby superseded. This is an obligation in advance of an appropriation that violates anti-deficiency laws (31 U.S.C. § 1341 and 41 U.S.C. § 6301), since the GSA Customer commits to pay an unknown amount at an unknown future time. The violation occurs when the commitment is made, i.e., when the agreement featuring this clause is incorporated into a Government contract, and not when the clause is triggered.
- n) **Future Fees or Penalties.** All Manufacturer Specific Terms that require the Government to pay any future fees, charges or penalties are hereby superseded unless specifically authorized by existing statutes, such as the Prompt Payment Act (31 U.S.C. § 3901 et seq.) or Equal Access To Justice Act (5 U.S.C. § 504; 28 U.S.C. § 2412).
- o) **Taxes.** Taxes are subject to FAR 52.212-4(k), which provides that the contract price includes all applicable federal, state, local taxes and duties. Contractor shall state separately on its invoices, taxes excluded from the fees, and the GSA Customer agrees to either pay the amount of the taxes (based on the current value of the equipment or services) to Contractor or provide it evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.
- p) **Third Party Terms.** When the end user is an instrumentality of the U.S., no license terms bind the GSA Customer unless included in the EULA, and the EULA is made an attachment to the underlying GSA Schedule Contract. All terms and conditions affecting the GSA Customer must be contained in a writing signed by a duly warranted Contracting Officer. Any third party manufacturer shall be brought into the negotiation, or the components acquired separately under federally-compatible agreements, if any.
- q) **Dispute Resolution and Standing.** Any disputes relating to the Manufacturer Specific Terms or to this Rider shall be resolved in accordance with the FAR, the underlying GSA Schedule Contract, any applicable GSA Customer Purchase Orders, and the Contract Disputes Act. The Ordering Activity expressly acknowledges that EC America as contractor, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.
- r) **Advertisements and Endorsements.** Pursuant to GSAR 552.203-71, use of the name or logo of any U.S. Government entity is prohibited. All Manufacturer Specific Terms that allow the Contractor to use the name or logo of a Government entity are hereby superseded.
- s) **Public Access to Information.** EC America agrees that the attached Manufacturer Specific Terms and this Rider contain no confidential or proprietary information and acknowledges the Rider shall be available to the public.
- t) **Confidentiality.** Any provisions in the attached Manufacturer Specific Terms that require the Ordering Activity to keep certain information confidential are subject to the Freedom of Information Act (5 U.S.C. § 552), and any order by a United States Federal Court. When the end user is an instrumentality of the U.S. Government, neither this Rider, the Manufacturer's Specific Terms nor the Schedule Price List shall be deemed "confidential information" notwithstanding marking to that effect. Notwithstanding anything in this Rider, the Manufacturer's Specific Terms or the Schedule Contract to the contrary, the GSA Customer may retain such Confidential Information as required by law, regulation or its bonafide document retention procedures for legal, regulatory or compliance purposes; provided however, that such retained Confidential Information will continue to be subject to the confidentiality obligations of this Rider, the Manufacturer's Specific Terms and the Schedule Contract.
- u) **Alternate Dispute Resolution.** The GSA Customer cannot be forced to mediate or arbitrate. Arbitration requires prior guidance by the head of a Federal agency promulgated via administrative rulemaking according to 5 U.S.C. § 575(c). GSA has not issued any because it considers the Board of Contract Appeals to be an adequate, binding ADR alternative. All Manufacturer Specific Terms that allow the Contractor to choose arbitration, mediation or other forms of alternate dispute resolution are hereby superseded.

3. Order of Precedence/Conflict. To the extent there is a conflict between the terms of this Rider and the terms of the underlying Schedule Contract or a conflict between the terms of this Rider and the terms of an applicable GSA Customer Purchase Order, the terms of the GSA Schedule Contract or any specific, negotiated terms on the GSA Customer Purchase Order shall control over the terms of this Rider. Any capitalized terms used herein but not defined, shall have the meaning assigned to them in the underlying Schedule Contract.

MASTER SOFTWARE AGREEMENT

IMPORTANT – PLEASE READ CAREFULLY: THIS MASTER SOFTWARE AGREEMENT ("**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN THE ORDERING ACTIVITY UNDER GSA SCHEDULE CONTRACTS IDENTIFIED IN THE PURCHASE ORDER, STATEMENT OF WORK, OR SIMILAR DOCUMENT ("**YOU**" OR "**CUSTOMER**") AND DEVONWAY, INC. ("**DEVONWAY**") AND GOVERNS YOUR USE OF THE DEVONWAY PRODUCTS. BY ACCEPTING THIS AGREEMENT, BY BOTH PARTIES EXECUTING AN ORDER FORM YOU AGREE TO THE TERMS OF THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "CUSTOMER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE DEVONWAY PRODUCTS.

This Agreement was last updated on January 9, 2019. It is effective between Customer and DevonWay as of the date Customer accepts this Agreement ("**Effective Date**") as set forth above.

You may not access the DevonWay Products if you are DevonWay's direct competitor, except with DevonWay' prior written consent. In addition, you may not access the DevonWay Products for purposes of monitoring its availability, performance or functionality, or for any other benchmarking purposes.

1. SCOPE OF SERVICES

1.1. Deployment and License Models. Subject to the terms and conditions of this Agreement and the applicable Order Form, DevonWay will make the DevonWay Product available to the Customer during the License Term. The DevonWay Product may be used under the following Deployment and License Models:

1.1.1. Deployment Models: The DevonWay Product may be deployed either as: (a) the online, Web-based platform and applications that are hosted by DevonWay, or a third party hosting facility designated by DevonWay ("**On-Demand**"), or (b) installed by or for Customer at Customer's premises, or on a Customer-controlled server within a third party data center ("**On-Site**").

1.1.2. License Models: DevonWay grants Customer either (a) a perpetual, non-exclusive, revocable, non-transferable right to install, use and modify the DevonWay Product solely for Customer's own internal business purposes ("**Perpetual License**"), or (b) a non-exclusive, revocable, non-transferable right to install, use and modify the DevonWay Product solely for Customer's own internal business purposes during the applicable License Term ("**Subscription License**").

The Deployment and License Model selected by Customer is as indicated on the Order Form. Customer may elect to migrate from one Deployment Model to another at any time during the License Term. Such migration may be subject to the applicable DevonWay migration fees in effect at the time of the migration in addition to additional terms and conditions that apply to the new deployment model. The parties acknowledge and agree that the terms and conditions contained in this Agreement and the terms of use applicable to the Deployment and License Models selected by Customer, which are set forth in the applicable Order Form, will govern Customer's use of the DevonWay Product, unless explicitly stated otherwise in a written agreement between the parties.

1.2. Professional Services and Support. The terms of the Professional Services Agreement ("**PSA**") detailed in Exhibit A shall apply to the configuration, implementation or installation services offered by DevonWay as set forth in the applicable Order Form ("**Professional Services**"). The PSA is hereby incorporated into the Agreement by this reference. During the License Term, and at no additional charge to Customer, DevonWay will provide Customer with the standard level of Support Services. DevonWay reserves the right, from time to time, to make modifications to the Support Services or particular components thereof and will use commercially reasonable efforts to notify Customer of any material modifications by posting a notice of the modification on DevonWay's Technology Blog or by otherwise notifying Customer in accordance with Section 16. Upgraded Support Services may be purchased by Order Form.

2. EVALUATION

2.1. Evaluation Terms. If Customer receives a free or pilot evaluation of the DevonWay Product(s), DevonWay will make one or more DevonWay Products available to Customer on an evaluation basis until the earlier of (a) the end of the evaluation period for which Customer registers to use the applicable DevonWay Product(s), (b) the start date of any DevonWay Product(s) ordered by Customer, or (c) termination by DevonWay at DevonWay's sole discretion. Additional evaluation terms and conditions may appear on the Order Form. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding.

2.2. Data and Customization. ANY DATA CUSTOMER ENTERS INTO THE DEVONWAY PRODUCT(S), AND ANY CUSTOMIZATIONS MADE TO THE DEVONWAY PRODUCT(S), BY OR FOR CUSTOMER, DURING CUSTOMER'S EVALUATION MAY BE PERMANENTLY LOST UNLESS CUSTOMER PURCHASES A LICENSE TO THE SAME DEVONWAY PRODUCT(S) AS THOSE COVERED BY THE EVALUATION, PURCHASES APPLICABLE UPGRADED SERVICES, OR EXPORTS SUCH DATA, BEFORE THE END OF THE EVALUATION PERIOD.

2.3. **No Warranty.** NOTWITHSTANDING SECTION 10 (WARRANTIES), THE DEVONWAY PRODUCT(S) ARE PROVIDED “AS-IS,” WITHOUT ANY WARRANTY DURING THE FREE EVALUATION.

2.4. **Review.** Customer shall review the applicable DevonWay Products' Documentation during the evaluation period in order to become familiar with the features and functions of the DevonWay Product(s) before making a purchase.

3. OUR RESPONSIBILITIES

3.1. **Provision of Products.** DevonWay will (a) make the DevonWay Products available to Customer pursuant to this Agreement and the applicable Order Forms, and (b) use commercially reasonable efforts to make the online DevonWay Products available 24 hours a day, 7 days a week, except for: (1) planned downtime (of which DevonWay shall give advance electronic notice as provided in the Documentation), and (2) any unavailability caused by circumstances beyond DevonWay's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, strike or other labor problem (other than one involving DevonWay employees), Internet service provider failure or delay, problems caused by Non-DevonWay Applications, or any denial of service attack. Additional Terms of Use and Service Level Agreements are as referenced in the Order Form.

3.2. **Protection of Customer Content.** DevonWay will maintain administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Content, as described in the Documentation. Those safeguards will include, but will not be limited to, measures for preventing access, use, modification, or disclosure of Customer Content by DevonWay personnel except (a) to provide the DevonWay Products and prevent or address service or technical problems, (b) as compelled by law, or (c) as Customer expressly permit in writing. By using the DevonWay Product Customer acknowledges that it meets Customer's requirements and processing instructions. DevonWay will provide Customer notice of any unauthorized third party access to Customer Content of which DevonWay becomes aware and will use reasonable efforts to remediate identified security vulnerabilities. If Customer Content is lost or damaged, DevonWay will assist Customer in restoring it to the DevonWay Product from the last available backup copy in compatible format.

3.2.1. **European Economic Area Customers.** For Customers located in the European Economic Area (EEA) DevonWay may use processors and subprocessors (including personnel and resources) in locations worldwide to deliver the DevonWay Products. DevonWay may transfer such Customer's personal data across country borders including outside the EEA. A list of countries where content may be processed for a DevonWay Product is described in the Order Form. A list of subprocessors is available upon request. Upon request by either party, DevonWay, Customer or their affiliates will enter into additional agreements required by law for the protection of personal data included in Customer Content, such as the standard unmodified EU Model Clauses agreement pursuant to EC Decision 2010/87/EU with optional clauses removed. The parties agree (and will procure that their respective affiliates agree) that such additional agreements will be subject to the terms of the Agreement.

3.3. **DevonWay Personnel.** DevonWay will be responsible for the performance of its personnel (including DevonWay employees and contractors) and their compliance with DevonWay's obligations under this Agreement.

4. USE OF THE SERVICES

4.1. **Customer Responsibilities.** Customer will (a) be responsible for all Users' compliance with this Agreement, Documentation and Order Forms, (b) be responsible for the accuracy, quality and legality of Customer Content and the means by which Customer acquired Customer Content, (c) use commercially reasonable efforts to prevent unauthorized access to or use of DevonWay Products, and notify DevonWay promptly of any such unauthorized access or use, (d) use DevonWay Products only in accordance with this Agreement, Documentation, Order Forms and applicable laws and government regulations, and (e) comply with terms of service of any Non-DevonWay Applications with which Customer uses the DevonWay Products.

4.2. **Usage Restrictions.** Customer will not, and will not permit any third party to: (a) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas or algorithms of the DevonWay Products (to the extent such restriction is permitted by law), (b) modify, translate, or create derivative works based on the DevonWay Products or use the DevonWay Products for timesharing or service bureau purposes or for any purpose other than its own use for the benefit of Users; (c) sell, resell, license, sublicense, distribute, make available, rent or lease the DevonWay Products; (d) use the DevonWay Product to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights, (e) use the DevonWay Product to store or transmit Malicious Code, (f) interfere with or disrupt the integrity or performance of the DevonWay Product or third-party data contained therein, (g) attempt to gain unauthorized access to any DevonWay Product or its related systems or networks, (h) permit direct or indirect access to or use of any DevonWay Product in a way that circumvents a contractual usage limit, or use any of the DevonWay Products to access or use any of DevonWay's intellectual property except as permitted under this Agreement, an Order Form, or the Documentation, (i) copy a DevonWay Product or any part, feature, function or user interface thereof, (j) frame or mirror any part of any DevonWay Product, other than framing on Customer's own intranets or otherwise for Customer's own internal business purposes or as permitted in the Documentation, or (k) access any DevonWay Product in order to build a competitive product or service that operates outside of or independently from the DevonWay Product. Any use of the DevonWay Products in breach of this Agreement, Documentation, or Order Forms, by Customer or Users that in DevonWay's judgment threatens the security, integrity or availability of the DevonWay Products, may result in immediate temporary suspension of Customer's use of the DevonWay Products, however, DevonWay will use commercially reasonable efforts under the circumstances to provide Customer with notice and an opportunity to remedy such

violation or threat prior to such suspension.

5. NON-DEVONWAY PROVIDERS

5.1. **Third-Party Services.** DevonWay or third parties may make available third-party products or services, including, for example, Non-DevonWay Applications and implementation and other consulting services. Any acquisition by Customer of such products or services, and any exchange of data between Customer and any third party provider, product or service is solely between Customer and the applicable third party. DevonWay does not warrant or support Non-DevonWay Applications or other third party products or services, whether or not they are designated by DevonWay as “certified” or otherwise.

5.2. **Non-DevonWay Applications and Customer Content.** If Customer chooses to use a Non-DevonWay Application with a DevonWay Product, Customer grants DevonWay permission to allow the Non-DevonWay Application and its provider to access Customer Content as required for the interoperation of that Non-DevonWay Application with the DevonWay Product. DevonWay is not responsible for any disclosure, modification or deletion of Customer Content resulting from access by such Non-DevonWay Application or its provider.

5.3. **Integration with Non-DevonWay Applications.** The DevonWay Products may contain features designed to interoperate with Non-DevonWay Applications. To use such features, Customer may be required to obtain access to such Non-DevonWay Applications from their providers, and may be required to grant DevonWay access to Customer’s account(s) on such Non-DevonWay Applications. DevonWay cannot guarantee the continued availability of such DevonWay Product features, and may cease providing them without entitling Customer to any refund, credit, or other compensation, if for example and without limitation, the provider of a Non-DevonWay Application ceases to make the Non-DevonWay Application available for interoperation with the corresponding DevonWay Product features in a manner acceptable to DevonWay.

6. CONFIDENTIALITY

6.1. **Confidential Information.** Each party (the “Receiving Party”) understands that the other party (the “Disclosing Party”) has disclosed or may disclose Confidential Information.

6.2. Obligations.

6.2.1. **Receiving Party.** The Receiving Party agrees: (a) not to divulge to any third person any such Confidential Information, (b) to give access to such Confidential Information solely to those employees, contractors, service providers, and affiliates with a need to have access thereto for purposes of this Agreement, and (c) to take the same security precautions to protect against disclosure or unauthorized use of such Confidential Information that the party takes with its own Confidential Information, but in no event will a party apply less than reasonable precautions to protect such Confidential Information.

6.2.2. **Disclosing Party.** The Disclosing Party agrees that the foregoing will not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public without fault of the Receiving Party, or (b) was in its possession or known by it prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. Nothing in this Agreement will prevent the Receiving Party from disclosing the Confidential Information pursuant to any judicial or governmental order or as otherwise required by operation of law, provided that the Receiving Party gives the Disclosing Party reasonable prior notice of such disclosure to allow Disclosing Party to contest such order.

6.2.3. DevonWay recognizes that Federal agencies are subject to the Freedom of Information Act, 5 U.S.C. 552, which may require that certain information be released, despite being characterized as “confidential” by the vendor.

6.3. **Restrictions.** Customer acknowledges that DevonWay does not wish to receive any Confidential Information from Customer that is not necessary for DevonWay to perform its obligations under this Agreement, and, unless the parties specifically agree otherwise, DevonWay may reasonably presume that any unrelated information received from Customer is not confidential or Confidential Information.

7. INTELLECTUAL PROPERTY RIGHTS

7.1. **Reservation of Rights.** Except as expressly set forth herein, DevonWay alone (and its licensors, where applicable) will retain all intellectual property rights in and to the DevonWay Products. No rights are granted to Customer hereunder other than as expressly set forth herein. This Agreement is not a sale and does not convey to Customer any rights of ownership in or related to the DevonWay Products, or any intellectual property rights.

7.2. **Suggestions.** DevonWay shall have a royalty-free, worldwide, transferable, sub-licensable, irrevocable, perpetual license to use or incorporate into the DevonWay Products any suggestions, enhancement requests, recommendations or other feedback provided by Customer relating to the DevonWay Products.

7.3. **Customer Content.** Customer and its licensors shall retain all right, title and interest in and to the Customer Content.

8. PAYMENT OF FEES

8.1. **Fees.** Unless otherwise provided in the applicable Order Form or Documentation, (a) fees are based on tiers according to the number of new Operational Records created each year, plus any add-ons, and (b) pricing does not vary according to the number of Users. Customer will pay DevonWay, or the GSA Schedule Contract Holder as applicable, the fees as set forth in the applicable Order Form in accordance with the GSA Schedule Pricelist. Any applicable storage fees are based on actual current usage, are due at the beginning of the License Term and are charged on an annual basis. Fixed fees are due at the beginning of the applicable License Term and are charged on an annual basis. Customer is responsible for all wire transfer and bank fees related to payments made to DevonWay.

8.2. **Purchase Orders.** If not otherwise specified, payments will be due within thirty (30) days of receipt of an invoice. If an annual purchase order is required for multi-year contracts, Customer shall issue the new purchase order at least 30 days prior to the beginning of each subsequent License Term. Any pre-printed or additional contract terms included on any purchase order shall be inapplicable and of no force or effect.

8.3. **Travel.** Travel-related expenses are actual costs incurred to be invoiced a month in arrears. Travel requirements are determined by the DevonWay and Customer project managers. DevonWay makes every effort to minimize travel-related expenses and will adhere to any specific travel guidelines requested by Customer, including the Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable.

8.4. **Late Payment.** Unpaid, undisputed fees are subject to a finance charge as specified by the Prompt Payment Act (31 USC 3901 et seq) and Treasury regulations at 5 CFR 1315.

8.5. **Taxes.** Vendor shall state separately on invoices taxes excluded from the fees, and the Customer agrees either to pay the amount of the taxes (based on the current value of the equipment) or provide evidence necessary to sustain an exemption, in accordance with FAR 52.229-1 and FAR 52.229-3.

8.6. **Future Functionality.** Customer agrees that its purchases are not contingent on the delivery of any future functionality or features, or dependent on any oral or written public comments made by DevonWay regarding future functionality or features.

9. TERMINATION

9.1. **Term of Agreement.** Subject to earlier termination as provided below, this Agreement commences on the Effective Date indicated on the Order Form and continues until all License Terms hereunder have expired or have been terminated.

9.2. **License Term and Renewal.** License Terms and corresponding payment obligations may be renewed for additional periods of one (1) year by both parties executing a new Agreement or purchase order incorporating this Agreement in writing.

9.3. **Termination for Cause.** When the Customer is an instrumentality of the U.S., recourse against the United States for any alleged breach of this Agreement must be brought as a dispute under the contract Disputes Clause (Contract Disputes Act). During any dispute under the Disputes Clause, DevonWay shall proceed diligently with performance of this Agreement according to the Contract Disputes Act, pending final resolution of any request for relief, claim, appeal, or action arising under the Agreement, and comply with any decision of the Contracting Officer according to applicable law.

9.4. **Effects of Termination.** Termination of this Agreement shall not limit the parties from pursuing any other remedies available to it, including injunctive relief.

9.5. **Data Portability and Deletion.** Customer retains all rights to Customer Content. At any time during the License Term, Customer may use DevonWay Product's export facilities to download a copy of Customer Content. Upon termination or for any other reason whatsoever, Customer may request that DevonWay provide a full database backup of Customer Content, which DevonWay will work on providing as soon as the written request is received (additional fees may apply). In the event of termination or expiration of this Agreement or any applicable Order Form, and if requested by Customer within ninety (90) days of such termination or expiration, DevonWay will: (a) return to Customer Content to Customer; or (b) destroy or permanently erase such Customer Content. After such 90-day period, DevonWay will have no other further obligation to maintain or provide access to Customer Content.

9.6. **Application Portability.** If an Order Form specifies that Customer has purchased a Perpetual License for use of DevonWay Products, upon termination of the applicable License Term Customer has the right to receive the binaries and application metadata required to run the application in an On-Site configuration. DevonWay will make the application binaries available free of charge. If Customer requires assistance setting up the On-Site environment, DevonWay will provide that assistance at the Time & Materials rate according to the applicable Customer's support level in effect prior to termination.

9.7. **Surviving Provisions.** All sections of this Agreement which by their nature should survive termination will survive termination, including, without limitation, restrictions, accrued rights to payment, confidentiality obligations, intellectual property rights, warranty disclaimers, and limitations of liability and specifically sections 6, 7, 8, 9, 10.2, 12, 15, 16 and 17.

10. WARRANTIES

10.1. **DevonWay Warranties.** DevonWay represents and warrants that (a) it will provide the DevonWay Products and Support Services in a professional manner consistent with industry standards and practices; (b) the DevonWay Products will conform in all material respects to the Documentation; (c) the functionality of the DevonWay Product will not be materially decreased during a License Term; and (d) the DevonWay Product will not contain or transmit to Customer any Malicious Code (except for Malicious Code that may be uploaded by Users). The Professional Services warranty is set forth in the PSA.

10.2. **Disclaimers.** EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 10, THE DEVONWAY PRODUCTS, SUPPORT SERVICES, PROFESSIONAL SERVICES, DOCUMENTATION, DEVONWAY CONFIDENTIAL INFORMATION AND ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT ARE PROVIDED "AS-IS," WITHOUT ANY OTHER WARRANTIES OF ANY KIND. DEVONWAY (AND ITS AGENTS, AFFILIATES, LICENSORS AND SUPPLIERS) HEREBY DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

11. INDEMNIFICATION

11.1. **Indemnification by DevonWay.** DevonWay shall hold Customer harmless from liability to an unaffiliated third party resulting from infringement by the DevonWay Product of any intellectual property right of such third party, provided DevonWay is promptly notified of any and all threats, claims and proceedings related thereto and given reasonable assistance and the opportunity to assume control over defense and settlement. DevonWay will not be responsible for any settlement it does not approve. Nothing contained herein shall be construed in derogation of the U.S. Department of Justice's right to defend any claim or action brought against the U.S., pursuant to its jurisdictional statute 28 U.S.C. §516. The foregoing obligations do not apply with respect to portions or components of the DevonWay Products (a) not created by DevonWay, (b) resulting in whole or in part from modifications according to Customer specifications, (c) that are modified after delivery, (d) combined with other products, processes or materials where the alleged infringement relates to such combination, (e) where Customer continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement, (f) where Customer's use of the DevonWay Products is not strictly in accordance with this Agreement and all Documentation, or (g) where Customer's use of any version of the DevonWay Products is not the most recent version of the DevonWay Products provided by DevonWay to Customer. Customer will indemnify DevonWay from all damages, costs, settlements, attorneys' fees and expenses related to any claim of infringement or misappropriation excluded from DevonWay's indemnity obligation by the preceding sentence.

11.2. **Reserved.**

11.3. **Exclusive Remedy.** This Section 11 states the indemnifying party's sole liability to, and the indemnified party's exclusive remedy against, the other party for any kind of claim described in this Section.

12. **LIMITATION OF LIABILITY.** EXCEPT FOR (a) VIOLATIONS OF EITHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (b) BREACHES OF CONFIDENTIALITY OBLIGATIONS HEREUNDER (OTHER THAN ANY BREACH AS TO THE SECURITY OR CONFIDENTIALITY OF CUSTOMER CONTENT IN CONNECTION WITH CUSTOMER'S USE OF THE PRODUCTS, FOR WHICH DEVONWAY'S LIABILITY SHALL BE LIMITED BY THIS SECTION), OR (c) INDEMNIFICATION OBLIGATIONS, IN NO EVENT WILL EITHER PARTY (OR ANY OF ITS AGENTS, AFFILIATES, LICENSORS OR SUPPLIERS) BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THE USE OF THE DEVONWAY PRODUCTS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT, THE DELAY OR INABILITY TO USE THE DEVONWAY PRODUCTS OR ANYTHING PROVIDED IN CONNECTION WITH THIS AGREEMENT OR OTHERWISE ARISING FROM THIS AGREEMENT, INCLUDING WITHOUT LIMITATION, LOSS OF REVENUE OR ANTICIPATED PROFITS OR LOST BUSINESS OR LOST SALES, WHETHER BASED IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF DAMAGES. THE TOTAL LIABILITY OF DEVONWAY, WHETHER BASED IN CONTRACT, TORT, OR OTHERWISE, WILL NOT EXCEED, IN THE AGGREGATE, THE FEES PAID AND/OR PAYABLE TO DEVONWAY HEREUNDER FOR THE LENGTH OF THE TERM OF THE AGREEMENT. THE FOREGOING LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY, AND ONLY TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO (1) PERSONAL INJURY OR DEATH RESULTING FROM LICENSOR'S NEGLIGENCE; (2) FOR FRAUD; OR (3) FOR ANY OTHER MATTER FOR WHICH LIABILITY CANNOT BE EXCLUDED BY LAW.

13. **U.S. GOVERNMENT MATTERS.** Notwithstanding anything else, Customer may not provide to any person or export or re-export or allow the export or re-export of the DevonWay Products or any software or anything related thereto or any direct product thereof (collectively "**Controlled Subject Matter**"), in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, any software and documentation provided by DevonWay are "commercial items" and according to DFAR section 252.227-7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

14. **PUBLICITY.** Customer agrees that DevonWay may publish a brief description describing Customer's deployment of the DevonWay Products and identify Customer as a DevonWay customer on any of DevonWay's websites, client lists, press releases, and/or other marketing materials to the

extent permitted by the General Services Acquisition Regulation (GSAR) 552.203-71.

15. INSURANCE. DevonWay will procure at its sole cost and expense and maintain in effect during the term of this Agreement the following insurance coverages, which insurance shall be placed with insurance companies rated A minus VII or better by Best's Key Rating Guide:

- (1) Commercial General Liability, including Bodily Injury, Property Damage, Personal Injury, Advertising Liability, Products-Completed Operations, and Contractual Liability coverage with the following limits of liability:
 - (A) \$1,000,000 per occurrence; and
 - (B) \$2,000,000 General Aggregate
- (2) Worker's Compensation with statutory limits, or the local equivalent, if applicable, as dictated by law, statute, or custom.
- (3) Employers Liability, with a minimum of \$1,000,000 limit of liability per occurrence, or the local equivalent, if applicable, as dictated by law, statute, or custom.
- (4) Automobile Liability, with a minimum combined single limit of liability of \$1,000,000 per accident covering all owned, non-owned, and hired vehicles.
- (5) Excess or Umbrella Liability Insurance, with a minimum \$4,000,000 limit of liability.
- (6) Professional Liability Coverage (Errors and Omissions) Insurance, with a minimum limit of \$1,000,000.
- (7) Cyber Liability Insurance, with minimum limits of \$2,000,000 for each occurrence or claim and an annual aggregate of \$5,000,000 covering claims involving privacy violations, information theft, damage to or destruction of electronic information, extortion, and network security.

16. MISCELLANEOUS. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by Customer except with DevonWay's prior written consent. Both parties agree that this Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement. All waivers and modifications must be in a writing signed by both parties, except as otherwise provided herein. Excusable delays shall be governed by FAR 52.212-4(f). No agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind DevonWay in any respect whatsoever. All notices under this Agreement will be in writing and will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; and upon receipt, if sent by certified or registered mail (return receipt requested), postage prepaid. DevonWay will not be liable for any loss resulting from a cause over which it does not have direct control. This Agreement will be governed by the Federal laws of the United States. DevonWay is permitted to disclose that Customer is one of its customers to any third-party unless Customer notifies DevonWay in writing in advance of such disclosure.

17. CHANGES. DevonWay may modify the non-material terms and conditions of its standard Agreements by posting revised versions at <https://legal.devonway.com/legal/> and by otherwise notifying Customer in accordance with Section 16. Since this agreement may apply to many future orders, DevonWay may modify the non-material terms and conditions of this agreement by providing Customer at least three months' written notice. Changes are not retroactive; they apply, as of the effective date, only to new orders, ongoing use of the DevonWay products that do not expire, and renewals. For transactions with a defined renewable License Term, Customer may request that DevonWay defer the change effective date until the end of the current License Term. Customer accepts non-material changes by placing new orders or continuing use after the change effective date or allowing License Terms to renew after receipt of the change notice. Except as provided above, all changes to the Agreement must be in writing accepted by both parties. If there is a conflict, an Order Form prevails over the terms of this agreement.

18. DEFINITIONS

18.1. **"Confidential Information"** means all confidential and proprietary information of a Disclosing Party disclosed to the Receiving Party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, Customer Content, the DevonWay Product, DevonWay's environmental and operational details including associated security information, business and marketing plans, technology, financial and technical information, product designs, and business processes. Confidential Information (except for Customer Content) shall not include any information that: (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party; (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (c) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (d) is received from a third party without breach of any obligation owed to the Disclosing Party.

18.2. **"Customer Content"** means the electronic information submitted to the DevonWay Product by Customer or on Customer's behalf.

- 18.3. **"DevonWay Product"** means the software application listed on an Order Form and made generally available by DevonWay.
- 18.4. **"Deployment Model"** means the On-Demand or On-Site deployment of the DevonWay Product as set forth in the applicable Order Form.
- 18.5. **"Documentation"** means DevonWay's then-current guides and manuals it makes generally available for the DevonWay Product.
- 18.6. **"License Model"** means the Perpetual License or Subscription License set forth in the applicable Order Form according to which the DevonWay Product is licensed to Customer.
- 18.7. **"License Term"** means the period of time set forth on the Order Form in which Customer shall have access to the DevonWay Product, commencing on the Effective Date.
- 18.8. **"Malicious Code"** means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- 18.9. **"Non-DevonWay Application"** means any software application not provided by DevonWay.
- 18.10. **"Operational Records"** are defined as those belonging to non-reference modules that are workflow-enabled or that contain a "Status" field. An operational record may contain child data, attachments, field history, and task information.
- 18.11. **"Order Form"** means an ordering document signed by an authorized representative of each party setting forth the DevonWay Products and Professional Services Customer has ordered, the License Term, and the Service Capacity.
- 18.12. **"Professional Services"** has the meaning ascribed to it in Section 1.2.
- 18.13. **"Service Capacity"** means any limitations set forth in an Order Form.
- 18.14. **"Support Services"** means the support services currently set forth at the following URL, corresponding to the DevonWay Product purchased by Customer: <https://docs.devonway.com/docs/common/resources/policies-and-procedures/>.
- 18.15. **"Technology Blog"** means the DevonWay blog currently made available at <http://dwaytechblog.blogspot.com/>.
- 18.16. **"User"** means individuals who are authorized by Customer to use the DevonWay Product, and who have been supplied user identifications and passwords by Customer (or by DevonWay at Customer's request). Users may include but are not limited to Customer's employees, consultants, contractors and agents, or third parties with whom Customer transacts business.

EXHIBIT A – PROFESSIONAL SERVICES AGREEMENT

A. Professional Services Provisions

1. **Description of Professional Services.** DevonWay will provide the Professional Services and deliverables (“**Deliverables**”) to Customer as described in one or more “**Statements of Work**” executed by an authorized representative of each party. Each Statement of Work is hereby deemed incorporated into this Agreement, and shall be governed by the terms herein.

2. **Customer’s Obligations.** Customer shall provide assistance, cooperation, information, equipment, data, a suitable work environment and resources reasonably necessary to enable DevonWay to perform the Professional Services. Customer acknowledges that DevonWay’s ability to provide Professional Services as set forth herein may be affected if Customer does not provide reasonable assistance as set forth above. Customer-caused delays may be subject to additional fees as specified in Section B.1.

3. **Project Management.** Each party shall designate a project manager who shall work together with the other party’s project manager to facilitate an efficient delivery of Professional Services.

4. **Change Order.** In order to change the scope of Professional Services set forth in a Statement of Work, Customer will submit a written request to DevonWay specifying the proposed changes in detail and DevonWay will provide an estimate of the charges and anticipated changes in the delivery schedule that will result from the proposed change in Professional Services. DevonWay will continue performing the Professional Services in accordance with the applicable Statement of Work until the parties agree in writing on the change in scope of work, scheduling, and fees.

5. **Proprietary Rights.** DevonWay shall retain all title, copyrights, patents, patent rights, trade secrets, trademarks and other proprietary or intellectual property rights in the Deliverables.

6. **Warranty.** DevonWay warrants for ninety (90) calendar days from the performance of any Professional Services by DevonWay pursuant to this Professional Services Agreement, that such Professional Services shall be performed in a manner consistent with generally accepted industry standards. Customer must report in writing any breach of this warranty to DevonWay during the relevant warranty period, and Customer’s exclusive remedy and DevonWay’s entire liability for any breach of such warranty shall be the re-performance of the Professional Services, or if DevonWay is unable to perform the Professional Services as warranted, Customer shall be entitled to recover the fees paid to DevonWay for the nonconforming Professional Services.

7. **Acceptance.** Upon completion of any Deliverable, DevonWay shall submit the Deliverable to Customer. At Customer’s request, DevonWay will demonstrate to Customer the functionality of the Deliverable. Customer shall be responsible for any additional review and testing of such Deliverable in accordance with any applicable acceptance criteria and test suites. If Customer, in its reasonable discretion, determines that any submitted Deliverable does not perform the functional requirements specified for such Deliverable in the applicable Statement of Work, Customer shall have five (5) calendar days after DevonWay’s submission of the Deliverable (“**Acceptance Period**”) to give written notice thereof to DevonWay specifying the deficiencies in detail. DevonWay shall use reasonable efforts to promptly cure any such deficiencies. After completing any such cure, DevonWay shall resubmit the Deliverable for review and testing as set forth above. Upon accepting any Deliverable submitted by DevonWay, Customer shall provide to DevonWay a written acceptance of such Deliverable. Notwithstanding the foregoing, if Customer fails to reject any Deliverable within the Acceptance Period in the manner described above, such Deliverable shall be deemed accepted at the end of the Acceptance Period. In the event any Deliverable is not accepted by Customer as specified above after the third submission and Acceptance Period, either party may terminate the applicable Statement of Work without further liability to either party, provided however, that Customer shall not be relieved of its payment obligations with respect to the accepted Professional Services delivered prior to any such termination.

8. **DevonWay Service and Products.** The Professional Services provided under this Agreement are provided in support of Customer’s license, under the Agreement, to use the DevonWay Product and the Agreement shall govern such use. Neither this Agreement nor any Statement of Work hereunder grants Customer any license or rights to use such DevonWay Product. In addition, Customer agrees that Customer’s purchase of Professional Services under this Agreement is not contingent upon the delivery of any future functionality or features in the DevonWay Product, nor is it dependent upon any oral or written public comments made by DevonWay with respect to future functionality or features.

9. **Third Party Sub-contractors.** DevonWay reserves the right to use third-parties (who are under a strict covenant of confidentiality with DevonWay), including, but not limited to, offshore sub-contractors to assist with the data migration, configuration, implementation and custom code development processes. DevonWay will remain responsible for the acts and omissions of its third party contractors as if it were performing the services itself.

B. Payment Provisions

1. **Fees.** Professional Services shall be provided under this Professional Services Agreement at the rates and terms set forth in the applicable Order Form in accordance with the GSA Schedule Contract.

2. **Expenses.** Customer will also be responsible for reimbursing DevonWay for all of its customary travel expenses (“**Expenses**”) incurred in each services engagement in accordance with Federal Travel Regulation (FTR)/Joint Travel Regulations (JTR), as applicable. All Expenses will be pre-authorized by Customer, invoiced promptly and due upon receipt.

3. **Cancellation.** Customer will be responsible for payment of any unpaid, uncontested fees for Professional Services rendered prior to the cancellation date if Customer cancels the project and the cancellation is not due to breach of Warranty as specified in Section A.6.

C. Miscellaneous

768-00003-20210127

GSA Approved 29-Jan-21

1. **Product Mix.** Customer acknowledges that the Professional Services acquired hereunder were ordered separately from the DevonWay Product described on DevonWay's Order Form and Customer may acquire either the DevonWay Product or Professional Services without acquiring the other.

2. **Independent Contractor.** With respect to one another, the parties are independent contractors and, as such, neither DevonWay nor its personnel shall be considered Customer's employee(s). As a consequence, Customer is not responsible for withholding or deducting any sums for federal or state income taxes, social security, health, workers' compensation, and disability insurance coverage, pension or retirement plan, or the like.

3. **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, Customer shall not solicit for hire, on behalf of itself or any other organization, any employee or sub-contractor of DevonWay's, unless Customer has first obtained DevonWay's written consent. The foregoing shall not apply to general solicitations for employment.

On-Demand Terms of Use and Service Level Agreements

1. **Service.** Subject to the terms of this Agreement, DevonWay will make the DevonWay Product available to Customer and its Users through a web browser and/or mobile application and grants Customer a license to use the DevonWay Product according to the License Model set forth on the applicable Order Form.
2. **DevonWay Product Releases.** During the License Term, if Customer has paid the applicable fees and is in compliance with the terms and conditions of the Agreement, DevonWay shall provide automatic updates to Customer's instance of the DevonWay Product with DevonWay Product Releases.
3. **Customizations.** If Customer decides to customize the DevonWay Product for Customer's environment, Customer agrees that such customization will be DevonWay-certified customizations using the DevonWay-approved methods and procedures and compliant with established industry security standards.
4. **Testing Environments.** DevonWay will provide, at no additional charge, one testing environment that is created as a duplicate of Customer's production environment (data application logic, representative data, and configuration) referred to as the User Acceptance Test environment, ("UAT") and two testing environments created without duplication of Customer's production environment ("Build" and "Test"). Any requests for additional test environments or updating of the UAT environment outside of scheduled updates shall be performed through the use of support requests or subject to DevonWay's then-current fees for such services. UAT, Build, and Test are intended to be used for development, testing, or staging of any modifications to Customer's production environment instance, and not for use as a production environment instance. DevonWay rigorously tests all software releases and incident patches in a multi-step quality assurance process before making them available to Customer. As a final pre-production test, DevonWay tests releases and incident patches in UAT, which is configured with Customer data and interfaces.
 - a. DevonWay tests new releases and incident fixes in the UAT environment before moving new software to Production. Customer will have the opportunity to use the UAT environment to preview changes or enhancements to DevonWay functionality.
 - b. If DevonWay applications interface with Customer applications, Customer is responsible for providing and operating UAT environments for Customer applications to test these interfaces before new DevonWay software is moved to Production.
5. **Monitoring and Administration.** DevonWay provides 24/7/365 monitoring and administration of the application environment. DevonWay uses a suite of standard and custom monitors, many running more than once a minute, to pro-actively detect, alert on, and escalate issues to DevonWay on-call staff so they can resolve most issues before they affect end-users. Additionally, DevonWay has automated processes that detect and resolve issues without human intervention.
6. **Incident and Request Management.** DevonWay provides 24/7/365 support for issues that cause production operations to cease. DevonWay provides on-line incident reporting for all other issues and responds to incidents or requests that Customer reports under the following terms.
 - a. DevonWay accepts support pages and on-line incidents from people whom Customer names as DevonWay support contacts. Customer may identify up to five support contacts. The people whom Customer names as DevonWay support contacts provide first-line support and accept incident reports from other members of Customer organization.
 - b. DevonWay responds to incidents differently depending on severity. Details and definitions regarding Severity One through Four incidents are documented at <https://docs.DevonWay.com/docs/common/resources/policies-and-procedures/#maintenance-policy>.
 - c. DevonWay takes changes to Production environments seriously, and strives to minimize such changes outside normal upgrade cycles. For this reason, the acceptable resolution of an incident may not always be a patch to the application, but could also be a workaround deemed viable by DevonWay and the Customer business users.
 - d. Customer is responsible for maintaining all application-configuration and end-user data. For example, if an end-user forgets his password, Customer application administrators are responsible for resetting it.
 - e. DevonWay will provide Customer support contacts a triage document to help them resolve common issues and to explain what constitutes a Severity One incident. The improper filing of Severity One incidents may incur time & materials or support request charges.
 - f. Non-incident requests, including data subject requests, are covered under the support procedure documented at <https://docs.devonway.com/docs/common/resources/policies-and-procedures/#support>.
7. **No-downtime Maintenance.** DevonWay seeks to reduce the number and amount of scheduled downtime for maintenance (for example, OS patching, software upgrades, server maintenance, etc.) by using its redundant production hardware to transparently perform most maintenance activities. DevonWay communicates these no-downtime maintenances through the DevonWay Technology Blog at least five calendar days in advance, although DevonWay reserves the right to perform no-downtime maintenances of an urgent nature with less notice than that.
8. **Scheduled Downtimes.** When downtime is unavoidable for maintenance, DevonWay will communicate the planned downtime to Customer at least seven calendar days in advance. DevonWay never schedules maintenance or downtime during business hours, defined to be 5am CST/CDT to 8pm CST/CDT, Monday through Friday without Customer request or explicit approval. DevonWay seeks to schedule most system maintenance requiring a downtime on Friday or Saturday nights after 8pm CST/CDT. DevonWay seeks to have one or less scheduled downtime lasting one hour or less in duration per month. At no time will DevonWay schedule more than three downtimes per month lasting more than four hours in total duration without Customer explicit approval.
9. **Unscheduled Downtimes.** DevonWay maintains fully redundant, highly available production hardware, software, and network architecture. However, from time to time, individual components can fail. Depending on the exact component and nature of the failure, end-users may experience

unscheduled application downtime. When a failed component leads to unscheduled application downtime, DevonWay brings the application back up through a combination of automated and manual processes. DevonWay provides 99.9% availability with no more than 2 unscheduled downtimes per month, excluding an event that would trigger a disaster recovery to the secondary datacenter or a database restore, both of which are described in more detail below. Unscheduled application downtime excludes failures within Customer datacenters or the Customer's connection to the internet since DevonWay's level of control ends at the perimeter of its datacenters. It is worth noting that DevonWay's datacenters have several connections to the internet from different vendors, and internet connectivity at DevonWay's datacenter is included in the unscheduled application downtime.

10. **Data Backup and Recovery.** DevonWay backs up Customer production application data on a regular basis using a variety of strategies, including on-site disk and tape backups, as well as copies stored off-site in the secondary datacenter on both disk and tape. DevonWay backs up Customer end-user generated data at least hourly and static files and underlying systems at least daily. DevonWay keeps backups for two weeks and can restore data from backup within a timeframe appropriate to the severity and circumstances of the situation. For Customer-caused data loss, the restoration of data may require the use of support requests. DevonWay does not automatically delete any Customer end-user generated data, although DevonWay does rotate log files on a periodic basis.
11. **Disaster Recovery.** DevonWay located its primary datacenter in Dallas, TX due to its generally low risk to disasters common to other parts of the country, including low risk to earthquakes, hurricanes, snowstorms, etc. However, in order to mitigate a disaster in the primary datacenter, DevonWay maintains a geographically separate, secondary datacenter in Ashburn, VA. In the unlikely event of a natural disaster, extended power outage that exhausts the UPS and generator systems, or other calamitous event, DevonWay will recover the Customer application in its secondary datacenter with a maximum one hour of lost data. The datacenter space is provisioned and dedicated to DevonWay and its Customers, so there is not a "first-come, first-served" policy to worry about. In the unlikely event of a failover to the secondary datacenter, DevonWay will recover the Customer application in 6 hours or less.
12. **Performance.** DevonWay applications will perform as well as or better than reasonably expected, with the majority of actions taking 1-3 seconds to complete. Due to the wide variety in which DevonWay applications can be configured, DevonWay does not offer a Service Level Agreement related to specific response times, but instead makes performance testing a required step in the final acceptance cycle of an implementation. If after go-live performance degrades beyond acceptable levels because of software, hardware, or network problems within DevonWay's control, DevonWay will treat these conditions as either Severity One or Severity Two incidents, depending on the scope and degree of the problem.
13. **Data Security Services.** DevonWay provides these data security services with the applications that Customer licenses:
 - a. **Security:** DevonWay primary and secondary datacenters are SSAE 16 Type II certified and its servers are Cisco-firewalled, virus-protected, and safeguarded from unauthorized access by biometric sensors and a full security detail. In addition, low-level network-based Intrusion Detection Systems protect against cracking. DevonWay and/or authorized datacenter personnel (at DevonWay's direction) apply critical operating system and software security patches within 30 days or sooner, depending on criticality, applicability to the DevonWay operating environments, and subject to testing and scheduling any appropriate downtimes.
 - b. **Encryption:** DevonWay allows only secure https access to the Customer application, backed by a 256bit SSL/TLS certificate. All backups are transferred to on-site tape backups and the secondary off-site datacenter through encrypted tunnels and are stored with 256bit encryption.
 - c. **End-User Passwords:** DevonWay encrypts all end-user passwords during logon. However, DevonWay cannot be responsible for unauthorized access to the Customer application caused by the Customer's users sharing or misusing their logon information.
14. **Capacity Planning Policy.** DevonWay manages growth by maintaining a 2x capacity in its datacenters as measured against peak load. DevonWay tracks percentage utilization on a daily, weekly, and monthly basis and uses a predictive formula to requisition any additional hardware necessary for new Customers well in advance of hosting them. DevonWay does not publish this formula.
15. **Notifications of Notable Events.** DevonWay communicates Notable Events through its Technology Blog, by targeted emails, or both. Notable Events include, but are not limited to:
 - Changes to the operating environment, such as planned maintenance
 - Descriptions and effects of unplanned downtimes
 - End-of-life announcements for deprecated software, such as old browser versions
 - Security warnings or breachesThe communication may be to the entire DevonWay community or to affected Customers when the event only applies to them. In the case of a security breach, DevonWay will communicate directly with the affected Customer(s) to develop a plan for mitigating its effects. The communication will occur as soon as possible, but in no case later than 72 hours of DevonWay becoming aware of the breach. Note that to date, no such breach has occurred.
16. **Miscellaneous Statement of Responsibilities.** DevonWay is not responsible for the following:
 - a. Network issues originating from within the Customer's intranet.
 - b. General Internet outages, defined as the Customer's inability to connect to both the Dallas, TX and Ashburn, VA datacenters.
 - c. Customer computers that are unsupported or running less than the minimum required configuration as determined and mutually agreed upon during implementation or as specified at <https://docs.DevonWay.com/docs/common/Advanced-documentation/Recommended-Client-Configuration/>.
 - d. Customer browsers that are unsupported or running less than the minimum required version as determined and mutually agreed upon during implementation.

17. **Handling of Customer Content Post Termination.** Upon any expiration or termination of this Agreement, and upon expiration of the License Term, the rights and licenses granted hereunder will automatically terminate, and Customer may not continue to use the DevonWay Product. If Customer is using the On-Demand DevonWay Product as of the effective date of termination, upon written request by Customer made within ninety (90) days of the effective date of expiration or termination of the Agreement (the "Post-Term Period"), DevonWay agrees to make available to Customer, a copy of Customer's production data. Further, during the Post-Term Period and upon the Customer's request, DevonWay shall grant the Customer limited access to the DevonWay Product for the sole purpose of permitting the Customer to retrieve Customer Content, provided that the Customer has paid in full all good faith undisputed amounts owed to DevonWay. Upon expiration of the Post-Term Period, DevonWay will have no further obligation to maintain for or provide to Customer any of the Customer Content and may thereafter, unless legally prohibited, delete all Customer Content in its systems or otherwise in its possession or under its control.

Service Level Agreement

This Service Level Agreement (“SLA”) describes the availability of the DevonWay Product and is made a part of any DevonWay Master Software Agreement (the “Agreement”) which references its terms and applies when the Order Form specifies a support plan that covers credits for missing SLAs in the DevonWay On-Demand environment. Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Agreement.

- 1. Availability.** DevonWay shall make the DevonWay Product available 99.9% of the time, except as provided below. Availability will be calculated per calendar quarter, as follows:

$$\left(\frac{\text{total} - \text{downtime}}{\text{total}}\right) \geq .999$$

Where:

- *total* means the total number of minutes in the calendar quarter;
- *downtime* means any period of unavailability of the DevonWay Product, where the majority of users cannot log on and view data;
- Exclusions to *total* and *downtime* calculations:
 - Any planned or scheduled unavailability of the DevonWay Product, including for the purposes of maintenance or upgrades. DevonWay will use commercially reasonable efforts to schedule all planned downtime during the hours from 8:00 p.m. Friday to 5:00 a.m. Monday, U.S. Central Time.
 - Non-environmental errors, such as those caused by application configuration changes or data updates.
 - Any period of unavailability lasting less than 15 minutes.
 - Any unavailability caused by circumstances beyond DevonWay’s reasonable control, including, without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving DevonWay employees), or third-party internet service provider failures or delays, including denial of service attacks.

For any partial calendar quarter during which Customer subscribes to the DevonWay Product, availability will be calculated based on the entire calendar quarter, not just the portion for which Customer subscribed.

- 2. Remedies.** If DevonWay fails to make the DevonWay Product available as set forth in Section 1 above, Customer may receive a credit for 1% of the then-current quarter’s subscription fee for the affected DevonWay Product for each full or partial hour of unavailability in violation of Section 1. In no case shall the total credit for any quarter exceed the lesser of \$100,000 or 80% of the subscription fees paid by Customer for the then-current quarter. If DevonWay fails to make the DevonWay Product available as set forth in Section 1 above in two consecutive calendar quarters, Customer may, in lieu of receiving the above-described credit for the second quarter, terminate the Agreement by providing notice of termination in accordance with Section 3 below, in which case DevonWay will refund to Customer any prepaid fees for the remainder of the License Term following the date of termination. The remedies described in this paragraph shall be the sole remedies available to Customer for breach of this SLA.
- 3. Reporting, Claims and Notices.** To claim a remedy under this SLA, Customer shall send DevonWay a written notice, via email addressed to notices@devonway.com, containing the following details:
- Billing information, including company name, billing address, billing contact and billing contact phone number
 - Downtime information with dates and time periods for each instance of downtime during the relevant period
 - An explanation of the claim, including any relevant calculations.

Claims may be made on a calendar-quarter basis only and must be submitted within 10 business days after the end of the applicable quarter, except where a License Term ends on a date other than the last day of a calendar quarter, in which case any claim related to that subscription must be submitted within 10 business days after the License Term ends.

All claims will be verified against DevonWay’s system records. If DevonWay disputes any period of unavailability alleged by Customer, DevonWay will provide to Customer a record of availability for the applicable period. DevonWay will provide such records only in response to claims made by Customer in good faith.

- 4. General:** Services designated as beta, limited release, developer preview, development or test bed environments, or by descriptions of similar import are excluded from this SLA.

On-Site Terms of Use and Service Level Agreements

1. **License Grant.** Subject to the terms of this Agreement, DevonWay will make the DevonWay Product available to Customer and its Users for use at the Customer's premises or on a Customer-controlled server within a third party datacenter, and grants Customer a license to use the DevonWay Product according to the License Model set forth on the applicable Order Form.
2. **Delivery.** DevonWay shall electronically deliver or make available the DevonWay Product and the information necessary for Customer's use and installation of the DevonWay Product.
3. **DevonWay Product Releases.** During the License Term, DevonWay will provide updates to the DevonWay Product. Customer understands and agrees that Customer may not have immediate access to new or improved features or newer versions of the DevonWay Product until the update is issued to On-Site customers by DevonWay.
4. **Termination.** Upon termination of the Agreement, if Customer has purchased a Perpetual License for use of the DevonWay Products, Customer may continue (i) to use DevonWay Products subject to its compliance with the terms of the Agreement; and (ii) may continue to receive maintenance and support from DevonWay, provided that Customer pays DevonWay the then-current fees for such maintenance and support.
5. **Production and Testing Environments.** The DevonWay Product must be installed in "appliance mode," meaning on a single web server/app server configuration, with the database server optionally segregated. Multi-server configurations are possible but carry an additional cost. Customer is allowed to create one Production instance and one Testing instance per licensed configuration .
6. **Incident Management.** DevonWay is responsible for rigorously testing all software releases and incident patches in a multi-step quality assurance process before making them available to customers. As a final pre-production test, Customer is responsible for testing DevonWay releases and incident patches in a User Acceptance Testing (UAT) environment configured with Customer data and interfaces. In addition to adhering to pre-production testing processes, DevonWay provides on-line incident reporting for all other issues and responds to incidents that Customer reports under the following terms.
 - a. DevonWay accepts support pages and on-line incidents from people whom Customer names as DevonWay support contacts. Customer may identify up to five support contacts. The people whom Customer names as DevonWay support contacts provide first-line support and accept incident reports from other members of Customer organization.
 - b. Regardless of the root cause, off-hours phone support is still subject to the fee defined by Customer support plan. Beyond that initial fee, the effort expended by DevonWay to address incidents due to platform defects is covered under maintenance, unless the defect leads to a Severity One or Two incident that is uncovered in Production due to insufficient testing or poor change management on Customer's part (for example, if Customer made an environmental change in Production without first validating it in a UAT area). In that case, the effort expended by DevonWay to resolve or address the issue in Customer's Production area is not covered by maintenance.
 - c. DevonWay responds to incidents differently depending on severity. Details and definitions regarding Severity One through Four incidents are documented at <https://docs.devonway.com/docs/common/resources/policies-and-procedures/#maintenance-policy>.
 - d. DevonWay takes changes to Production environments seriously, and strives to minimize such changes outside normal upgrade cycles. For this reason, the acceptable resolution of an incident may not always be a patch to the application, but could also be a workaround deemed viable by DevonWay and the Customer business users.
 - e. Customer is responsible for maintaining all application-configuration and end-user data. For example, if an end-user forgets his password, Customer application administrators are responsible for resetting it.
 - f. DevonWay will provide Customer support contacts a triage document to help them resolve common issues and to explain what constitutes a Severity One incident. The improper filing of Severity One incidents may incur time & materials or support request charges.
 - g. If Customer files an incident but is not on the latest DevonWay Product or platform release, DevonWay may request that Customer update a Testing environment to the latest release and reproduce the incident before DevonWay investigates, so as to ensure the incident has not already been resolved.
7. **Server Specifications and Third-party Licenses.** Customer is responsible for providing a Windows Server 2016 operating system license, a Microsoft Office license, a SQL Server 2016 database license, including SQL Server Reporting Services (SSRS), and licenses for supporting software such as anti-virus and backup tools. DevonWay is responsible for all third-party licenses required by the DevonWay platform, such as Jasper reporting and scheduling software. Customer is also responsible for configuring physical or virtual servers that meet the hardware specifications in the DevonWay On-premise Preparation document, which is provided during the procurement process.
8. **Administration.** Customer is responsible for:
 - a. Monitoring and administration of the application environment. DevonWay can train Customer to use DevonWay's suite of monitors, or Customer may use its own central monitoring technology.
 - b. Data backup and recovery.
 - c. Database server maintenance and administration, such as index maintenance, statistics updates, integrity checks, and database server health monitoring.
 - d. Disaster recovery.
 - e. Data security.
 - f. Scheduled and unscheduled downtimes.

- g. Capacity planning.
 - h. Hardware and Operating System upgrades and patches, including security updates. Note that this does not include upgrades to components required by the DevonWay platform, such as the Java Virtual Machine, Java Servlet Container (Tomcat), etc. Those must be coordinated with and performed at the same time as upgrades of the DevonWay platform or if needed to be installed ahead of a scheduled upgrade for security reasons, DevonWay must certify that the patch is compatible with the platform version prior to being installed.
 - i. DevonWay platform and application upgrades.
 - j. Providing and maintaining VPN access to named DevonWay personnel for remote troubleshooting purposes. Implementations that do not allow VPN connections due to internal security policies are encouraged to enable a screen sharing solution or support may require additional fees.
9. **Support.** Purchase of a Gold or Platinum plan is required so DevonWay may provide support when needed.
10. **Miscellaneous Statement of Responsibilities.** DevonWay is not responsible for the following:
- a. Client computers that are unsupported or running less than the minimum required configuration as determined and mutually agreed upon during implementation or as specified at <https://docs.devonway.com/docs/common/Advanced-documentation/Recommended-Client-Configuration/>.
 - b. Client browsers that are unsupported or running less than the minimum required version as determined and mutually agreed upon during implementation.