



Cloud Center of Excellence

Standard Terms and Conditions

Version 11.23

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Cloud Services – Standard Terms and Conditions

Cloud Services Terms and Conditions

These Cloud Services Terms and Conditions (the “Terms and Conditions”) are incorporated into and are a part of the Services Description entered into by and between DevCare Solutions, Inc. (“DevCare”) and the entity identified as the customer in the Services Description (“Customer”). DevCare and Customer are each referred to as a “Party” and both as the “Parties”.

1. **Definitions.** The following definitions apply to these Terms and Conditions:
 - a. **“DevCare Provided Software”** has the meaning specified below in **Section 10.A**.
 - b. **“Acceptable Use Policy”** or **“AUP”** means the DevCare Acceptable Use Policy that is applicable to use of the hardware and software provided by DevCare hereunder as such policy is revised from time to time. Customer may access the policy at any time through the website of DevCare.
 - c. **“Business Day”** or **“Business Hours”** means Monday through Friday, 8:00 a.m. – 6:00 p.m. United States eastern time, excluding federal holidays.
 - d. **“Cloud Services”** means any recurring fee for use of the Cloud System or platform support services as specified in the Services Description.
 - e. **“Cloud System”** means a combination of hardware, software and networking elements that comprise an information technology system and which includes Hosted Virtual Desktops, virtual servers, storage, cross connect, firewall capacity, additional RAM or CPUs, dedicated bandwidth and application virtualization ordered by Customer through the Services Description. The Cloud System may consist of a dedicated system for the use of Customer only, the right to use certain parts of a shared system that DevCare maintains for many customers or a combination of some dedicated elements and some shared elements.
 - f. **“Confidential Information”** means all information disclosed by one Party to the other Party before or during the term of Services and which: (1) with respect to Customer is Customer Data (defined below), (2) with respect to DevCare is (a) the pricing of any Service (defined below) offerings, (b) the terms and provisions set forth herein and in the Services Description, (c) any non-publicly available information about any DevCare data center or data center vendor used by DevCare (including non-graphic information observed by Customer while on a tour of any such data center) or (d) any non-publicly available information about any technology employed or used by DevCare and (3) for both DevCare and

Customer is any information provided (a) in writing with a legend conspicuously marking the information as “PROPRIETARY OR CONFIDENTIAL INFORMATION” or (b) if the information is conveyed verbally, with (i) an assertion at the time of disclosure that the information is deemed confidential protected hereunder and (ii) a letter submitted to the designated representative of the recipient Party within ten (10) days after the date of verbal disclosure describing the information disclosed and stating that such information is Confidential Information protected hereunder.

- g. **“Customer Data”** means any non-publicly available data transmitted to or from, or stored on, the Cloud System allocated for Customer’s use hereunder.
 - h. **“Customer Provided Software”** has the meaning specified below in **Section 10.B.**
 - i. **“Deployment Date”** is the date defined below in **Section 3.A.**
 - j. **“Effective Date”** means the date that the Services Description is signed by both Parties.
 - k. **“Hosted Virtual Desktop”** means a user interface in a virtualized environment and that is accessed through a unique login identifier (username and password). Hosted Virtual Desktops are provided by DevCare on a concurrent basis which means that the number of Hosted Virtual Desktops specified in the Services Description is the number of user interfaces that can be accessed at the same time.
 - l. **“Services Description”** is the document bearing such name as the title, which both Parties shall execute and which is described in greater detail below in **Section 2.**
 - m. **“Service Level Guaranty”** or **“Service Level Guaranties”** means a guaranty or guaranties identified as a “Service Level Guaranty” or “Service Level Guaranties” in **Section 3.**
 - n. **“Services”** means Cloud Services and Supplemental Services, collectively.
 - o. **“Supplemental Services”** means those Services that Customer purchases from DevCare other than the Cloud Services including (1) any setup fee, (2) any database administration or “DBA” services and (3) any assistance or support for any third party application that Customer operates on the Cloud System.
 - p. **“Stub Period”** means the period between the Deployment Date and the last day of the month in which the Deployment Date occurs as described further below in **Section 6.**
2. **Services Description.** DevCare will provide the Services that are specified in detail in the Services Description. In the event of any conflict or inconsistency between provisions of these Terms and Conditions and the provisions of the Services Description, the provisions of the Services Description shall control. If DevCare provides additional Services that are not described in the Services

Description then Customer shall pay for such Services on a time and materials basis based upon DevCare's then standard hourly rates.

3. Deployment and Service Level Guaranties.

a. Deployment Guaranties.

1. DevCare guaranties that it will deploy the Cloud Services described in the Service Description by the date stated in the Service Description or, if none is specified, then within thirty (30) Business Days after the Effective Date (the "Deployment Date"); provided, however, that if Customer does not provide all information that DevCare needs in order to complete deployment by the date that would otherwise be the Deployment Date, then the Deployment Date shall be within fifteen (15) Business Days after the date that Customer provides all required information.
2. Servers are deemed deployed as of the time that DevCare generates an email message to Customer that includes the information needed to allow Customer to transfer information to and from the Cloud System for operational purposes.
3. Customer's sole and exclusive remedy for DevCare's failure to deploy the Cloud Services by the Deployment Date shall be a credit equal to the amount of the setup fee (if any) stated in the Service Description; provided, however, that no credit is due if the actions of Customer cause the delay.
4. Customer may delay the deployment of a Cloud System by providing DevCare with written notice of the same no later than fifteen (15) days following the Effective Date of these Terms and Conditions. The requested delay may not continue for more than two (2) months following the Effective Date of these Terms and Conditions. Customer acknowledges and agrees that DevCare will incur a loss for the loss of planned revenue from the leasing of Cloud Systems for the use by its customers (including Customer) and that if Customer requests a delay in deployment DevCare may charge Customer up to fifty percent (50%) of the monthly recurring fees for the Cloud System otherwise chargeable to Customer during the period of delay.

b. Service Level Guaranties.

1. DevCare guaranties that its Cloud System will be available ninety-nine percent (99%) of the time in a given month, except to the extent that (a) any Customer provided hardware or software fails or is defective and said failure or defect causes, in whole or in part, the downtime, (b) the Cloud Services are suspended (see **Section 4**) or (c) as specified below in these Terms and Conditions (including in this **Section 3.B** and **Section 20.B**). Availability shall be measured at the exit (outbound port) of the firewall at DevCare's data center. Customer's sole and exclusive remedy for

any failure of the foregoing guaranty is that DevCare will credit Customer's account for 5% of the monthly Cloud Services fee for each hour of downtime, up to 100% of Customer's monthly fee for the affected Cloud System.

2. DevCare guaranties functioning of the following dedicated, DevCare-provided hardware: (a) servers, firewalls, and load balancers, (b) attached storage devices and (c) network attached storage devices. Hardware repair or replacement will begin once DevCare identifies the cause of the problem. Hardware repair or replacement is guaranteed to be completed within five hours of problem identification for network attached storage devices and within one hour of problem identification for all other hardware covered by the foregoing guaranty. In counting the five hours or one hour repair or replacement window specified in the immediately preceding sentence any time required to rebuild a RAID array, reconfigure devices from their default settings or reload operating systems and applications is specifically excluded. Customer's sole and exclusive remedy for any failure of the foregoing guaranty is that DevCare will credit Customer's account for 5% of the monthly Cloud Services fee for each additional hour of downtime (after the initial five hours or one hour for repair or replacement, as applicable), up to 100% of the monthly Cloud Services fee for the affected hardware. Customer cannot receive a duplicate credit for the same hour of downtime in both **Section 3.B(1)** and this **Section 3.B(2)**, and in the event of duplication the total of both credits will be reduced by the amount of any such duplication.
3. Downtime is measured (for purposes of this **Section 3.B**) from the time a trouble ticket is opened until availability of the Cloud System is restored, or the affected device is powered back on, as applicable.
4. Customer is not entitled to a credit if Customer is in breach of these Terms and Conditions (including any payment obligation to DevCare) at the time of the occurrence of the event giving rise to the credit until Customer has cured the breach. Customer is not entitled to a credit if the event giving rise to the credit would not have occurred but for Customer's breach of these Terms and Conditions or misuse of the Cloud System. To receive a credit, Customer must contact its DevCare account manager within ten (10) days after the occurrence of the event giving rise to the credit. The Service Level Guaranties are contingent on DevCare having full logical access to Customer's configuration. No credit will be due if the credit would not have accrued but for Customer's restriction of DevCare's logical access to Customer's configuration.

5. Notwithstanding anything in these Terms and Conditions to the contrary, the maximum total credit for failure to meet the Service Level Guaranties under these Terms and Conditions for any calendar month shall not exceed 100% of Customer’s then current monthly recurring fee for the affected Cloud System. Credits that would be available but for this limitation will not be carried forward to future months.
6. Customer acknowledges and agrees that DevCare may have to take one or more portions of the Cloud Services offline in order to conduct regular maintenance or major upgrades including the installation of any patches or other fixes. DevCare may utilize the following maintenance windows for planned downtime and such downtime shall not be counted as downtime for purposes of the Service Level Guaranty notwithstanding any provision herein to the contrary:

Maintenance Windows	
Regular Maintenance Windows	Wednesday and Friday mornings from 2 a.m. to 4 a.m EST.
Major Upgrades	Up to 4 times per year from Friday 10 pm to Monday 3 a.m EST. DevCare will provide Customer with advance written notice to the extent possible (either by email or by any other electronic means).

- c. **Service Standard.** DevCare will provide Services hereunder in a professional and workman-like manner consistent with reasonable industry standards. Customer’s sole and exclusive remedy for any failure of the foregoing guaranty is for DevCare to re-perform any portion of the Services that breaches the foregoing or, in the discretion of DevCare, issue a refund of any fees paid for the defective Services.
4. **Suspension of Services.** DevCare may suspend or terminate Services without liability if: (a) DevCare reasonably believes that the Services are being used in violation of these Terms and Conditions, (b) Customer does not cooperate with DevCare’s reasonable investigation of any suspected violation of these Terms and Conditions, (c) there is an attack on the Cloud System or the Cloud System is accessed or manipulated by a third party without Customer’s consent, (d) DevCare is required by law to suspend the Services, or (e) there is another event for which DevCare reasonably believe that the suspension of Services is necessary to protect the Cloud System, any other property of DevCare or any vendor of DevCare or the other customers of DevCare, including if DevCare is faced with a credible claim that the Services or any software infringes upon the intellectual property rights of others.

DevCare will provide Customer advance notice of a suspension under this **Section 4** of at least twelve Business Hours unless DevCare determines in its discretion that a suspension on shorter or contemporaneous notice is necessary to protect DevCare or its other customers from imminent and significant operational or security risk.

5. **Obligations and Representations of Customer.** Customer must comply with the following during the term of these Terms and Conditions:
- a. **Security Precautions, Account Information and AUP.** Customer must use reasonable security precautions (including encrypting any personal identification information) in connection with use of the Services provided hereunder and must cooperate with any investigation of DevCare (or any third party vendor or provider of DevCare with respect to the Services hereunder) into service outages, security problems, contractual breaches or other problems that may affect compliance with these Terms and Conditions or the Services provided hereunder. Customer must maintain current account permissions, billing, and other account information up to date pursuant to the then defined procedures of DevCare. Customer must comply with any laws applicable to use of the Services and with the then current Acceptable Use Policy of DevCare.
 - b. **Unauthorized Access.** DevCare is not responsible to Customer or any third party for unauthorized access to Customer's data or the unauthorized use of the Services unless the unauthorized access or use results from DevCare's failure to meet its security obligations. Customer is responsible for the use of the Services by any employee of Customer, any person Customer authorizes to use the Services, any person to whom Customer has given access to the Services, and any person who gains access to Customer's data or the Services as a result of Customer's failure to use reasonable security precautions, even if such use was not authorized by Customer.
 - c. **Privacy Policies and Applicable Data Security Laws.** Customer must comply with any laws applicable to privacy and data security and with the then current privacy policy of DevCare. Customer further represents and warrants as follows:
 1. Except if otherwise expressly provided for in the Services Description or in a written modification to the same, Customer will not transmit any "individually identifiable health information" (IIHI) as part of any Customer Data or otherwise to DevCare; DevCare is relying upon the foregoing representation in determining that it is not a business associate as defined in 45 CFR Reg. 160.103. IIHI means information that is a subset of health information, including demographic information collected from an individual, as defined in the Health Insurance Portability And Accountability Act of 1996 ("HIPPA") and 45 CFR Reg. 160.103. If

the Services Description specifically authorizes the transmission of IHI or if it does not but Customer desires to transmit the same after entering into the Services Description, then DevCare may impose additional requirements in order to comply with its requirements under HIPPA including entering into a business associate agreement with Customer and charging of an additional agreed upon fee to compensate DevCare for any required procedures for handling IHI or meeting any other obligations of HIPPA.

2. Customer will not transmit any personal information as part of any Customer Data or otherwise about minors and is not (and will continue to not be) in violation of the Children's Online Privacy Protection Act ("COPPA").
 3. Except if otherwise expressly provided for in the Services Description or in a written modification to the same, Customer is not a financial institution or other entity subject to the privacy provisions of the Gramm-Leach-Bliley Act ("GLBA") and will not transmit any personal information in violation of said act. If the Services Description specifically authorizes the transmission of information otherwise governed by the GLBA or if it does not but Customer desires to transmit the same after entering into the Services Description, then DevCare may impose additional requirements in order to comply with its requirements under the GLBA including entering into any required additional agreements pursuant to the GLBA and charging of an additional agreed upon fee to compensate DevCare for any required procedures for handling said information or meeting any other obligations of the GLBA.
- d. **Non-customary Configurations.** In the event that Customer requests DevCare to implement a configuration element (hardware or software) or service in a manner that is not customary at DevCare, DevCare may designate the element or service as "unsupported," "non-standard," "one-off" or with like term in the Service Description. DevCare makes no representation or warranty whatsoever regarding any element or service so designated, notwithstanding any other provision herein to the contrary. Customer agrees that DevCare shall not be liable to Customer for any loss or damage arising from the provision of the unsupported element or service. The Service Level Guaranties shall not apply to the unsupported element or service, or any other aspect of the Services that is adversely affected by the unsupported element or service.
- e. **Export.** Customer represents and warrants that it is not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and that it is not otherwise a person to whom DevCare is legally prohibited to provide the

Services. Customer may not use the Services for the development, design, manufacture, production, stockpiling, or use of nuclear, chemical or biological weapons, weapons of mass destruction, or missiles, in a country listed in Country Groups D: 4 and D: 3, as set forth in Supplement No. 1 to the Part 740 of the United States Export Administration Regulations, nor may Customer provide administrative access to the Cloud System to any person (including any natural person or government or private entity) that is located in or is a national of any country that is embargoed or highly restricted under United States export regulations.

- f. **No Third Party Beneficiaries.** Customer acknowledges that there are no third party beneficiaries to these Terms and Conditions and that only Customer has rights hereunder. Customer shall be responsible for the compliance of these Terms and Conditions by any representatives or others that use the Cloud System with the permission of Customer.
 - g. **No High Risk Use.** Customer may not use the Services in any situation where failure or fault of the Services could lead to death or serious bodily injury of any person, or to physical or environmental damage. For example, Customer may not use, or permit any other person to use, the Services in connection with aircraft or other modes of human mass transportation, nuclear or chemical facilities, or Class III medical devices under the Federal Food, Drug and Cosmetic Act.
6. **Term.** The initial term of Services provided pursuant to the Services Description will be the period of time specified in the Services Description beginning from the Deployment Date (the “Initial Term”); provided, however, that if the Deployment Date is a date that is other than the first day of a month then the number of days between the Deployment Date and the last day of the month in which the Deployment Date occurs (the “Stub Period”) shall be added to the Initial Term. The term will automatically renew for additional one-year terms unless within thirty (30) days before expiration of the Initial Term or the then current renewed term, as the case may be, the Party that does not want to renew the term provides written notice to the other Party. The term may only be terminated prior to expiration of the then current term in accordance with the provisions set forth below in **Section 17**. In the event that the term of Services expires or is otherwise terminated, the provision set forth below in **Section 17** shall govern.
7. **Consideration.**
- a. **Fees.** Customer shall pay DevCare the rates specified in the Services Description for reoccurring or other fees specified in the Services Description. Any reoccurring fees are due starting on the Deployment Date except as provided for in **Section 3.A(4)**. Following the Deployment Date DevCare will charge Customer the monthly recurring fee(s) (plus other usage fees as applicable) specified in the Services Description for

the then current term, except as provided for below in **Section 7.B.**

DevCare will charge Customer for any requested Services that are not covered in the Services Description on a time and materials basis based upon its then standard hourly rates.

- b. **Fee Increases.** Customer acknowledges that DevCare's ability to provide Services hereunder is in part based upon fees charged by its vendors and other third parties and that said fees may be increased from time to time. DevCare may increase any monthly recurring fee to account for any increase charged to DevCare by its vendors and then by no more than 25% upon sixty (60) days advance written notice to Customer. During the sixty day period Customer may terminate the term of the Services Description without any termination fee notwithstanding any other provision to the contrary.
- c. **Setup Fee, First Invoice and Deposit.** DevCare shall charge on the first monthly invoice a setup fee in the amount specified in the Services Description plus the prorated monthly recurring charges for the Stub Period. DevCare reserves the right to charge a deposit fee prior to the Deployment Date and said deposit will be credited towards the last Services to be rendered based upon the length of the initial term.
- d. **Expenses.** Customer also shall reimburse DevCare for all reasonable out-of-pocket authorized expenses incurred by DevCare hereunder.
- e. **Taxes.** Unless otherwise specified, all fees are stated without any applicable excise, sales, use, value, added, or other tax imposed upon the production, sales and/or delivery of Services, software or hardware provided hereunder. Any such taxes, when applicable, will be charged when assessed or due as separate additional items on invoices, unless valid exemption certificates are in the possession of DevCare before the date of service.

8. Invoicing, Payment and Failure to Pay.

- a. **Invoicing.** DevCare shall present an invoice to Customer for monthly reoccurring fees at the beginning of each applicable month. Following the Deployment Date, monthly recurring fees will be billed monthly in advance on or around the first day of each calendar month. Non-recurring fees, such as bandwidth overages or other service charges and any authorized expenses, will be billed monthly in arrears. Customer must contest the amount of any invoice within ninety (90) days after the invoice date. Invoices that are not disputed within said period of time are conclusively deemed accurate.
- b. **Payment.** Fees are due within fifteen (15) days of invoice date. If the Parties have arranged for payment by credit card or ACH, DevCare may charge Customer's card or account on or after the invoice date. DevCare may suspend all Services, and Services provided pursuant to any unrelated agreement, if payment of any invoiced amount is overdue, and

Customer does not pay the overdue amount within ten (10) Business Days of DevCare's written notice to Customer for the same. Customer agrees to pay a reasonable reinstatement fee if Services are reinstated after a suspension for non-payment.

- c. **Failure to Pay.** DevCare may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). Customer is responsible for any fees or costs, including reasonable attorney's fees or collection agency costs, incurred to collect any amount not paid hereunder. Customer will be charged an insufficient funds fee for any returned check. Any amount owed hereunder must be paid in U.S. Dollars.

9. Non-Disclosure of Confidential Information.

a. Restrictions on Use.

1. A Party disclosing information hereunder shall be referred to as the "Disclosing Party" and a Party receiving information hereunder shall be referred to as the "Recipient Party". A Recipient Party shall use reasonable efforts to safeguard the Disclosing Party's Confidential Information, and any and all documents or information derived therefrom. The Recipient Party further agrees that it shall not copy the Disclosing Party's Confidential Information which is in tangible or intangible form and shall not use the Disclosing Party's Confidential Information, or any information derived therefrom, for its own benefit or the benefit of others, except as authorized in writing by the Disclosing Party or except in furtherance of these Terms and Conditions.
2. The provisions of this **Section 9.A** shall not apply to any information that (a) the Recipient Party shall have acquired from the Disclosing Party pursuant to a subsequent agreement between the parties hereto or (b) as to particular portions of the Confidential Information, if such information (i) has become generally available to the public or (ii) was or becomes available to the Recipient Party on a non-confidential basis from a source other than the Disclosing Party.

- b. **Unauthorized or Compelled Disclosure.** In the event that the Recipient Party becomes aware of any unauthorized use or disclosure of the Disclosing Party's Confidential Information, the Recipient Party shall immediately advise the Disclosing Party in writing as to the same. In the event that the Recipient Party becomes legally compelled to disclose any such information, the Recipient Party may disclose the same and shall provide (where possible) the Disclosing Party with prompt notice so that the Disclosing Party may seek a protective order or other appropriate remedy and/or waive compliance with the provisions of these Terms and Conditions.

- c. **Obligations Survive these Terms and Conditions.** The obligations imposed hereunder shall survive termination of these Terms and Conditions.

10. Software.

- a. **Software Provided by DevCare.** DevCare may provide Customer with access to certain software which DevCare licenses from third parties (“DevCare Provided Software”). DevCare may charge Customer for the use of any DevCare Provided Software as specified in the Services Description. Customer may not copy any DevCare Provided Software for Customer’s use unless expressly permitted in the Services Description. Customer may not remove, modify or obscure any copyright, trademark or other proprietary rights notices that appear on any DevCare Provided Software. Customer may not reverse engineer, decompile or disassemble any DevCare Provided Software. In addition to the terms of these Terms and Conditions, Customer’s use of any DevCare Provided Software is governed by the terms and conditions set forth in any applicable license or use restrictions, including any limitation on the number of users.
- b. **Software Provided by Customer.**
 1. Customer may make arrangements with DevCare for the installation of any software provided by Customer, including open source software (collectively, “Customer Provided Software”). Customer represents and warrants to DevCare that Customer has the legal right to use any Customer Provided Software in the manner used and on the Cloud System and that such use will not infringe upon the intellectual property rights of others.
 2. If DevCare has agreed to install, patch or otherwise manage any Customer Provided Software in reliance on Customer’s license with a software vendor, then Customer represents and warrants that Customer has a written license agreement with the vendor that permits DevCare to perform these activities. DevCare does not agree to manage any Customer Provided Software except to the extent specified in the Services Description.
 3. Customer Provided Software may not be compatible with DevCare’s standard process for deploying and repairing any Cloud System. In addition, in order to install Customer Provided Software DevCare may require Customer to send the physical or electronic media provided to Customer by the software vendor, both for deployment and again in the event of a failure of the Cloud System. Customer agrees that DevCare will not be in breach of any Service Level Guaranty or other obligation under these Terms and Conditions that would not have occurred but for a delay resulting from our agreement to use Customer’s licensed software.

- c. **Compliance with Software Licensing Requirements.** DevCare may request specific written certification of Customer's compliance with this Section 10 from time to time. Customer agrees to provide DevCare with evidence (within two Business Days after a request) of compliance with any licensing requirements as DevCare may reasonably require prior to any scheduled Deployment Date and from time to time as necessary to update the status of any license. If Customer fails to provide the required evidence of licensing compliance DevCare may, at its option, either (1) delay the Deployment Date for the Cloud System that was to include such software until the evidence is provided, (2) deploy the Cloud System in reliance on DevCare's licensing agreement with the vendor, and charge Customer its standard fee for the use of the software until such time as the required evidence is provided, or (3) suspend or terminate the Services.

11. WARRANTIES/DISCLAIMERS. EXCEPT AS SET FORTH ABOVE IN **SECTION 3** WITH RESPECT TO DEPLOYMENT OR SERVICE LEVEL GUARANTIES OR DEFICIENT SERVICES, DEVCARE MAKES NO WARRANTIES, ORAL OR WRITTEN, EXPRESS OR IMPLIED, WITH RESPECT TO ANY SERVICES SOLD OR PROVIDED HEREUNDER, ALL OF WHICH ARE PROVIDED "AS IS." IN ADDITION:

- a. DEVCARE SPECIFICALLY DISCLAIMS AND DOES NOT PROMISE THAT THE FUNCTIONS CONTAINED IN THE DEVCARE PRODUCT(S) (WHICH INCLUDE THE CLOUD SYSTEM) OR SERVICES WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE DEVCARE PRODUCT(S) WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. CUSTOMER ACKNOWLEDGES THAT THERE ARE RISKS IN INTERNET CONNECTIVITY THAT COULD RESULT IN THE LOSS OF CUSTOMER DATA, PRIVACY, CONFIDENTIAL INFORMATION AND PROPERTY.
- b. ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF WORKMANLIKE QUALITY, ACCURACY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT ARE EXPRESSLY DISCLAIMED.
- c. DEVCARE DOES NOT PROMISE TO BACKUP ANY DATA UNLESS CUSTOMER HAS PURCHASED BACKUP SERVICES. IF BACKUP SERVICES ARE PURCHASED, THEN (1) DEVCARE DOES NOT PROMISE TO RETAIN ANY BACKUP DATA FOR LONGER THAN THE AGREED DATA RETENTION PERIOD AND, IF NONE IS SPECIFIED IN THE SERVICES DESCRIPTION, THEN FOR A PERIOD OF TWO MONTHS AND (2) CUSTOMER RELEASES DEVCARE FROM ANY LIABILITY FOR LOSS OF DATA TO THE EXTENT THAT THE DATA HAS CHANGED SINCE THE LAST TIME DEVCARE WAS REQUIRED TO PERFORM A BACKUP.
- d. DEVCARE DOES NOT WARRANT THE HARDWARE OR SOFTWARE OF ANY THIRD PARTY MANUFACTURER OR LICENSOR WHICH MAY BE

USED OR INSTALLED ON ANY CLOUD SYSTEM AND CUSTOMER AGREES TO LOOK ONLY TO SUCH THIRD PARTIES FOR ANY WARRANTY CLAIM RELATING THERETO.

NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY DEVCARE OR ANY DEVCARE AUTHORIZED REPRESENTATIVE SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF DEVCARE'S LIABILITY. THE ABOVE EXCLUSIONS SHALL NOT APPLY TO THE EXTENT A JURISDICTION DOES NOT ALLOW FOR APPLICATION OF THE SAME. CUSTOMER'S EXCLUSIVE REMEDY AND DEVCARE'S ENTIRE LIABILITY UNDER THESE TERMS AND CONDITIONS IS AS SET FORTH BELOW IN **SECTION 12**.

12. LIMITATIONS OF LIABILITY.

- a. **RESTRICTION ON TYPE OF LIABILITY.** DEVCARE WILL NOT UNDER ANY CIRCUMSTANCE, WHETHER AS A RESULT OF BREACH OF CONTRACT, BREACH OF WARRANTY, TORT OR OTHERWISE, BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, INDIRECT OR EXEMPLARY DAMAGES, HOWEVER CAUSED, INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS OR REVENUES, LOSS OF USE OF OR DAMAGE TO ANY ASSOCIATED EQUIPMENT OR DATA, COST OF CAPITAL, COST OF SUBSTITUTE PRODUCTS, FACILITIES OR SERVICES, DOWNTIME COSTS, OR CLAIMS OF CUSTOMER'S CUSTOMERS, ARISING OUT OF THE USE OF OR INABILITY TO USE DEVCARE PRODUCTS OR SERVICES, EVEN IF DEVCARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- b. **MAXIMUM LIABILITY.** DEVCARE'S LIABILITY FOR ANY BREACH OF ANY WARRANTY SHALL BE AS SPECIFIED IN **SECTION 3**. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DEVCARE'S LIABILITY ON ANY CLAIM OF ANY KIND WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OR DAMAGE TO PROPERTY INCLUDING DATA ARISING OUT OF, RESULTING FROM, OR CONCERNING ANY ASPECTS OF THESE TERMS AND CONDITIONS OR FROM THE SERVICES FURNISHED HEREUNDER SHALL NOT EXCEED TWO TIMES THE MONTHLY RECURRING FEE OR TWO TIMES ANY OTHER APPLICABLE FEE, FOR THE SERVICE THAT IS THE SUBJECT OF THE CLAIM, AND NO CLAIM MAY BE BROUGHT AGAINST DEVCARE MORE THAN ONE YEAR AFTER ANY CAUSE OF ACTION ACCRUES.
- c. **Indemnification for Acts of Customer.** Customer agrees to indemnify and hold harmless DevCare and any of its agents or vendors from any and all claims, losses, liabilities, damages, expenses and costs (including attorneys' fees and court costs) arising out of or in connection with any breach of any obligation of Customer hereunder including, but not limited to, the failure of Customer to comply with any Acceptance Use Policy, failure of Customer to obtain any required or comply with any software

licenses or usage restrictions or failure to follow any applicable privacy/data security policy or other applicable laws.

13.No Restrictions on Parties. Each of the parties hereto represents and warrants to the other that it has full right, power and authority to enter into these Terms and Conditions and that it is not subject to any consulting agreement or similar arrangement which would restrict its ability to enter into these Terms and Conditions or perform the Services required to be performed hereunder.

14.Ownership of Property, Access to Data Center and DevCare Personnel.

- a. **Ownership of Property.** Each Party retains all right, title and interest in and to its respective trade secrets, inventions, copyrights and other intellectual property. Any intellectual property developed by DevCare during the performance of the Services shall belong to DevCare unless DevCare has agreed with Customer in advance in writing that it shall have an interest in the intellectual property. Customer does not acquire any ownership interest in or right to possess the Cloud System, and Customer has no right of physical access to the Cloud System. DevCare does not acquire any ownership interest in or right to the Customer Data.
- b. **Access to Data Center.** The DevCare infrastructure used to provide the Services will be located in a controlled access data center operated by third party data center provider or an DevCare affiliated company. Access to the datacenter will be restricted to DevCare employees or its agents who need access for the purpose of providing the services. The data center will be staffed 24/7/365 and will be monitored by video surveillance. Entrance to the data center will be authorized by proximity-based access cards and biometric hand scanners or other approved security authentication methods.
- c. **DevCare Personnel.** DevCare will perform pre-employment background screening of its employees who have access to Customers' accounts. DevCare will restrict the use of administrative access codes for customer accounts to its employees and other agents who need the access codes for the purpose of providing the services. DevCare personnel who use access codes shall be required to log on using an assigned user name and password. DevCare will immediately report to Customer any unauthorized access or release of Customer Data of which DevCare becomes aware. Upon request, DevCare will promptly provide to Customer all information and documentation that DevCare has available to it in connection with any such event.
- d. **Non-Solicitation of Employees or Consultants.** Customer acknowledges that DevCare provides a valuable service by identifying and assigning employees or consultants for the provision of Services to Customer hereunder. Customer further acknowledges that Customer would receive

substantial additional value, and DevCare would be deprived of the benefits of its work force, if Customer directly hires DevCare's employees or consultants after they have been introduced to Customer by DevCare. Therefore, during the term of DevCare providing Services hereunder and for a period of two (2) years thereafter, Customer shall not, directly or indirectly, or through the use of others, retain the services of any employee or consultant of DevCare who provided services to Customer hereunder (or any such worker who resigned from DevCare within the six month period leading up to the date of any solicitation by Customer), except through DevCare. Both parties recognize the difficulty and uncertainty of demonstrating the amount of damages that would result in the event of a breach of this provision, therefore, both parties agree that an equitable measure of such damage is thirty percent (30%) times the greater of (a) the most recent monthly gross billing of such person by DevCare to a client times twelve (12), or (b) the most recent monthly rate of salary or other compensation paid to such person times twelve (12). Therefore, in the event of a breach of this provision, in addition to the remedies provided for elsewhere in these Terms and Conditions, Customer shall pay to DevCare as liquidated damages and not as a penalty the amount resulting from thirty percent (30%) times the greater of (a) or (b) hereinabove. The foregoing restriction shall not apply with respect to any former DevCare employee or consultant that DevCare terminated.

15. Termination.

- a. **Termination.** The term of Services may be terminated at any time (1) by an aggrieved Party, effective immediately upon written notice by the aggrieved Party if the breaching Party commits a material breach of any of the terms of these Terms and Conditions (including the failure of Customer to timely pay DevCare for Deliverables rendered hereunder which is specifically deemed a material breach) and such breach remains uncured for ten (10) Business Days after written notice of such breach has been furnished to the breaching Party or (2) by any Party, immediately upon the other Party's insolvency, filing of a petition in bankruptcy, making an assignment for the benefit of creditors, becoming subject to any proceeding under bankruptcy or insolvency law, or winding up or liquidation, voluntarily or otherwise. Notwithstanding any provision to the contrary, DevCare may terminate the term of Services prior to expiration of the then current term upon providing thirty (30) days' notice to Customer, in the event that DevCare's infrastructure has changed adversely affecting DevCare's ability to provide Cloud Services or in the event of any successor in interest by way of merger or consolidation, or the sale of all or substantially all of its assets.
- b. **Early Termination by Customer.** In the event that Customer terminates the term of Services for any reason other than as set forth above

in **Section 17.A** prior to expiration of the then current term, Customer agrees to pay as an equitable measure of the damages DevCare will incur for the loss of planned revenue from the leasing of Cloud Systems (1) 100% of the monthly recurring fees DevCare would have received with respect to any charges for the Cloud System for the remainder of the then current term had Customer not terminated or, if shorter, six months, beginning from the effective date of termination and (2) 75% of the monthly fees DevCare would have received after the period described in (1) and through expiration of the then current term with respect to Cloud Services but not Supplemental Services.

- c. **Survival of Terms and Turnover of Customer Data.** In the event of termination, the provisions set forth above in **Sections 7.E-13, Sections 16, 17.C** and **Sections 19-20** shall survive. DevCare shall provide reasonable assistance to Customer enabling it to retrieve any Customer Data within thirty (30) days after expiration of the Cloud Services term hereunder and provided that Customer has paid in full at said time any amount owed hereunder.

16. Assignability. Neither Party may assign or transfer any rights or delegate any obligations hereunder and pursuant to a Services Description, in whole or in part, whether voluntarily, or by operation of law, without the prior written consent of the other Party; provided, however, that each Party shall have the right to assign these Terms and Conditions to any successor in interest by way of merger, consolidation, or sale of all or substantially all of its assets. These Terms and Conditions shall be binding upon and shall inure to the benefit of the successors and permitted assigns of each Party.

17. Disputes. Customer expressly agrees that these Terms and Conditions shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods. These Terms and Conditions shall be interpreted and governed by the laws of the United States and the Commonwealth of Virginia. Any dispute arising out of these Terms and Conditions, except with respect to **Sections 9** and **16** above, shall be settled by final and binding arbitration conducted in Fairfax County, Virginia by one neutral arbitrator knowledgeable in the subject matter covered by these Terms and Conditions, in accordance with this Section and the then current Commercial Arbitration Rules of the American Arbitration Association (“AAA”). The successful Party in the arbitration shall be awarded by the arbitrator that Party’s costs and expenses, including attorneys’ fees and administrative fees of the AAA. An award may be confirmed and judgment entered in any court having competent jurisdiction. Except as otherwise provided for herein, any litigation initiated under such act or otherwise shall be conducted in a court of competent jurisdiction located in Northern Virginia.

18. Miscellaneous Provisions.

- a. **Notices.** Any notice or other communication required to be given or made under these Terms and Conditions shall be in writing and shall be given to the other Party at the address listed in Services Description. No communication or notice shall be effective if the Party to receive such communication or notice has notified the sender of a change in and a replacement address in accordance with the foregoing procedures for sending notices unless such communication or notice is sent to the replacement address in accordance with the foregoing procedures. Notices and communications shall be considered given or made: where sent by hand or courier, upon receipt unless delivery is refused in which case on the date of refusal; where sent by U.S. Mail, first class postage pre-paid, on the third working day following the date of posting; or where given by facsimile or electronic mail (subject to confirmation being sent by first class postage pre-paid and to retention by the sending Party of confirmation of successful transmission), four hours after the time of successful transmission.
- b. **Force Majeure.** Neither Party will be in violation of these Terms and Conditions if the failure to perform the obligation is due to an event beyond such Party's control, such as significant failure of a part of the power grid, significant failure of the Internet, natural disaster, war, riot, insurrection, epidemic, strikes or other organized labor action, terrorism, or other events of a magnitude or type for which precautions are not generally taken in the industry.
- c. **Severability.** If any provision of these Terms and Conditions is held invalid, all other provisions of these Terms and Conditions shall remain in effect; PROVIDED, HOWEVER, that the invalid provision may be modified by the parties, an arbitrator or a court of law, as needed to make such provision valid.
- d. **Promotional Use.** Customer agrees that DevCare may publicly disclose that DevCare is providing Services to Customer. DevCare may also use Customer's name and logo to identify Customer as DevCare's customer in promotional materials, including press releases and on its website. DevCare will not use Customer's name or logo in a manner that suggests an endorsement or affiliation.
- e. **Entire Agreement, Amendments and No Waiver.**
 1. These Terms and Conditions and the Services Description constitutes the entire agreement between the parties concerning the subject matter hereof, superseding all prior and contemporaneous negotiations and discussions. No waiver, amendment or modification of any provision of these Terms and Conditions shall be effective unless in writing and signed by both parties.

2. Notwithstanding the foregoing, DevCare may make changes to these Terms and Conditions from time to time. Said modifications shall be binding on Customer unless Customer objects to the same on the grounds that any such modification adversely affects the rights of Customer in a material manner hereunder and if Customer notifies DevCare within thirty (30) days after the date DevCare publishes new and revised Terms and Conditions on its website. If Customer notifies DevCare of any such objection, then the Parties shall negotiate in good faith a resolution of the same and if the Parties fail to agree on a resolution within thirty (30) days, then Customer may elect to terminate the Services effective within a period of fifteen (15) days thereafter without payment of the fee otherwise required pursuant to **Section 17.B** and notwithstanding any other provision herein to the contrary.
3. The failure of any Party to insist in any one (1) or more instances on strict performance of any of the terms and conditions of these Terms and Conditions, or the failure to exercise any right or privilege contained in these Terms and Conditions, or the waiver of any breach of the terms and conditions of these Terms and Conditions, shall not be considered as thereafter waiving any such terms, conditions, rights or privileges and the same shall continue and remain in full force and effect as if no waiver has occurred.