

## DN DIRECT SUBSCRIPTION SERVICES AGREEMENT

THIS DN DIRECT SUBSCRIPTION SERVICES AGREEMENT ("AGREEMENT") CONTAINS THE TERMS FOR USE OF THE PLATFORM AND IS BETWEEN DN DIRECT, INC. ("DN DIRECT"), A DELAWARE CORPORATION HAVING A PLACE OF BUSINESS AT 2745 LAKE ST., SAN FRANCISCO, CA. 94121 AND THE PARTY AGREEING TO THE TERMS OF THIS AGREEMENT ("CUSTOMER"). BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CLICKING AN "ACCEPT" OR SIMILAR BUTTON, OR OTHERWISE USING THE SOFTWARE (THE FIRST OF WHICH IS THE "EFFECTIVE DATE"), CUSTOMER AGREES TO BE BOUND BY THE TERMS OF THIS AGREEMENT. CUSTOMER MAY NOT USE THE PLATFORM WITHOUT AGREEING TO THIS AGREEMENT FIRST. IF A WRITTEN AGREEMENT REGARDING CUSTOMER'S USE OF THE PLATFORM EXISTS BETWEEN AND HAS BEEN EXECUTED BY BOTH DN DIRECT AND CUSTOMER, THE TERMS OF THAT WRITTEN AGREEMENT SHALL TAKE PRECEDENCE OVER THIS AGREEMENT.

### 1. DEFINITIONS.

"**Affiliate**" means, with respect to a party, any entity which directly or indirectly Controls, is Controlled by, or is under common Control with such party.

"**Confidential Information**" has the meaning set forth in Section 9.

"**Control**" means ownership or control, directly or indirectly, of more than 50% of the voting interests of the subject entity.

"**Customer Data**" means any data that Customer inputs into the Platform.

"**Data Protection Laws and Regulations**" means all EU/Swiss applicable legislation with respect to the processing of Personal Data.

"**Documentation**" means the description of the Platform licensed or purchased by Customer contained in the Platform description.

"**Order Form**" means an order for the Platform signed by DN Direct or a Reseller.

"**Platform**" means any DN Direct cloud solution and software programs (in object code format) licensed by DN Direct to Customer, together with all Updates, as further described in the Documentation and in an Order Form.

"**Reseller**" means a reseller authorized in writing by DN Direct to provide the Platform on DN Direct's behalf.

"**Support**" has the meaning set forth in Section 6.

"**Taxes**" means any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes.

"**Term**" means the Term applicable to each DN Direct Product, or if no such term period is defined, one (1) month, commencing on the Effective Date.

"**Updates**" means all Platform updates and enhancements that DN Direct generally makes available at no additional charge to its customers of the version of the Platform licensed hereunder who are current in payment of applicable fees.

"**Users**" means Customer's and its Affiliates' employees, agents, contractors, and consultants who are authorized by Customer to use the Platform.

**2. TERMS OF THE PLATFORM.** Subject to the terms of the Agreement, DN Direct grants Customer and its Affiliates a non-exclusive, non-transferable (except to a successor in interest as permitted hereunder) license to access, use, and install (only for the portions of the Platform that are available for download by DN Direct) the Platform listed under an Order Form during the Term. Customer's right to use the Platform is limited to the user and other restrictions contained in in an Order Form and the Documentation.

### 3. CUSTOMER RESPONSIBILITIES RELATING TO USE OF THE PLATFORM.

**3.1** As between the parties, Customer is responsible for, (i) all activities conducted under its User logins, and (ii) obtaining and maintaining any Customer Equipment and any ancillary software and/or services needed to connect to, access, install (only for the portions of the Platform that are available for download by DN Direct), or otherwise use the Platform.

**3.2** Customer shall use the Platform solely for its internal business purposes, in compliance with applicable law, and shall not: (a) resell, sublicense, lease, time-share or otherwise make the Platform available to any third party; (b) process, send, or store infringing or unlawful material using the Platform; (c) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Platform or the data contained therein; (d) modify, copy or create derivative works based on the Platform; (e) do any "mirroring" or "framing" of any part of the Platform, or create Internet links to the Platform which include log-in information, user names, passwords, and/or secure cookies; (f) reverse engineer the Platform; (g) propagate any virus, worms, Trojan horses, or other programming routine intended to damage any system or data; (h) access or use the Platform for the purpose of building a competitive product or service or copying its features or user interface; or (i) use the Platform, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without DN Direct's prior written consent.

### 4. OWNERSHIP.

**4.1** Customer shall retain all ownership rights in and to all Customer data passing through or generated by the Platform and Customer Confidential Information. DN Direct shall have and retain all ownership rights in the Platform and all work developed or created by DN Direct during the course of providing Support to Customer.

**4.2** DN Direct shall own any suggestions, enhancement requests, recommendations, or other feedback provided by Customer or its Users relating to the operation of the Platform.

**4.3** No license, right or interest in any DN Direct or Customer trademark, copyright, trade name or service mark is granted hereunder.

### 5. FEES.

**5.1** The Fees for the Platform are as stated in an Order Form. Unless otherwise stated in the applicable Order Form, Fees for the initial Term are due and payable upon the Effective Date. If Customer is paying by credit card, Customer shall provide DN Direct all relevant information regarding Customer's credit card prior to the provision of the Platform. Customer agrees that such information is true and that Customer is authorized to use such payment instrument. Customer will promptly update its account information with any changes (for example, a change in Customer billing address or credit card expiration date) that may occur. Customer hereby authorizes DN Direct to bill Customer's payment instrument in advance on a periodic basis in accordance with the terms described herein, and Customer further agrees to pay any charges so incurred.

**5.2** Upon execution of this Agreement, payment obligations are non-cancelable and, except as expressly provided in this Agreement, upon payment, all payments made by Customer are non-refundable. All undisputed fees due hereunder shall be due and payable within thirty (30) days of receipt of invoice. Any payment not received from Customer by the due date may accrue (except for amounts then under reasonable and good faith dispute) late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid. Failure to make payments in accordance with this Section may result in suspension of Customer's ability to access or use the Platform until payment is made. In the event Customer issues purchase orders in its normal course of business, Customer shall provide DN Direct with a purchase order upon execution of this Agreement, or if Customer does not provide DN Direct with such purchase order, Customer authorizes DN Direct to accept this Agreement in lieu of a purchase order.

**5.3** Customer is responsible for monitoring Customer's use of the Platform. If Customer is aware that its use of the Platform is found to be greater than the number of tier restrictions licensed hereunder, Customer shall notify DN Direct or Reseller of such excess use. DN Direct or Reseller will invoice Customer for the additional Fees for the period commencing on the date of excess use through the remainder of the Term, and the unpaid Fees shall be payable in accordance with Section 5.1.

**5.4** Unless otherwise provided, the fees do not include any Taxes. Customer is responsible for paying all Taxes, including, but not limited to sales, use, GST, and VAT taxes, associated with its purchases hereunder, excluding Taxes based on DN Direct's or Reseller's net income or property. If an invoice includes Taxes, Customer is responsible for such Taxes, unless Customer provides a valid tax exemption certificate authorized by the appropriate taxing authority upon execution of this Agreement. Taxes not included on an invoice shall be the responsibility of the Customer to remit to the appropriate tax authorities as necessary.

**6. SUPPORT.** DN Direct shall provide basic e-mail Support provided Customer is current on payment of the Fees.

## **7. WARRANTIES.**

**7.1** Each party represents and warrants that (i) it has the legal power to enter into and perform under this Agreement; and (ii) it shall comply with all other applicable laws in its performance hereunder.

**7.2** DN Direct warrants to Customer that the Platform will substantially conform in all material respects to the Documentation ("Platform Warranty"). The Platform Warranty does not apply when: (a) the Platform that has been modified by any party other than DN Direct; or (b) the Platform that has been improperly used and/or installed in a manner other than as authorized under the Agreement to the extent such modification(s) or improper installation cause the Platform to be nonconforming. As Customer's sole and exclusive remedy and DN Direct's entire liability for any breach of the foregoing warranty, DN Direct will repair or replace any nonconforming Platform so that it operates as warranted or, if DN Direct is unable to do so, terminate the license for such Platform and return or request the Reseller to return the license fees paid for the nonconforming Platform, pro-rated from the date of termination.

**7.3** EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. DN Direct DOES NOT WARRANT THE OPERATION OF THE PLATFORM AND RESULTS OF THE PROFESSIONAL SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. CUSTOMER ACKNOWLEDGES AND AGREES THAT CUSTOMER IS SOLELY RESPONSIBLE FOR THE DECISIONS IT MAKES FROM DATA THAT IS PROVIDED AS OUTPUT FROM THE PLATFORM.

## **8. PATENT AND COPYRIGHT INDEMNITY.**

**8.1** DN Direct shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ("Claims") made or brought against Customer by a third party alleging that the use of the Platform as contemplated hereunder infringes the U.S. intellectual property rights of such third party, provided that Customer (a) promptly gives written notice of the Claim to DN Direct; (b) gives DN Direct sole control of the defense and settlement of the Claim (provided that DN Direct may not settle any Claim unless it unconditionally releases Customer of all liability); and (c) provides to DN Direct, at DN Direct's cost, all reasonable assistance.

**8.2** DN Direct may, at its sole option and expense: (i) procure for Customer the right to continue using the Platform under the terms of this Agreement; (ii) replace or modify the Platform to be non-infringing without material decrease in functionality; or (iii) if the foregoing options are not reasonably practicable, terminate the license for the Platform and refund Customer or request the Reseller to refund the prepaid fees for the remainder of the then-current Term after the date of termination.

**8.3** DN Direct shall have no liability for any Claim to the extent the Claim is based upon (i) the use of the Platform in combination with any other product, service or device not furnished, recommended or approved by DN Direct, if such Claim would have been avoided by the use of the Platform, without such product, service or device; or (ii) Customer's use of the Platform other than in accordance with this Agreement.

**8.4** The provisions of this Section 8 set forth DN Direct's sole and exclusive obligations, and Customer's sole and exclusive remedies, with respect to infringement or misappropriation of third party intellectual property rights of any kind.

## **9. CONFIDENTIALITY.**

**9.1** As used herein, "Confidential Information" means all confidential and proprietary information of a party ("Disclosing Party") disclosed to the other party ("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, including the terms and conditions of this Agreement (including pricing and other terms reflected under this Agreement), the Platform, Documentation, business and marketing plans, technology and technical information, product designs, and business processes. Confidential Information shall not include any information that: (i) is or becomes generally known to the public without breach of any obligation owed to Disclosing Party; (ii) was known to Receiving Party prior to its disclosure by Disclosing Party without breach of any obligation owed to Disclosing Party; (iii) was independently developed by Receiving Party without breach of any obligation owed to Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to Disclosing Party.

**9.2** Receiving Party shall not disclose any Confidential Information of Disclosing Party for any purpose outside the scope of this Agreement, except with Disclosing Party's prior written consent. Receiving Party shall protect the confidentiality of Disclosing Party's Confidential Information in the same manner that it protects the confidentiality of its own confidential information of like kind (but in no event using less than reasonable care). Notwithstanding the foregoing, DN Direct may use, for its business purposes, data generated by or through the use of the Platform in anonymized format. Receiving Party shall promptly notify Disclosing Party if it becomes aware of any actual or reasonably suspected breach of confidentiality of Disclosing Party's Confidential Information.

**9.3** If Receiving Party is compelled by law to disclose Confidential Information of Disclosing Party, it shall provide Disclosing Party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at Disclosing Party's cost, if Disclosing Party wishes to contest the disclosure.

**9.4** Upon any termination of this Agreement, the Receiving Party shall continue to maintain the confidentiality of the Disclosing Party's Confidential Information as long as it remains confidential and, upon request, return to the Disclosing Party or destroy (at the Disclosing Party's election) all materials containing such Confidential Information.

**9.5** DN Direct will process all personally identifiable information originating in the EU or Switzerland in accordance with the Data Protection Laws and Regulations.

## **10. LIMITATION OF LIABILITY.**

**10.1** EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS ("EXCLUSIONS"), IN NO OTHER EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE SUBSCRIPTION FEES PAID (OR PAYABLE) TO DN DIRECT DURING TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED. EACH PARTY'S LIABILITY FOR THE EXCLUSIONS SHALL NOT EXCEED THREE (3) TIMES THE SUBSCRIPTION FEES PAID (OR PAYABLE) TO DN DIRECT DURING TWELVE MONTHS PRIOR TO WHEN THE CLAIM ACCRUED.

**10.2** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER FOR ANY LOST PROFITS OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **11. TERM AND TERMINATION.**

**11.1** This Agreement commences on the Effective Date and continues until all licenses granted in accordance with this Agreement have expired or have been terminated. The Term shall continue to renew for periods equal to the Term unless either party gives notice to the other party of its desire to not renew prior to the date of renewal. The fees may be increased by DN Direct on an annual basis at rates to not exceed 5% more than the fees for the then-current Term.

**11.2** A party may terminate this Agreement for cause: (i) upon 30 days written notice to the other party of a material breach of this Agreement if such breach remains uncured at the expiration of such period (or immediately for non-payment of fees); (ii) immediately upon written notice if the other party becomes the subject of a bankruptcy, insolvency, receivership, liquidation, assignment for the benefit of creditors or similar proceeding; and (iii) as otherwise provided herein.

**11.3** The parties' rights and obligations under Sections 4, 5, 7.3, 8, 9, 10, 11.3, and 12 shall survive termination of this Agreement.

## **12. General**

**12.1** The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

**12.2** Notices shall be in writing, sent using a recognized private mail carrier or the United States Postal Service and effective on proof of delivery.

**12.3** Each party may include the other's name and logos in its customer or vendor lists.

**12.4** No amendment or waiver of any provision of this Agreement shall be effective unless in writing and signed by Customer and DN Direct. To the extent of any conflict between this Agreement and any other schedule or attachment, this Agreement shall prevail unless expressly stated otherwise. Notwithstanding any language to the contrary therein, no terms stated in a purchase order or in any other order document (other than a statement of work, or other mutually executed order document expressly incorporated herein) shall be incorporated into this Agreement, and all such terms shall be void. This Agreement, which includes all documents referenced herein, statements of work and attachments hereto, represents the entire agreement of the parties, and supersedes all prior or contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.

**12.5** No failure or delay in exercising any right hereunder shall constitute a waiver of such right. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

**12.6** Neither party shall be liable to the other for any delay or failure to perform hereunder (excluding payment obligations) due to a natural disaster, actions or decrees of governmental bodies or communications line failure which (i) hinders, delays or prevents a party in performing any of its obligations, and (ii) is beyond the control of, and without the fault or negligence of, such party, and (iii) by the exercise of reasonable diligence such party is unable to prevent or provide against ("Force Majeure Event").

**12.7** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its successor in interest in connection with a merger, reorganization, or sale of all or substantially all assets or equity not involving a direct competitor of the other party. Any attempted assignment in breach of this Section shall be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**12.8** This Section 12.8 shall apply only if Customer is a federal government entity. DN Direct provides the Platform, including related technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Platform include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

**12.9** Each party agrees to comply fully with all applicable regulations of the United States Department of Commerce and with the United States Export Administration Act, as amended from time to time, and with all applicable laws and regulations of other jurisdictions with respect to the importation and use of the Platform.

**12.10** This Agreement shall be governed exclusively by the internal laws of the state of California, without regard to its conflicts of laws rules. The United Nations Convention on Contracts for the International Sale of Goods shall not apply. The parties hereby consent to the exclusive jurisdiction of the state and federal courts located in San Francisco, County, California, for resolution of any disputes arising out of this Agreement.