

## DENVR CLOUD TERMS OF SERVICE

Last updated: September 24, 2024

These **Denvr Cloud Terms of Service** (these “**Terms**”, together with any Sales Orders, Statements of Work, attachments, exhibits, and/or addendums hereto, this “**Agreement**”) is entered into between Denvr Dataworks Corp. (“**Denvr**”) and the customer accessing, downloading, installing or otherwise using (the terms “use” and “using” will refer to any of the foregoing) any part of the Services (as defined below) (such customer, the “**Customer**”), and is entered into on the earlier of the date Customer first uses any part of the Services and the date Customer agrees to be bound by this Agreement (the “**Effective Date**”). This Agreement includes any current or future Sales Order (as defined below), and all such documents are incorporated by this reference. Each of Denvr and Customer will individually be referred to as a “**Party**” and jointly as the “**Parties**”.

This Agreement sets forth the terms and conditions that govern Customer’s access and use of: (a) Denvr Cloud that enables Customer to have access to and use of Denvr’s high performance cloud computing capabilities; and (b) additional services made available by Denvr in respect of the Denvr Cloud.

BY USING THE SERVICES, CUSTOMER ACKNOWLEDGES THAT CUSTOMER HAS READ, ACCEPTS AND AGREES TO BE BOUND BY AND COMPLY WITH THE TERMS AND CONDITIONS SET OUT IN THIS AGREEMENT, AS AMENDED FROM TIME TO TIME IN ACCORDANCE WITH SECTION 14(k). IF CUSTOMER DOES NOT ACCEPT AND AGREE TO BE BOUND BY THIS AGREEMENT, CUSTOMER WILL IMMEDIATELY CEASE ANY FURTHER USE OF THE SERVICES. CUSTOMER REPRESENTS AND WARRANTS TO DENVR THAT CUSTOMER HAS THE CAPACITY TO ENTER INTO THIS LEGALLY BINDING AGREEMENT. IF CUSTOMER IS USING THE SERVICES ON BEHALF OF ANOTHER PERSON, CUSTOMER HEREBY REPRESENTS AND WARRANTS TO DENVR THAT CUSTOMER HAS THE AUTHORITY TO BIND SUCH PERSON TO THIS AGREEMENT.

THE SERVICES MAY NOT BE ACCESSED FOR BENCHMARKING OR COMPETITIVE PURPOSES.

### 1. Definitions

Capitalized terms used in this Agreement have the meaning ascribed to them in the preamble or in this Section 1 as follows:

- (a) “**Action**” has the meaning set out in Section 11(a)(i).
- (b) “**Agreement**” has the meaning set out in the preamble.
- (c) “**Amendment**” has the meaning set out in Section 14(k).
- (d) “**Checks**” has the meaning set out in Section 2(f).
- (e) “**Confidential Information**” has the meaning set out in Section 9(a).
- (f) “**Customer**” has the meaning set out in the preamble.
- (g) “**Customer Indemnitee**” has the meaning set out in Section 11(a)(i).

- (h) **“Customer Materials”** means any data, information, content, records, files, and source code that Customer or any Permitted User loads or enters into, transmits to, or makes available to the Denvr Cloud, including but not limited to Personal Information.
- (i) **“Customer User Account”** has the meaning set out in Section 3(a).
- (j) **“Data Processing Addendum”** means the data processing addendum located at [www.denvrdata.com/data-processing-addendum](http://www.denvrdata.com/data-processing-addendum).
- (k) **“Denvr”** has the meaning set out in the preamble.
- (l) **“Denvr Cloud”** means: (i) the cloud computing services provided by Denvr under this Agreement that are detailed in the Sales Order; and (ii) any component or Modification of the services referred to in (i), but it does not include Professional Services.
- (m) **“Denvr Indemnitee”** has the meaning set out in Section 11(b).
- (n) **“Denvr Property”** has the meaning set out in Section 4(b).
- (o) **“Discloser”** has the meaning set out in Section 9(a).
- (p) **“Documentation”** means any documentation relating to the Denvr Cloud provided by Denvr to Customer either electronically or in hard copy form relating to the Denvr Cloud.
- (q) **“Effective Date”** has the meaning set out in the preamble.
- (r) **“Feedback”** has the meaning set out in Section 4(c).
- (s) **“Fees”** has the meaning set out in Section 8(a).
- (t) **“Force Majeure”** has the meaning set out in Section 14(f).
- (u) **“Indemnitee”** has the meaning set out in Section 11(c).
- (v) **“Indemnitor”** has the meaning set out in Section 11(c).
- (w) **“Loss”** or **“Losses”** means any and all losses, damages, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including reasonable legal fees and the costs of enforcing any right to indemnification hereunder and the cost of pursuing any insurance providers.
- (x) **“Modifications”** means modifications, improvements, customizations, patches, bug fixes, updates, enhancements, aggregations, compilations, derivative works, translations and adaptations, and **“Modify”** has a corresponding meaning.
- (y) **“Party”** and **“Parties”** have the meanings set out in the preamble.
- (z) **“Permitted User”** has the meaning set out in Section 3(a).
- (aa) **“Personal Information”** means information about an identifiable individual.

- (bb) **“Professional Services”** has the meaning set out in Section 2(i). The term “Professional Services” does not include Denvr Cloud.
- (cc) **“Sales Order”** means a sales order that references these Terms and that is executed by both Parties or is otherwise accepted by Customer.
- (dd) **“Services”** means the Denvr Cloud, the Support Services, and the Professional Services, collectively, and any part thereof.
- (ee) **“Recipient”** has the meaning set out in Section 9(a).
- (ff) **“Statement of Work”** means a statement of work that references these Terms and that is executed by both Parties or is otherwise accepted by Customer.
- (gg) **“Support Services”** has the meaning set out in Section 6.
- (hh) **“Term”** has the meaning set out in Section 13(a).
- (ii) **“Terms”** has the meaning set out in the preamble.
- (jj) **“Third-Party Products”** has the meaning set out in Section 2(h).

## 2. **Denvr Cloud**

- (a) Provisioning of the Denvr Cloud. Subject to Customer’s and its Permitted Users’ compliance with the terms and conditions of this Agreement, Denvr will make the Denvr Cloud available to Customer and Permitted Users on the terms and conditions set out in this Agreement during the Term.
- (b) Restrictions on Use. Unless otherwise set out in this Agreement, Customer will not itself, and will not permit others to:
  - (i) sub-license, sell, rent, lend, lease or distribute the Denvr Cloud or any intellectual property rights therein, or otherwise make the Denvr Cloud available to others other than Permitted Users;
  - (ii) use the Denvr Cloud to permit timesharing, service bureau use or commercially exploit the Denvr Cloud;
  - (iii) use or access the Denvr Cloud:
    - (A) in violation of any applicable law;
    - (B) in a manner that threatens the security or functionality of the Denvr Cloud; or
    - (C) for any purpose or in any manner not expressly permitted in this Agreement;
  - (iv) use the Denvr Cloud to create, collect, transmit, store, use or process any Customer Materials:

- (A) that contains any computer viruses, worms, malicious code, or any software intended to damage or alter a computer system or data;
  - (B) that Customer does not have the lawful right to create, collect, transmit, store, use or process; or
  - (C) that infringes, violates or otherwise misappropriates the intellectual property or other rights of any third party (including any moral right, privacy right or right of publicity);
- (v) Modify the Denvr Cloud;
  - (vi) reverse engineer, decompile or disassemble the Denvr Cloud;
  - (vii) remove or obscure any proprietary notices or labels on the Denvr Cloud, including brand, copyright, trademark and patent or patent pending notices;
  - (viii) access or use the Denvr Cloud for the purpose of building a similar or competitive product or service; or
  - (ix) perform any vulnerability, penetration or similar testing of the Denvr Cloud.
- (c) Reproduction of Documentation. Customer may reproduce and use the Documentation solely as necessary to support Permitted Users' use of the Denvr Cloud.
  - (d) Customer's Responsibility for Permitted Users. Customer is responsible for identifying and authenticating all Permitted Users, for ensuring only Permitted Users access and use the Denvr Cloud, and for Permitted Users' compliance with this Agreement.
  - (e) Suspension of Access; Scheduled Downtime; Modifications. Denvr may, from time to time and in its discretion, without limiting any of its other rights or remedies at law or in equity, under this Agreement:
    - (i) suspend Customer's access to or use of the Services or any component thereof:
      - (A) for scheduled maintenance;
      - (B) due to a Force Majeure;
      - (C) if Denvr believes in good faith that Customer or any Permitted User has violated any provision of this Agreement;
      - (D) to address any emergency security concerns;
      - (E) if Denvr determines, acting reasonably, that such a suspension is required in order to protect Denvr from financial risk, including: (i) in the circumstances described in Section 8(c); (ii) where Customer has otherwise failed to make full or partial payments of invoices and Fees payable for the Services; (ii) where Customer has failed to pay a top-up amount reasonably requested by Denvr for the Services; or (iii) where

Customer's unpaid invoices or Fees for the Services exceed an acceptable threshold amount, as determined by Denvr, acting reasonably;

(F) if required to do so by a regulatory body or as a result of a change in applicable law; or

(G) for any other reason as provided in this Agreement.

(ii) make any Modifications to the Services.

(f) Background Checks. Customer authorizes Denvr, and any third party acting on Denvr's behalf, to run know-your-customer checks, credit checks and other background checks on Customer and Permitted Users in connection with the provision and receipt of Services under this Agreement ("**Checks**"). At Denvr's reasonable request, Customer will cooperate and assist with the performance of any Checks.

(g) Subcontracting. Denvr may engage third parties to assist it in providing the Services or any part thereof.

(h) Third-Party Products. Denvr may permit access to products, content, services, information, websites, or other materials that are owned by third parties, including through the Denvr Cloud ("**Third-Party Products**"). For purposes of this Agreement, such Third-Party Products are subject to their own terms and conditions presented to Customer for acceptance by Denvr through a website link or otherwise. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not install, access, or use such Third-Party Products.

(i) Professional Services. Denvr may provide one-time implementation of Denvr Cloud including configuration, technical integration and initial training required to successfully implement the Denvr Cloud as may be set out in a Statement of Work (the "**Professional Services**").

### 3. **User Accounts and Customer Responsibility**

(a) In order for Customer to access and use the Denvr Cloud, Denvr will issue one or more administrator accounts to Customer that provides Customer with the capability to create user accounts (each, a "**Customer User Account**") for each user that Customer wishes to have access to and use of the Denvr Cloud (each user, and each administrator, a "**Permitted User**").

(b) Customer will ensure that Permitted Users only use the Denvr Cloud through the Customer User Account. Customer will not allow any Permitted User to share the Customer User Account with any other person. Customer will promptly notify Denvr of any actual or suspected unauthorized use of the Denvr Cloud. Denvr reserves the right to suspend, deactivate, or replace the Customer User Account if it determines that the Customer User Account may have been used for an unauthorized purpose. Customer will ensure that all individual users of the Denvr Cloud, including Permitted Users, are contractually bound to terms and conditions with Customer that are no less restrictive or protective of Denvr's rights than those set forth in this Agreement.

- (c) Customer will solely be responsible for:
- (i) the accuracy, quality and legality of Customer Materials, the means by which Customer acquired Customer Materials, Customer's use of Customer Materials with the Denvr Cloud, and the interoperation of any third party products or systems with which Customer uses the Denvr Cloud;
  - (ii) unless otherwise set out herein, providing, at its own expense, all network access to the Denvr Cloud, including, without limitation, acquiring, installing and maintaining all telecommunications equipment, hardware, software and other equipment as may be necessary to connect to, access and use the Denvr Cloud;
  - (iii) properly configuring and using the Denvr Cloud and taking its own steps to maintain appropriate security, protection and backup of its infrastructure (including without limitation any databases, servers, and any other protocol) which may include the use of encryption technology to protect such infrastructure from unauthorized access and routine archiving of such infrastructure; and
  - (iv) using the Denvr Cloud in accordance with this Agreement and applicable laws.

#### 4. **Ownership; Reservation of Rights**

- (a) As between Denvr and Customer, Customer retains all ownership and intellectual property rights in and to Customer Materials. Customer grants to Denvr a nonexclusive, worldwide, royalty-free, irrevocable, sublicensable, and fully paid-up right to access, collect, use, process, store, disclose and transmit Customer Materials to provide the Services.
- (b) Denvr or its licensors retain all ownership and intellectual property rights in and to:
  - (i) the Services;
  - (ii) anything developed or delivered by or on behalf of Denvr under this Agreement;
  - (iii) all other Confidential Information of Denvr; and
  - (iv) any Modifications to the foregoing (i), (ii) and (iii)
 (collectively "**Denvr Property**").
- (c) Customer grants to Denvr and its affiliates a worldwide, perpetual, irrevocable, royalty-free license to use and incorporate into the Denvr Cloud, any suggestion, enhancement request, recommendation, correction or other feedback provided by Customer or Permitted Users relating to the operation of Services or any of Denvr's affiliates' services ("**Feedback**"). Nothing in this Agreement will restrict Denvr's right to use, profit from, disclose, publish or otherwise exploit any Feedback, without compensation to the Customer or Permitted Users and without any obligation to the Customer or any Permitted User. Denvr is not obligated to use any Feedback.

(d) All rights not expressly granted by Denvr to Customer under this Agreement are reserved.

## 5. **Privacy**

Denvr shall process Customer's Personal Information in accordance with the Data Processing Addendum.

## 6. **Support**

Customer will generally have access to Denvr's technical support services as set out in the Sales Order ("**Support Services**").

## 7. **Service Levels**

Denvr will make the Denvr Cloud available in accordance with the service levels set out in the Sales Order.

## 8. **Fees and Payment**

- (a) Fees. Customer will pay to Denvr the fees described in a Sales Order ("**Fees**") in accordance with the terms set out in such Sales Order. Unless otherwise noted on a Sales Order: (i) Fees are identified in United States dollars; (ii) Fees are non-cancelable and non-refundable; (iii) if Customer pre-pays for Services during the term of a Sales Order and fails to use such pre-paid Services during the term of such Sales Order, Customer will not be entitled to a refund or credit for the unused portion of the pre-paid Services; and (iv) Service quantities purchased cannot be decreased during the term of the applicable Sales Order. In the event that the outstanding amounts payable by Customer for any Services exceeds an acceptable threshold amount as determined by Denvr, acting reasonably, Denvr reserves the right to require the Customer to pay all or part of the outstanding amounts in order to continue receiving the Services.
- (b) Changes to the Fees. Unless otherwise set out in a Sales Order, Denvr reserves the right to change the Fees set out in a Sales Order and institute new charges on each anniversary of the term of such Sales Order, upon providing not less than 30 days prior notice to Customer.
- (c) Late Payment. Any late payment will be increased by the costs of collection (if any) and will incur interest at the rate of 1.5% per month, or the maximum legal rate (if less), plus all expenses of collection, until fully paid. Customer may not withhold or setoff any amounts due under this Agreement. Without limiting Denvr's other rights, Denvr may suspend Customer's access to the Services, if Customer has not paid the applicable Fees within 15 days of the date that such Fees become due.
- (d) Taxes. The Fees set out in this Agreement do not include applicable sales, use, gross receipts, value-added, excise, personal property or other taxes. Customer will be responsible for and pay all applicable taxes, duties, tariffs, assessments, export and import fees or similar charges (including interest and penalties imposed thereon) on the transactions contemplated in connection with this Agreement other than taxes based on the net income or profits of Denvr.

- (e) Suspension. Any suspension of the Services by Denvr pursuant to the terms of this Agreement will not excuse Customer from its obligation to make payments under this Agreement.

## 9. Confidential Information

- (a) Definitions. For the purposes of this Agreement, a Party receiving Confidential Information (as defined below) will be the “**Recipient**”, the Party disclosing such information will be the “**Discloser**” and “**Confidential Information**” of the Discloser means any and all information of the Discloser or any of its licensors that has or will come into the possession or knowledge of the Recipient in connection with or as a result of entering into this Agreement, including information concerning the Discloser’s past, present or future customers, suppliers, technology or business, and where the Discloser is Customer includes Customer Materials; provided that the Discloser’s Confidential Information does not include, except with respect to Personal Information: (i) information already known or independently developed by the Recipient without access to the Discloser’s Confidential Information; (ii) information that is publicly available through no wrongful act of the Recipient; or (iii) information received by the Recipient from a third party who was free to disclose it without confidentiality obligations.
- (b) Confidentiality Covenants. The Recipient hereby agrees that during the Term and at all times thereafter it will not, except to exercise its license rights or perform its obligations under this Agreement:
- (i) disclose Confidential Information of the Discloser to any person, except to:
    - (A) in the case of Customer to its own employee having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement, and to such other recipients as the Discloser may approve in writings; or
    - (B) in the case of Denvr to Denvr’s employees, consultants, agents or affiliates, having a “need to know” and that have entered into written agreements no less protective of such Confidential Information than this Agreement; to such other recipients as the Discloser may approve in writing; and to its subcontractors or contractors to perform the Services;
  - (ii) use Confidential Information of the Discloser; or
  - (iii) alter or remove from any Confidential Information of the Discloser any proprietary legend.

Each Party will take industry standard precautions to safeguard the other Party’s Confidential Information, which will in any event be at least as stringent as the precautions that the Recipient takes to protect its own Confidential Information of a similar type.

- (c) Exceptions to Confidentiality. Notwithstanding Section 9(b), the Recipient may disclose the Discloser’s Confidential Information: (i) to the extent that such disclosure is required by applicable law or by the order of a court or similar judicial or administrative body,



provided that, except to the extent prohibited by law, the Recipient promptly notifies the Discloser in writing of such required disclosure and cooperates with the Discloser to seek an appropriate protective order; or (ii) to its legal counsel and other professional advisors, if and to the extent such persons need to know such Confidential Information in order to provide applicable professional advisory services in connection with the Party's business.

- (d) Return of Confidential Information. Upon the termination or expiration of this Agreement and all Sales Orders under this Agreement, each Party will promptly return to the other Party or destroy all Confidential Information (excluding any Customer Materials which is addressed at Section 13(b) below) of the other Party in its possession or control within a reasonable amount of time, in accordance with the Recipient's data destruction practices. Notwithstanding the foregoing, Denvr may retain any electronically archived Customer's Confidential Information, provided that such retained information remains subject to the confidentiality obligations in this Agreement.

## 10. **Warranty and Disclaimer**

- (a) Customer Warranty. Customer represents and warrants to and covenants with Denvr that: (i) the Customer Materials will only contain Personal Information in respect of which Customer has provided all notices and disclosures (including to each Permitted User), obtained all applicable third party consents and permissions, and otherwise has all authority, in each case as required by applicable laws, to enable Denvr to provide the Denvr Cloud, including with respect to the collection, storage, access, use, disclosure, processing and transmission of Personal Information, including by or to Denvr and to or from all applicable third parties; and (ii) Customer will not permit any Permitted User to access and use the Denvr Cloud: (A) from a country that is subject to any embargo by the United States, United Kingdom, European Union, or Canada; or (B) if such Permitted User is on the Office of Foreign Assets Control (OFAC) of the US Department of the Treasury list or on the U.S. Department of Commerce's Denied Persons List or Entity List, or on the U.S. Treasury Department's list of Specially Designated Nationals, or any similar U.S., UK or EU restricted parties lists (including but not limited to the Sectoral Sanctions Identifications List, relevant directives under Executive Order 14024, Entity List, Denied Persons List, Unverified List) or similar lists maintained by other governments with jurisdiction.
- (b) GENERAL DISCLAIMER. DENVR DOES NOT WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ALL ERRORS CAN OR WILL BE CORRECTED; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SERVICES. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, THE SERVICES (OR ANY PART THEREOF) AND ANY OTHER PRODUCTS AND SERVICES PROVIDED BY DENVR TO CUSTOMER ARE PROVIDED "AS IS" AND "AS AVAILABLE". TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DENVR HEREBY DISCLAIMS ALL EXPRESS, IMPLIED, COLLATERAL OR STATUTORY WARRANTIES, REPRESENTATIONS AND CONDITIONS, WHETHER WRITTEN OR ORAL, INCLUDING ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, MERCHANTABILITY, COMPATIBILITY, TITLE, NON-INFRINGEMENT, SECURITY, RELIABILITY, COMPLETENESS, QUIET ENJOYMENT, ACCURACY, QUALITY, INTEGRATION OR FITNESS FOR A PARTICULAR PURPOSE OR USE, OR ANY WARRANTIES OR CONDITIONS ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF ANY OF THE FOREGOING, DENVR

EXPRESSLY DISCLAIMS ANY REPRESENTATION, CONDITION OR WARRANTY THAT ANY DATA OR INFORMATION PROVIDED TO CUSTOMER IN CONNECTION WITH CUSTOMER'S USE OF THE SERVICES OR ANY SERVICES (OR ANY PART THEREOF), IS ACCURATE, OR CAN OR SHOULD BE RELIED UPON BY CUSTOMER FOR ANY PURPOSE WHATSOEVER.

## 11. Indemnities

### (a) Denvr Indemnity.

- (i) Denvr will indemnify, defend, and hold harmless the Customer and its officers, directors, employees, and agents (each, a "**Customer Indemnitee**") from and against any and all Losses incurred by a Customer Indemnitee arising out of or relating to any claim, action, demand, inquiry, audit, proceeding, or investigation of any nature, civil, criminal, administrative, regulatory, or other, whether at law, in equity or otherwise (collectively, an "**Action**") by a third party (other than an affiliate or a Customer Indemnitee) that arise from or relate to any allegation that the Denvr Cloud infringes any third-party intellectual property right in Canada or the United States. The foregoing obligation does not apply to any Action or Losses arising out of or relating to any: (A) incorporation of any Denvr Cloud into, or any combination, operation, or use of any Denvr Cloud with, any products or services not provided or authorized by Denvr, unless such infringement would also have resulted solely from the use of the Denvr Cloud without their incorporation in, or combination, operation or use, with such other products or services; (B) modification of any Denvr Cloud other than by Denvr or with Denvr's express written approval; (C) unauthorized use of the Denvr Cloud; or (D) Customer's indemnity in Section 11(b).
- (ii) If the Denvr Cloud is, or in Denvr's opinion are likely to be, claimed to infringe, misappropriate, or otherwise violate any third-party intellectual property right, or if the Customer's use of any Denvr Cloud is enjoined or threatened to be enjoined, Denvr may, at its option and sole cost and expense:
  - (A) obtain the right for the Customer (A) to continue to use the affected Denvr Cloud materially as contemplated by this Agreement;
  - (B) modify or replace the Denvr Cloud, in whole or in part, to seek to make the Denvr Cloud (as so modified or replaced) non-infringing while providing materially equivalent features and functionality, in which case such modifications or replacements will constitute Denvr Cloud under this Agreement; or
  - (C) if Denvr determines that neither of the foregoing two options are reasonably available, by written notice to the Customer, terminate the Services, in whole or in part, and require the Customer to immediately cease all use of the terminated Services or part or feature thereof and refund any unused prepaid Fees for the terminated Services, if applicable.

This Section 11(a) states the Denvr's sole liability to, and the Customer Indemnitees exclusive remedy against, Denvr for any third party claim described in this section.

- (b) Customer Indemnity. The Customer will defend, indemnify and hold harmless Denvr, and its officers, directors, employees and agents (each, a “**Denvr Indemnitee**”) from and against any and all Losses incurred by a Denvr Indemnitee arising out of or relating to any Action by a third party (other than an affiliate of a Denvr Indemnitee) that arise from or relate to: (i) Customer Materials; (ii) Customer’s breach of any of Customer’s obligations, representations, warranties or covenants under this Agreement; or (iii) use of the Services (or any part thereof) by Customer or any Permitted User in combination with any third party software, application or service. Customer will fully cooperate with Denvr in the defense of any claim defended by Customer pursuant to its indemnification obligations under this Agreement and will not settle any such claim without the prior written consent of Denvr.
- (c) Indemnification Procedure. Each Party will promptly notify the other Party in writing of any Action for which such Party believes it is entitled to be indemnified pursuant to this Section 11. The Party seeking indemnification (the “**Indemnitee**”) will cooperate with the other Party (the “**Indemnitor**”) at the Indemnitor’s sole cost and expense. The Indemnitor will promptly take control of the defense and investigation of such Action and will employ counsel of its choice to handle and defend the same, at the Indemnitor’s sole cost and expense. The Indemnitee’s failure to perform any obligations under this Section 11(c) will not relieve the Indemnitor of its indemnity obligations under this Section 11 except to the extent that the Indemnitor can demonstrate that it has been materially prejudiced as a result of such failure. The Indemnitee may participate in and observe the proceedings at its own cost and expense with counsel of its own choosing.

## 12. **Limitation of Liabilities**

The Parties acknowledge that the following provisions reflect a fair allocation of risk and form an essential basis of the bargain and will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy:

- (a) AMOUNT. SUBJECT TO SECTION 12(c), IN NO EVENT WILL THE TOTAL AGGREGATE LIABILITY OF EITHER PARTY IN CONNECTION WITH OR UNDER THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, EXCEED THE AMOUNT OF FEES PAID OR PAYABLE BY CUSTOMER FOR THE SERVICES IN THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM. FOR GREATER CERTAINTY, THE EXISTENCE OF ONE OR MORE CLAIMS UNDER THIS AGREEMENT WILL NOT INCREASE THIS MAXIMUM LIABILITY AMOUNT. IN NO EVENT WILL DENVR’S THIRD PARTY SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT.
- (b) TYPE. SUBJECT TO SECTION 12(c), TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY: (I) SPECIAL, EXEMPLARY, PUNITIVE, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES; (II) LOST OR LOSS OF (i) SAVINGS, (ii) PROFIT, (iii) DATA, (iv) USE, OR (v) GOODWILL; (III) BUSINESS INTERRUPTION; (IV) COSTS FOR THE PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES; (V) PERSONAL INJURY OR DEATH; OR (VI) PERSONAL OR PROPERTY DAMAGE ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT, REGARDLESS OF CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER

IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, AND EVEN IF NOTIFIED IN ADVANCE OF THE POSSIBILITIES OF SUCH DAMAGES.

- (c) EXCEPTIONS. SECTIONS 12(a) AND 12(b) WILL NOT LIMIT: (I) CUSTOMER'S LIABILITY OR OBLIGATIONS UNDER SECTION 11(b); (II) CUSTOMER'S LIABILITY ARISING FROM OR RELATED TO CUSTOMER'S BREACH OF SECTION 2(b), SECTION 3, OR SECTION 10(a); (III) CUSTOMER'S PAYMENT OBLIGATIONS SET OUT IN THIS AGREEMENT; AND (IV) EITHER PARTY'S LIABILITY ARISING FROM ITS GROSS NEGLIGENCE OR WILFUL MISCONDUCT.

### 13. **Term and Termination**

- (a) Term. The term of this Agreement will commence on the Effective Date and will continue in full force and effect until the date that is the end of six consecutive months of no Sales Orders being in effect (the "**Term**").
- (b) Termination by Denvr. Denvr may, in addition to other relief, terminate this Agreement or any Sales Order, in whole or in part, upon delivery of notice of termination to Customer if: (i) Customer commits a material breach of this Agreement and fails to correct such breach within 30 calendar days after receipt of notice of such breach; or (ii) the Customer becomes insolvent, ceases to conduct business in the ordinary course, takes any step or proceeding available to Customer for the benefit of insolvent debtors, or is subject to a proceeding for liquidation, dissolution or winding up, or a receiver, receiver-manager, liquidator or trustee in bankruptcy.
- (c) Termination by Customer. Customer may, in addition to other relief, terminate this Agreement if Denvr commits a material breach of this Agreement and fails to correct such breach within 30 calendar days after receipt of notice of such breach.
- (d) Effect of Termination. Upon expiration or earlier termination of this Agreement or any Sales Order, Customer shall immediately discontinue use of the Denvr Cloud provided to Customer under the expired or terminated Sales Order(s), and Customer shall delete or, if requested by Denvr return any Denvr Property in its possession provided to Customer under such Sales Order(s), and certify in writing to Denvr that such Denvr Property has been deleted or destroyed. No expiration or termination of this Agreement, in whole or in part, will affect Customer's obligation to pay all Fees that may have become due before such expiration or termination or entitle the Customer to any refund. All Fees due and payable and any amounts due to Denvr under this Agreement are immediately due and are to be immediately paid by Customer to Denvr. Unless otherwise agreed to by Denvr, Customer will have 30 calendar days following the expiration or termination of this Agreement or any Sales Order to extract and retrieve all Customer Materials from the Denvr Cloud that have been provided or submitted by Customer under this Agreement or such Sales Order. Following such 30 day period, Denvr will have no obligation to maintain or provide any such Customer Materials and will thereafter delete or destroy all copies of such Customer Materials in its systems or otherwise in its possession or control, unless legally prohibited. Provided, however, that Denvr will not be required to remove any such Customer Materials from its backup media and services that are maintained in accordance with its standard back procedures of record retention policies until such time as such backups are scheduled to be deleted provided that in all cases such Customer Materials will continue to be protected in accordance with this Agreement.

- (e) Survival. The following Sections, together with any other provision of this Agreement which expressly or by its nature survives termination or expiration, or which contemplates performance or observance subsequent to termination or expiration of this Agreement, will survive expiration or termination of this Agreement for any reason: Section 4 (Ownership; Reservation of Rights), Section 5 (Privacy), Section 8 (Fees and Payment), Section 9 (Confidential Information), Section 10 (Warranty and Disclaimer), Section 11 (Indemnities), Section 11(a) (Limitation of Liabilities), Section 13(e) (Survival), and Section 14 (General Provisions).

#### 14. **General Provisions**

- (a) Notices. Notices sent to either Party will be effective when delivered in writing and in person or by email, one day after being sent by overnight courier, or five days after being sent by first class mail postage prepaid to the official contact designated by the Party to whom a notice is being given. Notices must be sent: (i) if to Denvr, to the following address and email contact:

2700, 225 6<sup>th</sup> Avenue SW  
Calgary, AB T2P 1N2

Email: [legal@denvrdata.com](mailto:legal@denvrdata.com)

and (ii) if to Customer, to the current mailing or email address that Denvr has on file with respect to Customer. Denvr may change its contact information by giving notice thereof to Customer. Customer is solely responsible for keeping Customer's contact information on file with Denvr current at all times during the Term.

- (b) Assignment. Customer may not assign this Agreement to any third party without Denvr's prior written consent. Any purported assignment or delegation by Customer in violation of this Section will be null and void. Denvr may assign this Agreement, in whole or in part, or any rights under this Agreement to any third party without Customer's consent. This Agreement enures to the benefit of and is binding upon the Parties and their respective successors and permitted assigns.
- (c) Governing Law and Attornment. This Agreement and any action related thereto will be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada applicable therein, without regard to conflicts of law principles. The Parties will initiate any lawsuits in connection with this Agreement in Toronto, Ontario, Canada, and irrevocably attorn to the exclusive personal jurisdiction and venue of the courts sitting therein. The U.N. Convention on Contracts for the International Sale of Goods will not apply to this Agreement. This choice of jurisdiction does not prevent either Party from seeking injunctive relief with respect to a violation of intellectual property rights or confidentiality obligations in any appropriate jurisdiction.
- (d) Export Restrictions. Customer will comply with all export laws and regulations that may apply to its access to or use of the Denvr Cloud. Denvr makes no representation or warranty that the Denvr Cloud may be exported without Customer first obtaining appropriate licenses or permits under applicable law, or that any such license or permit has been, will be, or can be obtained.

- (e) Construction. Except as otherwise provided in this Agreement, the Parties' rights and remedies under this Agreement are cumulative and are in addition to, and not in substitution for, any other rights and remedies available at law or in equity or otherwise. The terms "include" and "including" mean, respectively, "include without limitation" and "including without limitation." The headings of sections of this Agreement are for reference purposes only and have no substantive effect. The terms "consent" or "discretion" mean the right of a Party to withhold such consent or exercise such discretion, as applicable, arbitrarily and without any implied obligation to act reasonably or explain its decision to the other Party.
- (f) Force Majeure. Neither Party will be liable for delays caused by any event or circumstances beyond that Party's reasonable control (except for a failure by Customer to pay Fees or Customer's indemnities under this Agreement), including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labour problems (other than those involving that Party's employees), Internet service failures or delays, or the unavailability or Modification by third parties of telecommunications or hosting infrastructure or third party websites ("**Force Majeure**"). For clarity, a Force Majeure event shall not excuse the Customer from its failure to pay Fees or Customer's indemnities under this Agreement.
- (g) Severability. Any provision of this Agreement found by a tribunal or court of competent jurisdiction to be invalid, illegal or unenforceable will be severed from this Agreement and all other provisions of this Agreement will remain in full force and effect.
- (h) Waiver. A waiver of any provision of this Agreement must be in writing and a waiver in one instance will not preclude enforcement of such provision on other occasions.
- (i) Independent Contractors. Denvr's relationship to Customer is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have, and neither Party will represent to any third party that it has, any authority to act on behalf of the other Party.
- (j) Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes all prior or contemporaneous agreements, representations or other communications between the Parties, whether written or oral.
- (k) Amendments. NO AMENDMENT, SUPPLEMENT, MODIFICATION, WAIVER, OR TERMINATION OF THIS AGREEMENT AND, UNLESS OTHERWISE EXPRESSLY SPECIFIED IN THIS AGREEMENT, NO CONSENT OR APPROVAL BY CUSTOMER WILL BE BINDING UNLESS EXECUTED IN WRITING BY DENVR. DENVR MAY UNILATERALLY AMEND THIS AGREEMENT, IN WHOLE OR IN PART (EACH, AN "**AMENDMENT**"), BY GIVING CUSTOMER PRIOR NOTICE OF SUCH AMENDMENT OR POSTING NOTICE OF SUCH AMENDMENT IN THE DENVR CLOUD MANAGEMENT CONSOLE. UNLESS OTHERWISE INDICATED BY DENVR, ANY SUCH AMENDMENT WILL BECOME EFFECTIVE AS OF THE DATE THE NOTICE OF SUCH AMENDMENT IS PROVIDED TO CUSTOMER OR IS POSTED IN THE DENVR CLOUD MANAGEMENT CONSOLE (WHICHEVER IS THE EARLIER).

- (l) Customer Lists. Denvr may identify the Customer by name and logo as a Denvr customer on Denvr's website and on other promotional materials. Any goodwill arising from the use of the Customer's name and logo will inure to the benefit of the Customer.
  
- (m) English Language. It is the express wish of the Parties that this Agreement and all related documents be drawn up in English. C'est la volonté expresse des Parties que la présente convention ainsi que les documents qui s'y rattachent soient rédigés en anglais.