

# eDeneb Cloud Terms of Service

between Deneb, Inc. d/b/a Deneb Software, and eDeneb ("**we**" or "**Deneb**"), and the customer who orders eDeneb® services ("**you**" or "**Customer**").

## **THE AGREEMENT.**

Your use of eDeneb services is governed by these Terms of Service, the eDeneb Cloud Acceptable Use Policy, and the terms of your Order. When we use the term "Agreement" in any of the Order, Terms of Service, or Acceptable Use Policy, we are referring collectively to all of them. Sections 1 – 28 of these Terms of Service state the general terms applicable to all Cloud Services. If the individual who submits an Order does so on behalf of a company or other legal entity, the individual represents that he or she has authority to bind that entity to the Agreement. This Agreement is the complete and exclusive agreement between you and Deneb regarding its subject matter and supersedes and replaces any prior agreement, understanding, or communication, written or oral.

## **GENERAL TERMS**

### **1. DEFINED TERMS.**

Some words used in the Agreement have particular meanings:

"**Acceptable Use Policy**" or "**AUP**" means the eDeneb Cloud Acceptable Use Policy posted at <http://www.denebsoftware/documents/legal/aup.pdf> as of the date you sign the Order, as it may be amended pursuant to Section 21 below.

"**Confidential Information**" means all information disclosed by one of us to the other, whether before or after the effective date of the Agreement, that the recipient should reasonably understand to be confidential, including: (i) for you, all information transmitted to or from, or stored on, the Deneb cloud system, (ii) for Deneb, unpublished prices and other terms of service, audit and security reports, product development plans, server configuration designs, and other proprietary information or technology, and (iii) for both of us, information that is marked or otherwise conspicuously designated as confidential. Information that is developed by one of us on our own, without reference to the other's Confidential Information, or that becomes available to one of us other than through violation of the Agreement or applicable law, shall not be "Confidential Information" of the other party.

"**Order**" means either: (i) the online order that you submit to Deneb via the Deneb website, or (ii) any other written order (either in electronic or paper form) provided to you by Deneb for signature that describes the Services you are purchasing, and that is signed by you, either manually or electronically.

"**Services**" means those services described in the Order.

## **2. DENEBS OBLIGATIONS.**

Contingent on Deneb's acceptance of your Order, and subject to these Terms of Service, Deneb agrees to provide the Services. Deneb agrees to follow the standard industry security procedures and protocols to protect the privacy and data of our Customers and their employees.

**2.1 Deneb Cloud Servers.** Utilization of Deneb Cloud Services is with the understanding that Deneb uses third-party providers for Cloud Servers, and hosting of the eDeneb applications.

**2.2 Monitoring and Response** If you purchase Deneb Cloud Services, Deneb will provide continuous monitoring to insure server availability and will notify you of any monitoring alerts.

## **3. YOUR OBLIGATIONS.**

You agree to do each of the following: (i) comply with applicable law and the eDeneb Cloud Acceptable Use Policy (ii) pay when due the fees for the Services, (iii) use reasonable security precautions in light of your use of the Services, (iv) cooperate with Deneb's reasonable investigation of outages, security problems, and any suspected breach of the Agreement, (v) keep your billing contact and other account information up to date; and (vi) immediately notify Deneb of any unauthorized use of your account or any other breach of security. In the event of a dispute between us regarding the interpretation of applicable law or the AUP, Deneb's reasonable determination shall control.

## **4. ACCESS TO THE SERVICES.**

You may access the Services via the Deneb-provided URL, Customer ID, logins, and passwords.

## **5. SERVICE LEVEL AGREEMENT.**

The Service Level Agreement as indicated in the Order is part of this Agreement.

## **6. TERM.**

The initial term for each Order begins on the date we make the Services available for your use and continues for the period stated in the Order. If no period is stated in the Order, then the initial term shall be two months. Upon expiration of the initial term, the Order will automatically renew for successive renewal terms of one month each, unless and until one of us gives the other a written notice of non-renewal prior to the expiration of the initial term, or then-current renewal term, as applicable. You must follow Deneb's non-renewal process to give an effective notice of non-renewal.

## **7. FEES.**

Deneb will charge you the fees stated in your Order. Unless you have made other arrangements, Deneb will charge your credit card without invoice as follows: (i) for recurring fees, in advance, on or around the first day of each billing cycle, and (ii) for non-recurring fees (such as fees for set-up, training or support not included in the Service Level Agreement) on or around the date incurred, or on or around the first day of the billing cycle that follows the date incurred, at Deneb's option; provided that Deneb may wait to charge your credit card until the total aggregate fees due are at least \$50. Unless otherwise agreed in the Order, your billing cycle will be monthly, beginning on the date that Deneb first makes the Services available to you. Deneb may suspend all services (including services provided pursuant to any unrelated Order or other agreement we may have with you) if our charges to your credit card are rejected for any reason. Deneb may charge interest on overdue amounts at 1.5% per month (or the maximum legal rate if it is less than 1.5%). If any amount is overdue by more than thirty (30) days, and Deneb brings a legal action to collect, or engages a collection agency, you must also pay Deneb's reasonable costs of collection, including attorney fees and court costs. All fees are stated and will be charged in US Dollars. Charges that are not disputed within sixty (60) days of the date charged are conclusively deemed accurate. You must provide Deneb with accurate factual information to help Deneb determine if any tax is due with respect to the provision of the Services, and if Deneb is required by law to collect taxes on the provision of the Services, you must pay Deneb the amount of the tax that is due or provide satisfactory evidence of your exemption from the tax. Any credit that we may owe you, such as a credit for a Service Level Agreement remedy, will be applied to unpaid fees for services or refunded to you, at our option.

## **8. FEE INCREASES.**

If you are under a month-to-month contract, then we may increase fees at any time on thirty (30) days advance written notice. If the initial term of your Agreement is longer than two months, then we may increase your fees effective as of the first day of the renewal term that first begins thirty (30) days from the day of our written notice of a fee increase.

## **9. SUSPENSION.**

We may suspend your Services without liability if: (i) we reasonably believe that the Services are being used (or have been or will be used) in violation of the Agreement, (ii) we discover that you are, or are affiliated in any manner with, a person who has used similar services abusively in the past; (iii) you don't cooperate with our reasonable investigation of any suspected violation of the Agreement; (iv) we reasonably believe that your Services have been accessed or manipulated by a third party without your consent, (v) we reasonably believe that suspension of the Services is necessary to protect our network or our other customers, (vi) a payment for the Services is overdue, or (vii) suspension is required by law. We will give you reasonable advance notice of a suspension under this paragraph and a chance to cure the grounds on which the suspension are based, unless we determine, in our reasonable commercial judgment, that a suspension on shorter or contemporaneous notice is necessary to protect Deneb or its

other customers from imminent and significant operational or security risk. If the suspension was based on your breach of your obligations under the Agreement, then we may continue to charge you the fees for the Services during the suspension, and may charge you a reasonable reinstatement fee (not to exceed \$150) upon reinstatement of the Services.

## **10. TERMINATION FOR CONVENIENCE; EARLY TERMINATION FEE.**

You may terminate the Agreement for convenience at any time on thirty days advance written notice. If you terminate the Agreement for convenience, in addition to other amounts you may owe, you must pay an early termination fee equal to any minimum monthly financial commitment you have made for the remaining portion of the then-current term. If you terminate on these grounds, we will give you a reasonable opportunity to migrate your environment out of Deneb in an orderly fashion if all current fees due are paid.

## **11. TERMINATION FOR BREACH.**

We may terminate the Agreement for breach on written notice if: (i) we discover that the information you provided to us about yourself or your proposed use of the Services was materially inaccurate or incomplete, (ii) if you are an individual, you were not at least 18 years old or otherwise did not have the legal capacity to enter into the Agreement at the time you submitted the Order for Services, or if you are an entity or fiduciary, the individual submitting the Order for Services did not have the legal right or authority to enter into the Agreement on behalf of the person represented to be the customer, (iii) your payment of any invoiced amount is overdue, and you do not pay the overdue amount within ten (10) days of our written notice, (iv) you use your Service in violation of the AUP and fail to remedy the violation within ten (10) days of our written notice, (v) you violate the AUP more than once, even if you cure each violation, or (vi) you fail to comply with any other provision of the Agreement and do not remedy the failure within thirty (30) days of our notice to you describing the failure. If we terminate on these grounds, we will give you a reasonable opportunity to migrate your environment out of Deneb in an orderly fashion when any fees due are paid.

You may terminate the Agreement for breach on written notice if: (i) we materially fail to provide the Services as agreed and do not remedy that failure within five (5) days of your written notice describing the failure, or (ii) we materially fail to meet any other obligation stated in the Agreement and do not remedy that failure within thirty (30) days of your written notice describing the failure.

## **12. ACCESS TO DATA.**

**12.1** You will not have access to your data stored on the Deneb Cloud system during a suspension or following termination except as previously described.

**12.2** We backup the Deneb Cloud systems on a periodic basis so that we are able to more quickly restore the systems in the event of a failure. These backups are made on a snapshot basis and, therefore, capture only the information that exists on the system at the time of the backup. In addition, we may destroy all but the most recent backup. These backups may not be available to you or, if available, may not be useful to you outside of the Deneb Cloud systems.

**12.3** Although the Deneb Cloud service may be used as a backup service, you agree that you will maintain at least one additional current copy of your data stored on the Deneb Cloud system somewhere other than on the Deneb Cloud system .

### **13. UNAUTHORIZED ACCESS TO YOUR DATA OR USE OF THE SERVICES.**

Deneb is not responsible to you for unauthorized access to your data or the unauthorized use of the Services unless the unauthorized access or use results from Deneb's failure to meet its security obligations stated in the Agreement. You are responsible for the use of the Services by any employee of yours, any person to whom you have given access to the Services, and any person who gains access to your data or the Services as a result of your failure to use reasonable security precautions, even if such use was not authorized by you.

### **14. DISCLAIMERS.**

We do not promise that the Services will be uninterrupted, error-free, or completely secure. You acknowledge that there are risks inherent in Internet connectivity that could result in the loss of your privacy, Confidential Information, and property. Deneb has no obligation to provide security other than as stated in this Agreement. We disclaim any and all warranties not expressly stated in the Agreement, including the implied warranties of merchantability, fitness for a particular purpose, and noninfringement. You are solely responsible for the suitability of the service chosen. If you have not made agreement for support and other services, the Services are provided AS IS. Any voluntary services we may perform for you at your request and without any additional charge are provided AS IS.

### **15. EXPORT MATTERS.**

You represent and warrant that you are not on the United States Department of Treasury, Office of Foreign Asset Controls list of Specially Designated National and Blocked Persons and are not otherwise a person to whom Deneb is legally prohibited to provide the Services. You 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 you provide administrative access to the Service to any person (including any natural person or government or private entity ) that is located in or is a national of Cuba, Iran, Libya, Sudan, North Korea or Syria or any country that is embargoed or highly restricted under United States export regulations.

## **16. CONFIDENTIAL INFORMATION.**

Each of us agrees not to use the other's Confidential Information except in connection with the performance or use of the Services, as applicable, the exercise of our respective legal rights under the Agreement, or as may be required by law. Each of us agrees not to disclose the other's Confidential Information to any third person except as follows:

- i. to our respective service providers, agents, and representatives, provided that such service providers, agents, or representatives agree to confidentiality measures that are at least as stringent as those stated in these General Terms and Conditions.
- ii. to law enforcement or government agency if required by a subpoena or other compulsory legal process, or if either of us believes, in good faith, that the other's conduct may violate applicable criminal law as required by law; or
- iii. in response to a subpoena or other compulsory legal process, provided that each of us agrees to give the other written notice of at least seven days prior to disclosing Confidential Information under this subsection (or prompt notice in advance of disclosure, if seven days advance notice is not reasonably feasible), unless the law forbids such notice.

## **17. LIMITATION ON DAMAGES.**

Our obligations to you are defined by this Agreement. We are not liable to you for failing to provide the Services unless the failure results from a breach of this Agreement, or results from our gross negligence or willful misconduct.

Neither of us (nor any of our employees, agents, affiliates or suppliers) is liable to the other for any lost profits or any other indirect, special, incidental or consequential loss or damages of any kind, or for any loss that could have been avoided by the damaged party's use of reasonable diligence, even if the party responsible for the damages has been advised or should be aware of the possibility of such damages. In no event shall either of us be liable to the other for any punitive damages.

Notwithstanding anything in the Agreement to the contrary, except for liability based on willful misconduct or fraudulent misrepresentation, and liability for death or personal injury resulting from Deneb's negligence, the maximum aggregate monetary liability of Deneb and any of its employees, agents, suppliers, or affiliates in connection with the Services, the Agreement, and any act or omission related to the Services or Agreement, under any theory of law (including breach of contract, tort, strict liability, violation of law, and infringement) shall not exceed the greater of (i) the amount of fees you paid for the Services for the six months prior to the occurrence of the event giving rise to the claim, or (ii) Five Hundred Dollars (\$500.00).

## **18. INDEMNIFICATION.**

If we, our affiliates, or any of our or their respective employees, agents, or suppliers (the "**Deneb Indemnitees**") are faced with a legal claim by a third party arising out of your

actual or alleged gross negligence, willful misconduct, violation of law, failure to meet the security obligations required by the Agreement, violation of the AUP, or violation of Section 15 (Export Matters) of these Terms and Conditions, then you will pay the cost of defending the claim (including reasonable attorney fees) and any damages award, fine, or other amount that is imposed on the Deneb Indemnitees as a result of the claim. Your obligations under this subsection include claims arising out of the acts or omissions of your employees, any other person to whom you have given access to the Services, and any person who gains access to the Services as a result of your failure to use reasonable security precautions, even if the acts or omissions of such persons were not authorized by you. If you resell the Services, the grounds for indemnification stated above also include any claim brought by your customers or end users arising out of your resale of the Services. We will choose legal counsel to defend the claim, provided that these decisions must be reasonable and must be promptly communicated to you. You must comply with our reasonable requests for assistance and cooperation in the defense of the claim. We may not settle the claim without your consent, although such consent may not be unreasonably withheld. You must pay expenses due under this Section as we incur them.

#### **19. THIRD PARTY SOFTWARE.**

In addition to the terms of our Agreement, your use of any Microsoft® software, Adobe software, Crystal Reports software, or any other third-party software utilized in the provision of eDeneb services is governed by the manufacturer's trademark, copyright and license provisions.

#### **20. WHO MAY USE THE SERVICE.**

You may resell the Services, but you are responsible for use of the Services by any third party to the same extent as if you were using the Services yourself. If you resell any part of the Services you must have prior written consent by Deneb. Unless otherwise agreed, Deneb will provide support only to you, not to any other person you authorize to use the Services. There are no third party beneficiaries to the Agreement, meaning that third parties do not have any rights against either of us under the Agreement.

#### **21. CHANGES TO THE ACCEPTABLE USE POLICY.**

We may change our Acceptable Use Policy, provided that any changes are reasonable and consistent with applicable law and industry norms. Any such changes made during the term of your Agreement will become effective to your account upon the first to occur of: (i) renewal, (ii) your execution of a new/additional Order for your account that incorporates the revised AUP or General Terms, or (iii) thirty (30) days following our notice to you describing the change. If the change materially and adversely affects you, you may terminate the Agreement by giving us written notice of termination on such grounds no later than thirty (30) days following the date the change became effective for your account, and we will not enforce the change with respect to that account for thirty (30) days following the date of your notice. If you terminate your Service because the

change adversely affects you, we may decide not to enforce that change with respect to your account and keep your Agreement in place for the remainder of the term.

## **22. NOTICES.**

Your routine communications regarding the Services should be sent to your Deneb Cloud account team using the electronic mail address: [denebsoftware@att.net](mailto:denebsoftware@att.net).

If you want to give us a notice regarding termination of the Agreement for breach, indemnification, or other non-routine legal matter, you should send it by electronic mail and first-class United States mail to:

Deneb, Inc.  
270 Regency Ridge Dr, Suite 200  
Dayton, OH 45459

Deneb's routine communications regarding the Services and legal notices will be sent to the individual(s) you designate as your contact(s) on your account either by electronic mail, United States mail, or overnight courier. Notices are deemed received as of the time delivered, or if that time does not fall within a Business Day, as defined below, as of the beginning of the first Business Day following the time delivered, except that notices of AUP amendments are deemed delivered as of the first time that you log on to your Deneb Cloud after the time that the notice is posted. For purposes of counting days for notice periods, the Business Day on which the notice is deemed received counts as the first day. Notices must be given in the English language.

## **23. OWNERSHIP OF INTELLECTUAL PROPERTY**

Each of us retains all right, title and interest in and to our respective trade secrets, inventions, copyrights, and other intellectual property. Any intellectual property developed by Deneb during the performance of the Services shall belong to Deneb unless we have agreed with you in advance in writing that you shall have an interest in the intellectual property.

## **24. IP ADDRESSES.**

Upon expiration or termination of the Agreement, you must discontinue use of the Services and relinquish use of the IP addresses and Customer ID assigned to you by Deneb in connection with Services. You agree that Deneb may, as it determines necessary, make modifications to DNS records and zones on Deneb managed or operated DNS servers and services.

## **25. ASSIGNMENT/SUBCONTRACTORS**

You may not assign the Agreement without Deneb's prior written consent. We may assign the Agreement in whole or in part as part of a corporate reorganization or a sale of our business, and we may transfer your Confidential Information as part of any such transaction. Deneb may use third party service providers to perform all or any part of the Services, but Deneb remains responsible to you under this Agreement for work performed by its third party service providers to the same extent as if Deneb performed the Services itself.

## **26. FORCE MAJEURE**

Neither of us will be in violation of the Agreement if the failure to perform the obligation is due to an event beyond our 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.

## **27. GOVERNING LAW, ARBITRATION**

The Agreement is governed by the laws of the State of Ohio, and the laws of the United States of America, as applicable. In the event of any dispute, claim, question, or disagreement arising from or relating to this agreement or the breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question, or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. If they do not reach such solution within a period of 60 days, then, upon notice by either party to the other, all disputes, claims, questions, or differences shall be finally settled by arbitration administered by the American Arbitration Association in accordance with the provisions of its Commercial Arbitration Rules.

## **28. SOME AGREEMENT MECHANICS**

These Terms of Service may have been incorporated in your Order by reference to page on the Deneb website. Although we may from time to time revise the Terms of Service posted on that page, those revisions will not be effective as to an Order that we accepted prior to the date we posted the revision, and your Order will continue to be governed by the Terms of Service posted on the effective date of the Order. However, any amended Terms of Service will become effective on the first day of the renewal period that follows the date that the new Terms of Service were posted by at least thirty days. In addition, if over time you sign multiple Orders for a single account, then the Terms of Service incorporated in the latest Order posted on the effective date of the latest Order will govern the entire account. Deneb may accept or reject any Order you submit in its sole discretion. Deneb's provisioning of the Services described in an Order shall be Deneb's acceptance of the Order.

An Order may be amended by a formal written agreement signed by both parties, or by an exchange of correspondence, including electronic mail, that includes the express consent of an authorized individual for each of us. Any such correspondence that adds or modifies Services in connection with an account established by an Order shall be deemed to be an amendment to that Order, notwithstanding the fact that the correspondence does not expressly refer to the Order.

Other than as stated herein, the Agreement may be modified only by a formal document signed by both parties.

If there is a conflict between the terms of any of the documents that comprise the Agreement, the documents will govern in the following order: Order, Terms of Service, and the Acceptable Use Policy. If any part of the Agreement is found unenforceable by a court or other tribunal, the rest of the Agreement will nonetheless continue in effect, and we agree that the tribunal may reform the unenforceable part if it is possible to do so consistent with the material economic incentives of the parties resulting in this Agreement. Each of us may enforce each of our respective rights under the Agreement even if we have waived the right or failed to enforce the same or other rights in the past. Our relationship is that of independent contractors and not business partners. Neither of us is the agent for the other, and neither of us has the right to bind the other on any agreement with a third party. The captions in the Agreement are for convenience only and are not part of the Agreement. The use of the word "including" in the Agreement shall be read to mean "including without limitation." Sections 1, 7, 10, 16, 17, 18, 22, 24, 28, and all other provisions that by their nature are intended to survive expiration or termination of the Agreement shall survive expiration or termination of the Agreement.

If you have made any change to the Agreement documents that you did not bring to our attention in a way that is reasonably calculated to put us on notice of the change, the change shall not become part of the Agreement.

The Agreement may be signed in multiple counterparts, which, taken together, will be considered one original. Facsimile signatures, signatures on an electronic image (such as .pdf or .jpg format), and electronic signatures shall be deemed to be original signatures.

2011 Deneb, Inc.  
March 28, 2011 revision 1