

Cloud Services Terms of Use

These terms of use ("Agreement") govern use of DNN[®] Corp.'s Cloud Services ("Service"). By accepting or using the Service, you are agreeing on behalf of yourself or of the Entity ordering the service that your company will be bound by and become a party to these terms and conditions herein and certifying that you have the authority to bind your company ("LICENSEE")

Definitions:

"DNN" means DNN[®] Corp., a Delaware Corporation, headquartered at 155 Bovet Road, Suite 201, San Mateo, California 94402

"DNN Cloud Service" or "Service" means DNN's managed cloud services offered via dnnsoftware.com.

"LICENSEE" means the person or Entity subscribing to or ordering the Service from DNN.

IF YOUR COMPANY DOES NOT AGREE TO ALL OF THE TERMS, DO NOT SELECT THE "ACCEPT" BOX IF YOU ARE SUBSCRIBING TO THE SERVICE ELECTRONICALLY OR SIGN A SALES ORDER FORM ISSUED BY DNN IF YOU ARE SUBSCRIBING TO THE SERVICE THROUGH A DNN REPRESENTATIVE. UNLESS AND UNTIL YOUR COMPANY HAS AGREED TO BE BOUND BY ALL OF THE TERMS OF THE AGREEMENT, YOUR COMPANY HAS NOT BECOME A LICENSEE OF, AND IS NOT AUTHORIZED TO USE, THE SERVICE. THE "EFFECTIVE DATE" OF THIS AGREEMENT IS THE DAY THAT YOU CHECK THE "ACCEPT" BOX IF SUBSCRIBING ELECTRONICALLY OR SIGN A SALES ORDER FORM IF SUBSCRIBING MANUALLY. THESE TERMS ARE ALSO APPLICABLE TO YOUR USE OF THE SERVICE DURING A TRIAL PERIOD.

1.0 LICENSE GRANT; RESTRICTIONS

- 1.1 Services Provided.** DNN owns, or is the lawful licensee of, certain proprietary software. DNN will make the software accessible to and usable by Licensee via the internet as a service provided by DNN, according to the terms and conditions of this Agreement ("Service").
- 1.2 Grant.** Subject to your use of the Service during a Trial Period or payment in full of the Fees, DNN grants to Licensee a limited, non-transferable, non-exclusive license to access and use the Service and Documentation (defined below) during the Term or Trial Period subject to the terms of this Agreement and the limitations set forth in this Section 1. The license granted hereunder is limited in that the Service may only be used in accordance with the functional description of the Service made available to Licensee ("Documentation") and with the terms of this Agreement. **All rights not expressly granted to Licensee are reserved to DNN and its licensors.**
- 1.3 Additional License Restrictions.** Licensee may not use the Service outside of the scope set out in this Agreement without the prior written consent of DNN which consent may be withheld at DNN's sole discretion. Any consent given by DNN to amend the scope of the license may be dependent on payment of additional Fees by Licensee. Licensee shall not:
- (a) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or access to the Service in any way;
 - (b) modify or make derivative works based upon the Service; or
 - (c) except to the extent that applicable law specifically prohibits such restrictions, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Service or access the Service in order to: (i) build and sell for commercial gain a competitive product or service; (ii) build and sell for commercial gain a product using similar ideas, features, functions or graphics of the Service; or (iii) copy any ideas, features, functions or graphics of the Service for commercial gain;

2.0 LICENSEE OBLIGATIONS

- 2.1 Hardware, Software and Communications.** Licensee is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and use the Service,

and for paying all third-party access charges (e.g., ISP, telecommunications) incurred while using the Service. Licensee acknowledges that it has been advised of and can comply with all minimum hardware, software, and communications requirements applicable to accessing and using the Service.

2.2 Licensee Responsibilities. Licensee shall be solely responsible for its actions and the actions of its users while using the Service and for the contents of its transmissions through the Service (including, without limitation, Licensee IP). Licensee agrees:

- (a) to abide by all local, state, national, foreign and international laws, treaties, and regulations applicable to Licensee's use of the Service, including, without limitation, all laws regarding the transmission of technical or personal data or software exported from the United States;
- (b) not to upload or distribute files that contain viruses, malicious files, or any other similar software or programs that may damage the operation of the Service or another's computer;
- (c) not to interfere or disrupt the Service and networks connected to the Service;
- (d) to comply with all regulations, policies and procedures of networks connected to the Service;
- (e) not to send spam or otherwise duplicative or unsolicited messages in violation of applicable laws;
- (f) not to send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or that violates a third party's privacy rights;
- (g) not to send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs;
- (h) not to interfere with or disrupt the integrity or performance of the Service or the data contained therein; and
- (i) not to attempt to gain unauthorized access to the Service or its related systems or networks.

2.3 Compliance With Applicable Laws. Without limiting the other terms of this Agreement, Licensee shall be solely responsible for its compliance with all laws, statutes, ordinances and/or regulations (including without limitation the laws and regulations governing export control, unfair competition, anti-discrimination, false advertising, privacy and publicity) (collectively, "**Laws**") applicable to Licensee's business and use of the Service. The Parties agree that DNN may in its sole discretion make changes to the Service from time to time as may be reasonably necessary or appropriate for DNN to comply with applicable Laws. The Parties further agree that if a change in applicable Laws makes the continued performance of this Agreement or any part thereof, in DNN's sole reasonable discretion, unduly burdensome or unlawful, DNN may terminate this Agreement upon notice to, and without further obligation to, Licensee.

3.0 DNN OBLIGATIONS

3.1 Access. DNN will use commercially reasonable efforts as to provide Internet access to the Service subject to scheduled downtime for maintenance purposes, unscheduled maintenance, and system outages. The parties acknowledge that, since the Internet is neither owned nor controlled by any particular entity, DNN can make no guarantee that any given user will be able to access the Service at any given time. There are also no assurances given that access and Service will be available at all times or be uninterrupted, and DNN shall not be liable to Licensee or to any third party for failure of accessibility to the Service, including due to failures of the Internet or for other causes beyond DNN's reasonable control. DNN may, at any time at its sole discretion but without obligation to do so, provide updates, enhancement, or new versions of the software associated with the Service.

3.2 Security. DNN will operate the Services at DNN facilities or at a reputable third party Internet service provider and hosting facility at DNN's sole discretion. DNN will implement commercially reasonable security precautions in connection with the Services. Licensee represents and warrants that any information provided by Licensee to DNN directly or through its use of the Service shall not be regarded as Confidential Information. Licensee agrees not to provide DNN any personally identifiable data of any kind or to use any personally identifiable data in connection with the Services. Licensee acknowledges that, notwithstanding any security precautions, use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Service. Accordingly, DNN cannot and does not guaranty the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet

4.0 INTELLECTUAL PROPERTY AND PROPRIETARY RIGHTS

4.1 Rights Regarding Intellectual Property. DNN alone (and its licensors, where applicable) shall own all right, title and interest, including all unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world ("**Intellectual Property Rights**"), in and to the Service, any software provided to Licensee while using the Service, and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Licensee or any other party relating to the Service or the software accessed while using the Service. This Agreement is not a sale and does not convey to Licensee any rights of ownership in or related to the Service, any software offered in the Services, or the Intellectual Property Rights owned by DNN. The DNN name, logo, and product names associated with the Service are trademarks of DNN or third parties, and no right or license is granted to use them.

4.2 Licensee Grant. Licensee grants to DNN a non-exclusive, worldwide right and license to access, use, adapt, display, perform and distribute all data and information input into the Service by Licensee, and other materials provided by Licensee hereunder (collectively, the "**Licensee IP**"), as may be reasonably necessary or appropriate in connection with the provision of access to the Service by DNN to Licensee and Licensee's use thereof. DNN will notify Licensee immediately of any unauthorized use of any Licensee IP that it becomes aware of.

5.0 FEES AND PAYMENTS

5.1 Fees / Payment by Credit Card. Licensee agrees to pay the fees specified in the Documentation or in a Sales Order Form, exclusive of all applicable duties, tariffs, and taxes ("**Fees**") by having on file with DNN a valid, authorized and unexpired credit card (the "**Authorized Card**"). Unless other payment obligations have been arranged between Licensee and DNN, the Authorized Card will be charged by DNN for pre-payment for the term outlined in the plan selected by Licensee. DNN reserves the right to suspend or terminate Licensee's access to the Service in the event that DNN is unable to charge the Authorized Card or until overdue Fees are paid in full. All payment obligations are non-cancellable and all amounts paid are nonrefundable. During the Term, Licensee may place orders to authorize additions to its Service. Licensee agrees to pay all appropriate additional fees associated with such additional Service.

5.1.1 Resource Usage Overages: Licensee agrees to pay per 1 gigabyte of data transfer in excess of the amount included in the monthly allocation for Bandwidth. Also, licensee agrees to pay per 1 gigabyte of Cloud Storage in excess of the amount included in the monthly allocation for Cloud Storage, and to pay per 1 gigabyte of SQL Database Storage in excess of the amount included in the monthly allocation for SQL Database Storage. The cost per 1 gigabyte of data transfer, per 1 gigabyte of Cloud Storage and per 1 gigabyte of SQL Database Storage is specified in the Subscription Agreement. All overages and usage data is determined solely by DNN and billed to the Licensee at the end of each monthly period.

5.2 Taxes. Licensee agrees to pay in addition all applicable duties, tariffs and similar charges which may apply or be charged under applicable laws and regulations as well as all taxes at the appropriate rate resulting from any transaction under this Agreement including, but not limited to, sales, use, excise, value-added, goods and services, consumption, business and other similar taxes, except taxes based on DNN's own income or property. Should the payment of any fees be subject to withholding tax by any government, Licensee shall reimburse DNN for such withholding tax, or for any deficiency relating to taxes and other charges that are the Licensee's responsibility under this Agreement. Each party shall provide and make available to the other party any exemption certificates, treaty certification or other exemption information reasonably requested by the other party.

6.0 SERVICE WARRANTY, PARTIES' WARRANTIES AND DISCLAIMER

6.1 Service DNN Warranty. DNN warrants that the Service in the form delivered to Licensee, will function in all material respects as specified in the Documentation and in this Agreement. The Service will be delivered in accordance with the SLA as included in Schedule A.

6.1 Exclusive Remedy: In the event the Service fails to perform as warranted, DNN shall use commercially reasonable efforts to correct any such failure which materially impairs the performance of the Service. In the event DNN is unable to correct such failure by exercising reasonable commercial efforts in a mutually agreed time period, either party may terminate this Agreement. Licensee's sole remedy shall be for DNN

to provide a pro-rata refund of any pre-paid Fees from the date on which DNN was notified of the material defect.

6.2 Licensee Warranty. Licensee warrants that Licensee IP will not contain any data, content or other materials that infringe or violate any third party rights of publicity or privacy. Licensee warrants that it has obtained all authorization(s), consents and licenses necessary to fully perform this Agreement, and to use the Licensee IP to be used in conjunction with the Service. Licensee further warrants that: (i) it has the right to execute this Agreement and act in accordance with its terms; (ii) the execution and performance of the Agreement are within its respective corporate powers, have been duly authorized by all necessary corporate action, do not require any consent of or filing with any third party or governmental body or agency, and do not violate any law, agreement, judgment, order, or the like or their respective charter or by-laws; and (iii) this Agreement will constitute valid and binding obligations of Licensee enforceable against it in accordance with its terms.

6.3 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, DNN AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. DNN AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT: (a) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA; (b) THE SERVICE WILL MEET LICENSEE'S REQUIREMENTS INCLUDING, WITHOUT LIMITATION, COMPLIANCE WITH ANY APPLICABLE LAW OR REGULATION; (c) ANY STORED DATA WILL BE ACCURATE OR RELIABLE; (d) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY LICENSEE THROUGH THE SERVICE WILL MEET LICENSEE'S REQUIREMENTS; (e) ERRORS OR DEFECTS WILL BE CORRECTED; OR (f) THE SERVICE IS FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE IS PROVIDED TO LICENSEE STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY DNN AND ITS LICENSORS. THE SERVICE MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DNN IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

7.0 INDEMNITIES

7.1 Licensee Indemnity Obligation. Licensee will defend any third party claim against DNN and pay any damages and costs finally awarded against DNN by a court of competent jurisdiction or that are included in a settlement approved by Licensee to the extent Licensee IP, or DNN's access or use thereof, is held to infringe a valid U.S. patent issued as of the Effective Date, copyright, trademark, or trade secret of any third party. This obligation is contingent upon: (a) DNN's prompt written notification to Licensee of the claim; and (b) DNN's tender to Licensee of the case and settlement negotiations provided that DNN is allowed to assist in and approve any settlement. Licensee shall have no obligation to pay damages or settlement amounts negotiated by DNN.

7.2 DNN Indemnity Obligations. DNN will defend any third party claim against Licensee and pay any damages and costs finally awarded against Licensee by a court of competent jurisdiction or that are included in a settlement approved by DNN to the extent the Service, or Licensee's access or use thereof, is held to infringe a valid U.S. patent issued as of the Effective Date, copyright, or trade secret of any third party enforceable in the United States. This obligation is contingent upon: (a) Licensee's prompt written notification to DNN of the claim; (b) Licensee's unconditional tender to DNN of the case and settlement negotiations; (c) DNN's sole control of the defence and settlement negotiations related to the claim; (d) Licensee's assistance (at DNN's expense) in the defence or settlement of the claim; and (e) Licensee not making any admission prejudicial to the defence of the claim. DNN shall have no obligation to pay any damages or settlement amounts negotiated by Licensee. DNN will not be liable to Licensee if an infringement claim is based on: (a) use of the Service in combination with any components not supplied

by DNN; or (b) use of the Service in violation of any terms of this Agreement. If the Service is held to be infringing or where DNN believes it may be infringing, DNN may at its expense and option: (a) obtain for Licensee the right to continue using the Service; (b) replace the Service with non-infringing software of similar functionality; (c) modify the Service so it is not infringing; or (d) if such remedies are not reasonably available, terminate Licensee's access to the Service and return any prepaid fees for the unused portion of the Service.

7.3 Remedies. The remedies stated in this Section are the sole and exclusive remedies of each Party with respect to any indemnified claims related to the Service.

8.0 LIMITATION OF LIABILITY

8.1 IN NO EVENT SHALL DNN HAVE ANY LIABILITY TO THE LICENSEE OR TO ANY THIRD PARTY WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE FOR ANY LOSS OF PRODUCTION, LOSS OF OR CORRUPTION TO SOFTWARE OR DATA, LOSS OF BUSINESS OR OF REVENUES, LOSS OF OPERATION TIME, WASTED MANAGEMENT TIME, LOSS OF GOODWILL OR REPUTATION, WHETHER CAUSED DIRECTLY OR INDIRECTLY OR TO GIVE AN ACCOUNT OF PROFITS TO THE LICENSEE OR ANY THIRD PARTY, OR FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES WHATSOEVER ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF DNN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE TOTAL, AGGREGATE LIABILITY OF DNN ARISING FROM OR RELATED TO THIS AGREEMENT, FOR ANY REASON, SHALL BE LIMITED TO DIRECT DAMAGES NOT TO EXCEED AN AMOUNT EQUAL TO THE FEES PAID OR PAYABLE BY LICENSEE FOR ACCESS TO THE SERVICE DURING THE PRECEDING TWELVE (12) MONTHS OR THE TERM, WHICHEVER IS LESS. DNN WILL BE LIABLE FOR DIRECT DAMAGES ONLY IF IT FAILS TO EXERCISE ORDINARY CARE, AND THAT IT SHALL BE DEEMED TO HAVE EXERCISED ORDINARY CARE IF ITS ACTION OR FAILURE TO ACT IS IN CONFORMITY WITH COMMERCIALY REASONABLE PRACTICES IN THE INDUSTRY.

8.2 EXCEPT TO THE EXTENT OF SUCH LIABILITY AS CANNOT BE EXCLUDED BY LAW, THE FOREGOING LIMITATIONS APPLY TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING WITHOUT LIMITATION TO BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. EACH OF THE PARTIES ACKNOWLEDGES THAT IT UNDERSTANDS THE LEGAL AND ECONOMIC RAMIFICATIONS OF THE FOREGOING LIMITATIONS, AND THAT THE FOREGOING LIMITATIONS FORM AN ESSENTIAL PART OF THE AGREEMENT OF THE PARTIES.

9.0 TERM AND TERMINATION

9.1 Term. Upon DNN's permission which may be revoked at DNN's sole discretion, Licensee may initially try the Service without charge for a defined period of time ("Trial Period"). If Licensee continues to use the Service after the Trial Period, then Licensee will be charged Fees pursuant to Section 5 and in accordance with the plan selected by Licensee ("Term"). Thereafter, the Term for Services will renew for successive terms for the scope of use currently licensed unless a different Term and scope is agreed to by the parties at the time of renewal.

9.2 Termination for Breach. A party may terminate this Agreement immediately if the other party commits any material breach and fails to cure such default within thirty (30) days after written notice thereof from the non-breaching party; or (ii) the other party enters bankruptcy proceedings, becomes insolvent, or otherwise becomes generally unable to meet its obligations under this Agreement.

9.3 Effect of Termination. Upon the termination or expiration of this Agreement, or upon a request by either party hereto: (a) Licensee's right and license to access and use the Service ceases immediately; (b) all undisputed, outstanding payments to DNN shall promptly be paid in full; and (c) all Confidential Information of one party in the possession of the other shall be promptly returned (or, at the other party's written instruction, destroyed). Licensee may request that DNN conduct a mass export of Licensee provided data and information, and DNN agrees to provide such services at its then current rates on a time and materials basis provided that Licensee is current in payment of all Fees and Licensee does not dispute the fees with its credit card company that are charged for export services. Thirty (30) days after termination, DNN may delete and destroy all Licensee Information without notice or further liability to

Licensee. The notification by either party of its intent to terminate this Agreement does not relieve either party of any obligations that have accrued on or before the date on which termination becomes effective.

9.5 Survival. The provisions of Sections 2, 4, 5, and 7 through 11, and any other sections which by their nature are intended to survive, shall survive the termination or expiration of this Agreement.

10.0 CONFIDENTIALITY

10.1 Confidential Information. Licensee acknowledges and agrees that the Service contains valuable proprietary and Confidential Information (as hereinafter defined) of DNN and includes, without limitation, intellectual property rights such as trade secrets, copyrightable works, and/or inventions for which a patent has been or may be applied for or issued. Neither Licensee nor any of its owners, officers, employees or agents shall, during or after termination of this Agreement, directly or indirectly: (a) divulge, disclose, or communicate to any person, entity, firm, corporation, or any other third party any Confidential Information (as hereinafter defined); or (b) utilize for their personal benefit or for the benefit of any person or entity other than DNN, any Confidential Information. For the purposes of this Agreement, "Confidential Information" means, without limitation, any knowledge or information comprising or relating to any technical or non-technical data, algorithms, formulae, patterns, compilations, computer programs (including the Service, software, and Documentation and all pricing terms related thereto), devices, methods, trade secrets, know-how, techniques, drawings, designs, processes, procedures, improvements, models, manuals, financial data, the terms of this Agreement and other confidential business information, documents, manuals and data, whether written, machine reproducible, visual or oral, relating to the Service, the design, structure, logic and algorithms of the Service, its interactions and the programming techniques employed therewith, or the affairs of DNN and its owners, officers, employees and agents, which are not generally known to the public through legitimate origins. Each person or entity provided access to the Service by Licensee, including without limitation, employees and agents of Licensee, shall be advised by Licensee of the confidential nature of the Service and Documentation and shall be party to a confidentiality agreement with Licensee that protects DNN's Confidential Information in a manner consistent with Licensee's obligations under this Agreement.

10.2 Limitations. Confidential Information shall not include information which: (a) is previously rightfully known to Licensee without restriction on disclosure; (b) is or becomes publicly known, through no act or failure on Licensee's part; or (c) is lawfully disclosed to Licensee by a third party under no confidentiality obligations to DNN related to the disclosed information. Licensee shall notify DNN in writing of any proposed disclosure in reliance upon any claimed exception at least thirty (30) days in advance of such disclosure, specifying the proposed disclosure and the relevant exception(s). Licensee shall have the burden of proving that a claimed exception is applicable to Licensee.

11.0 ADDITIONAL TERMS

11.1 Notices. Any notice or other document to be served under this Agreement shall be delivered personally or by registered mail or nationally recognized overnight courier to the addresses provided by either party which may be changed by a party from time to time by notice to the other party.

11.2 Governing Law. The laws of the State of California and of the United States shall govern the construction, validity and operation of this Agreement and the performance of all obligations hereunder without regard for its choice of law provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods, including any domestic laws that implement such UN Convention in the Territory, and any U.S. implementation of the Uniform Computer Information Transactions Act (UCITA) are hereby excluded.

11.3 Dispute Resolution. Subject first to the following dispute resolution procedures, any dispute arising between the parties shall be settled exclusively by the state and federal courts located in County of San Mateo, in California. The parties agree that in the event of a dispute or alleged breach of this Agreement or an Exhibit, they will work together in good faith first, to resolve the matter internally within thirty (30) days by escalating it to higher levels of management and, then if necessary, to submit to binding arbitration using a single arbitrator in accordance with the Rules of Commercial Arbitration of the American Arbitration Association and the arbitrator shall award the prevailing party its costs, including reasonable attorneys' fees and costs, to the degree of such prevailing party's success. Judgment upon any arbitration award may be entered in any court having jurisdiction thereof. This provision shall not

apply to disputes involving confidentiality or infringement of either party's intellectual property rights or non-payment of fees which shall constitute material breaches of this Agreement (in which case either party shall be free to seek available remedies).

11.4 Federal Use. In the event that the software or Service under this Agreement can be construed as "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1), then, if access is acquired by or on behalf of a civilian agency, the US Government acquires this access to commercial computer software and/or commercial computer software Documentation subject to the terms of this Agreement and as specified in 48C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations ("FAR") and its successors. If access is acquired by or on behalf of any agency within the Department of Defence ("DOD"), the U.S. Government acquires this access to commercial computer software and/or commercial computer software Documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

11.5 Miscellaneous.

- (a) Licensee may not assign this Agreement or any of its rights or obligations hereunder without the prior written consent of DNN.
- (b) Except as otherwise expressly provided to the contrary in this Agreement, this Agreement may only be changed, modified or expanded by a writing signed by both parties.
- (c) No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of this Agreement shall be deemed to be a waiver nor shall it in any way prejudice any right of that party under this Agreement.
- (d) The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision hereof.
- (e) This Agreement, along with any exhibits, attachments, or addenda attached hereto from time to time, contains the entire Agreement between the parties with respect to the matters specified herein.
- (f) Except in relation to the payment of fees as set out herein, neither party shall be considered in default hereunder due to any failure in its performance of this Agreement should such failure arise out of causes beyond its reasonable control and without its fault or negligence.
- (g) Each party shall retain responsibility for its compliance with all applicable export control laws and economic sanctions programs relating to its respective business, facilities, and the provision of services to third parties.
- (h) This Agreement and any exhibits, schedules, or addenda may be executed in one or more counterparts, each of which shall be deemed an original but all of which, taken together, shall be deemed a single instrument.
- (i) Nothing in this Agreement shall be deemed to create a joint venture, partnership, or agency relationship between the parties or be deemed to authorize either party to incur any liabilities or obligations on behalf of, or in the name of, the other.
- (j) The parties agree that any principle of construction or rule of law that provides that an agreement shall be construed against the drafter shall not apply to this Agreement.
- (k) All headings in these Terms and Conditions are for convenience only and shall have no legal or contractual effect.
- (l) These Terms and Conditions shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

11.6 Force Majeure. Except with respect to the payment of Fees owing under this Agreement, neither party will be liable for nonperformance or delays caused by acts of God, wars, riots, strikes, fires, floods, earthquakes, government restrictions, terrorist acts or other causes beyond its reasonable control.

Schedule A – Service Level Agreement

This Service Level Agreement (“SLA”) is between the LICENSEE and DNN and covers the Service purchased under this Agreement. DNN and LICENSEE may be referred to individually as “Party” or collectively as “Parties”

1 Overview, Definitions and Qualifications

This SLA describes DNN’s target service level metrics for the Services purchased. Where DNN fails to meet a given standard of performance as defined below (a “Performance Standard”), LICENSEE shall be eligible for a corresponding credit, also defined below (a “Service Credit”), subject to the qualifications contained herein. By purchasing the Service, LICENSEE agrees that he or she has read this SLA and that this SLA constitutes the entire agreement between DNN and LICENSEE as to the credits available, except as provided in writing and executed by both Parties.

Definitions

- a) “Affected Service” means a DNN Cloud Service experiencing a Service Outage or a Service Degradation for which a Support Ticket has been opened.
- b) “Combined Service” means more than one Service purchased by LICENSEE that are billed as a single product and therefore are not independently invoiced, such as “Package”.
- c) “Contract Year” means a year beginning on the Service Effective date (or an anniversary thereof).
- d) “Customer Premise Equipment” (the “CPE”) means equipment purchased by the LICENSEE and used to support the Services on the LICENSEE’s network.
- e) “Downtime” means the sum of Service Outage Time and Service Degradation Time, but the Services may not experience a simultaneous Service Outage and Service Degradation.
- f) “Recurring Charges” means the charges billed on a recurring basis by DNN to the LICENSEE for provided Service, exclusive of usage fees, taxes, and other non-recurring charges.
- g) “Service Outage” means an unscheduled period during which the Services are interrupted and not usable.
- h) “Service Outage Time” means the length of the Service Outage, beginning when the Service Outage begins and ending when the Service is fully functional; Service Outage credits will NOT be issued unless and until an appropriate Support Ticket is opened by the LICENSEE.
- i) “Service Degradation” means an unscheduled period during which the Services are available but do not perform as defined herein or in the Terms and Conditions
- j) “Service Degradation Time” means the length of the Service Degradation, beginning when the Service Degradation Begins and ending when the Service is fully functional; Service Degradation credits will NOT be issued unless and until an appropriate Support Ticket is opened by the LICENSEE.
- k) “Support Ticket” means a record of a Service Outage or Service Degradation and its subsequent resolution, as recorded by DNN; Support Tickets are initiated by the LICENSEE opening a ticket through the Customer Support Network at <http://www.dnnsoftware.com>
- l) “Support Ticket Number” means the unique number assigned to a Support Ticket by DNN.
 - (1) “Response Time” means the length of time between the LICENSEE opening a Support Ticket and the LICENSEE receiving acknowledgment from a DNN support representative of the ticket.
- m) “Repair Time” means the length of time between the LICENSEE opening a Support Ticket and DNN resolving the Service Outage or Service Degradation.
- n) “Packet Loss” means the total packet loss associated with data delivery for a given month.
- o) “Severity 1 Error” means a Support Ticket level indicating the severity of the Service Outage or Degradation; Severity 1 Support Tickets include all Service Outages, also referred to as “down-hard” issues, and other severe Service Degradations.
- p) “Severity 2 Errors” means a Support Ticket level indicating a less severe Service Degradation than those described as Severity 1; Severity 2 Tickets means the Service is (i) functioning with limited capabilities, or (ii) is unstable with periodic interruptions, or (iii) mission critical applications, while not being affected, have experienced material system interruptions.
- q) “Severity 3 Errors” means (i) there is a need to clarify procedures or information in documentation or (ii) there is a request for a product enhancement. DNN may include an Update in the next Maintenance Release.

- r) "Service Availability" means the amount of time during a calendar month that the Service will be functional.
- s) "Service Credit" means the amount of credit issued by DNN in response to a LICENSEE's Service Outage or Service Degradation, subject to the specifications and qualifications contained herein.
- t) "Incident" means any set of circumstances resulting in a failure to meet a Service Level.
- u) "Customer Support" means the services by which DNN may provide assistance to LICENSEE to resolve issues with the Service.
- v) "Major Releases" means generally commercially released major new releases, modifications or enhancements to the Software, as designated by a change in the number to the left of the first decimal in the version number.
- w) "Maintenance Releases" means generally commercially released code corrections, patches, updates and minor version releases of the Software, as designated by a change in any number to the right of the first decimal in the version number.
- x) "Supported Version(s)" means the current release of Software and the immediately preceding version of the Software for a period of twelve (12) months after it is first superseded.
- y) "Update" means either a software modification or addition that, when made or added to the Software, corrects the Error, or a procedure or routine that, when observed in the regular operation of the Software, eliminates the practical adverse effect of the Error on LICENSEE.
- z) "Upgrade" means a revision of the Software released by DNN to its end user customers generally, during the Support Services term, to add new and different functions or to increase the capacity of the Software. Upgrade does not include the release of a new product or added features for which there may be a separate Fee.

2 **Qualifications**

In order to be eligible for a Service Credit as defined herein, LICENSEES must first open a Support Ticket to report the Service Outage or Service Degradation. LICENSEES must then e-mail accounts@dnnsoftware.com within thirty (30) days of Support Ticket closing to request a Service Credit. The e-mail should read "Request for Service Credit" in the subject line, a short explanation of the credit due, and the corresponding Support Ticket Number.

- a. Past-due Accounts – if LICENSEE has a past-due balance on the account, review of any credit requests will be delayed until the past-due amount is resolved.
- b. LICENSEE must provide to DNN Support all reasonable details regarding the Service Credit, including but not limited to, detailed descriptions of the Incident(s), the duration of the Incident, network trace routes, the URL(s) affected and any attempts made by LICENSEE to resolve the Incident.
- c. In the event of any dispute between the parties regarding the availability of a Service Credit, the parties will negotiate in good faith for a period of ten (10) business days to resolve such dispute. In the event that such negotiations are unsuccessful, the parties shall escalate such dispute to Senior VP level personnel, who shall negotiate in good faith for an additional ten (10) business days to resolve such dispute. If such negotiations are unsuccessful, the parties shall resolve such dispute in accordance with the dispute resolution procedures set forth in the Agreement.
- d. SLA credits will only be applied when a LICENSEE experiences Downtime covered by an SLA set forth in this schedule.
- e. SLA credits will only be issued for Downtime resulting from a single incident (i.e., if a physical failure and a network failure occur simultaneously and cause a single Downtime incident, only one credit will be applied for such Downtime incident).

- f. Under no circumstances will an SLA credit be greater than an end-users monthly recurring bill or, in a case where multiple end users are affected, the aggregate of the affected end-users' monthly recurring bills. Where services are billed at an annual rate (or multiple thereof), the credit will be no greater than 1/12th of the billing amount representing 12 calendar months of service,
- g. Downtime is measured from the time the Support Ticket is opened by the customer with DNN to the time the problem is resolved and the Service comes back on line. In order to be eligible for an SLA credit, Downtime must be a Severity 1 level incident.

3 Service Support Levels

Support Services includes all Major Releases and Maintenance Releases for Supported Versions. Support Services do not include developer assistance, which might include, but is not limited to, LICENSEE's customizations of the Software or LICENSEE's integrations of the Software with LICENSEE-developed or third-party developed software. Support Services does not include support for Software that is not a Supported Version. DNN will assist LICENSEE in updating to a Supported Version and this may necessitate DNN charging LICENSEE a separate Fee.

Support for Standard and Premium Packages

Initial Response	Severity 1 : 4 Hours Severity 2 : 4 Hours Severity 3 : 1 Business Day
Support Availability	Severity 1 & 2 : 24 hours, 7 days a week, 365 days a year Severity 3: 9 a.m. - 5 p.m. U.S. Pacific Time Zone, Mon. – Fri. except U.S. public holidays
Incident Reporting and Response	Web-based Support Ticket system
Cost	No extra fee. Cost is included with Service

- 4 Customer Success Network.** Subject to the terms of this Agreement, LICENSEE will be entitled to access Customer Success Network via Web interface. All electronic Services will be provided to the LICENSEE through Customer Success Network. All support incidents must be reported through Customer Success Network.

Communications between support staff and customers is handled primarily through Customer Success Network. On occasion, by mutual consent, telephone, VOIP or instant messaging communications may be used to expedite resolution of a problem. The parties will follow up such communications via logging into Customer Success Network. For tracking and recording purposes, each party is responsible for funding the cost of any such communication at their own locations.

Problems may be recorded at any time via the Customer Success Network, response times will be in line with the Service Levels stated for each service type.

- 5 Exclusions from Support Services.** DNN is not obligated to provide Support Services in the following situations: (a) the Software has been changed, modified or damaged (except if under the direct supervision of DNN); (b) the incident is caused by LICENSEE's negligence or other causes beyond the reasonable control of DNN; (c) the incident is caused by third party software not licensed through DNN; (d) errors caused by LICENSEE'S use of the Service after DNN advised LICENSEE to modify its use of the Service and LICENSEE has not modified its use after being so advised; (e) Errors during previews (e.g. technical previews and betas as determined by DNN); (f) LICENSEE has not installed and implemented Maintenance Release(s) so that the Software is not a Supported Version; or (g) LICENSEE has not paid the Fees for the Service(s) when due.