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**Last Modified: February 2026**

These General Terms and Conditions (these “**GTC**”) set forth the terms and conditions under which DemandTec, LLC or an Affiliate (as defined below) of DemandTec, LLC (collectively, “**DemandTec**”) executing an Order will provide the customer (“**Customer**”) that executes an ordering document that references the GTC, including quotes or statements of work (each, an “**Order**”) with: (a) access to those certain software as a service products ordered by Customer (the “**SaaS Product(s)**” or the “**DemandTec Products**”); (b) those certain professional services as described in an Order (the “**Professional Services**”); and (c) optional add-on support as described in DemandTec’s support handbook and set forth in an Order (the “**Premium Support Services**”).

## 1. DEFINITIONS

1.1. For purposes of the GTC: “**Agreement**” means these GTC, the applicable Order, any and all schedules, exhibits, other attachments to the GTC and the Order (including references on an Order), the Data Processing Addendum (“**DPA**”) and any Supplement (as applicable and as defined below); “**DemandTec Documentation**” means the applicable service descriptions, data sheet, DPA (as defined below), maintenance and support handbooks, and any applicable product license information documents, each as can be found at <https://demandtec.com/contract-terms> and all other documents referenced in the foregoing, including references to information contained in a URL, each as may be amended from time to time; “**Affiliate**” means any affiliated entity that controls, is controlled by, or is under common control with the applicable party; and “**control**” means the legal, beneficial, or equitable ownership, directly or indirectly, of outstanding securities or shares with sufficient voting power to elect a majority of the board of directors (or equivalent governing body).

## 2. RIGHT OF USE

2.1. **Use of DemandTec Product(s).** Subject to the terms and conditions of the Agreement, including the payment of fees, DemandTec grants Customer a subscription-based, non-exclusive, non-sublicensable, and nontransferable right to access and use the DemandTec Product(s) identified in the Order solely for the following purposes (collectively, “**Use**”): (a) to perform the functions described in the applicable DemandTec Documentation, (b) for its internal business purposes, and (c) within the applicable standard of measurement for determining the permitted Use and calculating the fees due for a DemandTec Product as set forth in the applicable Order or elsewhere in the Agreement (“**Charge Metrics**”). Customer may use the functionality provided by the DemandTec Product(s) to download and print a reasonable number of copies of reports included in the DemandTec Product(s) to which Customer has properly gained access, *provided* that Customer maintains all copyright or other proprietary notices on all such copies.

2.2. **Additional Restrictions.** Customer will not use the DemandTec Products in any manner not expressly and specifically authorized by the Agreement and will not cause or permit its Authorized Users (as defined below) to use the DemandTec Products in any manner not expressly and specifically authorized by the Agreement. In particular, and without limitation, Customer shall not, except as the Agreement expressly permits: (a) copy, modify, or create derivative works or improvements of the DemandTec Products; (b) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available any of the DemandTec Products to any Affiliate of Customer (unless explicitly permitted on an Order), on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (c) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to the source code of the DemandTec Products, in whole or in part; (d) bypass or breach any security device or protection used by the DemandTec Products or access or use the DemandTec Products other than as an Authorized User (as defined below); (e) input, upload, transmit, or otherwise provide

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to or through the DemandTec Products, any information or materials that are unlawful or injurious, or contain, transmit, or activate any Malware (as defined below);

(f) damage, destroy, disrupt, overload, excessively use, disable, impair, interfere with, or otherwise impede or harm in any manner DemandTec Products, or DemandTec's provision of services to any person or entity, in whole or in part; (g) remove, delete, alter, or obscure any trademarks, warranties, or disclaimers, or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from any DemandTec Products or DemandTec Documentation, including any copy thereof; (h) access or use the DemandTec Products in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person or entity (including by any unauthorized access to, misappropriation, use, alteration, destruction, or disclosure of the data of any other DemandTec customer), or that violates any federal, state, provincial, regional, territorial and local laws, international treaties, statutes, statutory instruments, ordinances, by-laws, regulations, rules, executive orders, supervisory requirements, directives, circulars, opinions, interpretive letters and other office releases, guidelines, and policies with the force of law, of or by any government, or any governmental authority, department, or agency thereof (including all federal, state, provincial, regional, territorial and local banking laws, regulations, guidance, and policies), or any court of competent jurisdiction ("**Law**"); (i) access or use the DemandTec Products for purposes of competitive analysis of the DemandTec Products, the development, provision, or use of a competing software service or product, or any other purpose that is to DemandTec's detriment or commercial disadvantage; (j) access or use the DemandTec Products in a manner that is overly burdensome or processes more data than is reasonably expected by DemandTec based on the Customer's volume entitlements; (k) access or use the DemandTec Products in, or in association with, the design, construction, maintenance, or operation of any hazardous environments, systems, or applications, any safety response systems or other safety-critical applications, or any other use or application in which the use or failure of the DemandTec Products could lead to personal injury or severe physical or property damage; or (l) otherwise access or use the DemandTec Product(s) beyond the scope of the Use granted under this Article 2 (Right of Use). "**Competitor**" means a third party that could reasonably be deemed a competitor of DemandTec, a business partner of a competitor of DemandTec, or an operator of product(s) of a competitor of DemandTec's on its customers' behalf. "**Permitted Contractors**" means third-party contractors of Customer that are not a Competitor and are authorized by Customer to use the DemandTec Products on Customer's behalf for Customer's sole benefit.

- 2.3. **Enabling Software.** The DemandTec Product(s) may require the use of enabling software provided by DemandTec that Customer downloads to Customer systems to facilitate use of the DemandTec Product(s). Customer may use such enabling software only in connection with use of the DemandTec Product(s) as specified in the DemandTec Documentation. Enabling software is provided "AS-IS". Terms and conditions related to such enabling software, if any, can be accessed in the applicable DemandTec Documentation.
  - 2.4. **Authorized Users.** Subject to the terms and conditions of the Agreement, Customer may only permit natural persons who are either its employees or the employees of its Permitted Contractors (together, "**Authorized Users**") to Use the applicable DemandTec Products and DemandTec Documentation. Permitted Contractors may Use the DemandTec Products and/or DemandTec Documentation only for Customer's business purposes and benefit. Customer is fully liable for the breach of the Agreement by, and the acts and omissions of, Authorized Users (including any usage charges or overage charges) under the Agreement. Customer and its Authorized Users may not Use the applicable DemandTec Products and DemandTec Documentation via bots, artificial intelligence or other automated programs.
  - 2.5. **Monitoring of Use.** DemandTec may monitor the DemandTec Products and any other services it provides, including monitoring to verify Customer's use thereof is in compliance with the Agreement.
  - 2.6. **Customer License Grant.** Customer grants to DemandTec a non-exclusive, royalty-free license to access, use, reproduce, modify, perform, display, distribute, and otherwise process any and all information, content, and other data, in any form or medium, that is collected, submitted, posted, displayed, downloaded, or otherwise received from or provided, directly or indirectly, by Customer or an Authorized User by or through the DemandTec Products (collectively the "**Customer Assets**") as is reasonably necessary for DemandTec to perform or provide the DemandTec Products, Premium Support Services, Professional Services and Deliverables (as defined below). As between Customer and DemandTec, Customer shall at all times be the sole owner of Customer Assets.
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Customer has sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of Customer Assets, and for obtaining all rights related to Customer Assets required by DemandTec to provide the DemandTec Products, and Deliverables, and to perform the Premium Support Services, Professional Services, and other services ordered by Customer.

- 2.7. **Modifications.** The DemandTec Products, Premium Support Services, Professional Services, and DemandTec Documentation may be modified by DemandTec. DemandTec will inform Customer of modifications by email, the support portal, release notes, or DemandTec Documentation. If Customer establishes that a modification materially degrades the performance of the DemandTec Products, Customer may terminate its subscriptions to the affected DemandTec Products by providing written notice to DemandTec within thirty days (30) after receipt of DemandTec's notice, and DemandTec will refund to Customer, as Customer's sole remedy and DemandTec's sole liability for such termination, the amount of the unused portion of prepaid fees for the terminated DemandTec Products calculated as of the effective date of termination.
- 2.8. **Third-Party Services.** Customer may elect to access through the DemandTec Products integrations with services and data made available by third parties (collectively "**Third-Party Services**"). Third-Party Services are subject to the terms and conditions of those third parties. The Agreement does not apply to Third-Party Services and Third-Party Services are not part of the DemandTec Products.

### 3. PAYMENT

- 3.1. **Fees.** Customer shall pay DemandTec the fees indicated on the Order based upon the Charge Metric for the applicable DemandTec Products. Such fees are payable annually in advance net 30 days from invoice date. All payments due from Customer shall be made by ACH to an account designated by DemandTec. DemandTec may at its discretion permit payment by credit card or check (collectively "**Alternative Payment Method**") provided that in the event that DemandTec incurs processing charges associated with such Alternative Payment Method ("**Charges**") DemandTec will invoice Customer and Customer will pay DemandTec for such Charges. For all payment methods, DemandTec will invoice Customer in advance. Fees for Premium Support Services and Professional Services shall be set forth in the Order and will be billed in accordance with such Order. Unless otherwise specified on an Order, all fees payable shall increase by ten percent (10%) each year of the Order term and upon automatic renewal. Any late payment will be subject to any costs of collection (including reasonable legal fees) and will bear interest at the rate of one and one-half percent (1.5%) per month (prorated for partial periods) or at the maximum rate permitted by law, whichever is less. Disputed charges must be made in writing within thirty (30) days from the date of the invoice. Invoices will be sent by electronic delivery.
- 3.2. **Taxes.** The fees and other amounts required to be paid hereunder do not include any amount for taxes or levy (including interest and penalties). Customer shall reimburse DemandTec and hold DemandTec harmless for all sales, use, VAT, excise, property or other taxes or levies which DemandTec is required to collect or remit to applicable tax authorities. This provision does not apply to DemandTec's income or franchise taxes, or any taxes for which Customer is exempt, provided Customer has furnished DemandTec with a valid tax exemption certificate.
- 3.3. **Overage Charges.** If the actual usage of the DemandTec Products during the applicable measurement period exceeds the permitted Charge Metric limitations, Customer will be charged for the overage as set forth in the Order or elsewhere in the Agreement.

### 4. DEMANDTEC PRODUCTS/ PREMIUM SUPPORT SERVICES/ PROFESSIONAL SERVICES

- 4.1. **Service Description.** The DemandTec Products and Professional Services are described in the applicable DemandTec Documentation.
  - 4.2. **Service Availability.** DemandTec will make the DemandTec Product(s) available for Customer to Use as described in the DemandTec Documentation. DemandTec will use commercially reasonable efforts to achieve DemandTec's availability goals as described in the applicable Service Descriptions.
  - 4.3. **Premium Support Services.** Upon Customer's payment of the relevant fees set forth in the Order, DemandTec will provide the Premium Support Services for the DemandTec Products pursuant to the support plan selected by Customer as described in the then-current version of the DemandTec maintenance and support handbook.
  - 4.4. **Professional Services.** DemandTec will perform the Professional Services and will provide the deliverables described in the statement of work ("**Deliverables**"). Any additional scope or activities that extend beyond those set forth in the Order will require an additional Order or a change order executed by the parties.
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## 5. OWNERSHIP

- 5.1. **Reservation of Rights.** Customer acknowledges that, subject to the rights granted herein, Customer has no ownership interest in the DemandTec Products, Deliverables, DemandTec Documentation or other materials provided to Customer, and nothing in the Agreement will be construed to convey any title or ownership rights in the foregoing, or to any patent, copyright, trademark, or trade secret or other intellectual property right or proprietary right embodied therein to Customer.
- 5.2. **Marks and Publicity.**
- a. The trademarks, trade names, service marks, and logos, whether or not registered ("**Marks**"), of DemandTec and the Marks of Customer are the sole and exclusive property of the respective owning party.
  - b. Subject to Customer's reasonable right to review and approve in writing (including via email), Customer shall: (i) allow DemandTec to include a brief description of the DemandTec Products, Premium Support Services, Professional Services, Deliverables, and/or other services provided to Customer in DemandTec promotional materials, (ii) allow DemandTec to make reference to Customer in case studies, ROI analyses, white papers and related marketing materials, (iii) serve as a reference to DemandTec potential clients, (iv) provide interviews to the news media and provide quotes for press releases, (v) make presentations at conferences, upon DemandTec's reasonable request and at DemandTec's cost, (vi) permit DemandTec to use the Customer's marks in product literature, press releases, social media and other marketing materials, and (vii) participate in case studies for the DemandTec Products at the request of DemandTec. Customer hereby consents to the receipt of marketing communications from DemandTec.
- 5.3. **Deliverables.** All Deliverables, output from Professional Services, and such other work product produced by DemandTec under the Agreement will be exclusively owned by DemandTec and will not be considered to be works made for hire. DemandTec hereby grants to Customer a worldwide, nonexclusive, non-sublicensable, limited license to reproduce, distribute, perform, and display (publicly or otherwise), the Deliverables solely in connection with Customer's Use of the DemandTec Products, as applicable, during the term of the Agreement.
- 5.4. **Feedback.** If Customer submits, orally or in writing, feedback or suggestions to any of DemandTec's products and/or services ("**Feedback**"), then Customer shall assign and hereby assigns to DemandTec all right, title, and interest in and to the Feedback, including any ideas, know-how, concepts, techniques, or other intellectual property rights contained therein, and agrees that DemandTec is free to use such Feedback without any attribution or compensation to Customer, for any purpose whatsoever.

## 6. CONFIDENTIALITY

- 6.1. **Definition. "Confidential Information"** means all information disclosed by the Discloser or its Representatives (as defined below) that is generally not publicly known, whether tangible or intangible, and in whatever form or medium provided and that is (a) marked as "Confidential" or the like or (b) should reasonably be understood to be confidential given the nature of the information and the circumstances surrounding its disclosure.
- 6.2. **Non-Disclosure.** Each Party may disclose Confidential Information ("**Discloser**") to the other Party ("**Recipient**") in connection with its performance under the Agreement (the "**Purpose**"). Recipient must: (a) hold in confidence and safeguard the Confidential Information of the Discloser from unauthorized use, access or disclosure using no less than a commercially reasonable degree of care; (b) not use or exploit the Confidential Information in any way except for the Purpose; and (c) not disclose or make available such Confidential Information (in whole or in part) to any person or entity other than to its Affiliates and its or their employees, consultants, and advisors (collectively, "**Representatives**") who: (i) need access to such Confidential Information for the Purpose; and (ii) are bound by obligations with respect to Confidential Information consistent with, and no less protective than, the Agreement. Recipient is responsible for any and all breaches of the Agreement caused by its Representatives. Recipient must promptly report to Discloser any actual or suspected violation of the terms of the Agreement and take all reasonable further steps to prevent, control or remedy any such violation.
- 6.3. **Exclusions.** Confidential Information does not include any information that: (a) is or becomes generally available to the public other than as a result of Recipient's or its Representatives' breach of the Agreement; (b) is obtained by Recipient or its Representatives on a nonconfidential basis from a
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third-party that, to Recipient's knowledge, was not legally or contractually restricted from disclosing such information; or (c) Recipient establishes, by documentary evidence, (i) was in Recipient's or its Representatives' possession prior to Discloser's disclosure hereunder; or (ii) was or is independently developed by Recipient or its Representatives without using any Confidential Information of the Discloser.

- 6.4. **Injunctive Relief.** A party may seek injunctive or other equitable relief for an actual or threatened breach of this Article 6 (Confidentiality).
- 6.5. **Data Privacy.** DemandTec's current DPA provides additional data protection information regarding the types of personal information that may be processed, the processing activities involved, data protection features, and information on retention and return of personal information.
- 6.6. **Data Protection.** Customer is responsible for taking necessary actions to enable or use available data protection features for the DemandTec Product(s) as set forth in the applicable DemandTec Documentation and accepts responsibility for use of the DemandTec Product(s) if Customer fails to take such actions, including meeting any requirement of Law.
- 6.7. **Ownership of Confidential Information.** Nothing in the Agreement will be construed to convey any title or ownership rights of a party's Confidential Information to the other party.
- 6.8. **Diagnostic Information.** Notwithstanding anything to the contrary elsewhere stated, DemandTec may use deidentified data related to Customer's use of the DemandTec Product(s) and Customer Assets for security and operations management, to compile statistical, diagnostic and performance information, conduct analysis, for research and development purposes, and for any other legitimate business purpose. DemandTec retains all rights in such information. DemandTec may make such information and analyses thereof publicly available in aggregated and anonymized form.
- 6.9. **Backup.** Customer is responsible for backing up Customer Assets on a regular basis to ensure that Customer Assets are recoverable in the case of data loss, and taking appropriate steps to safeguard and ensure the integrity of Customer Assets.

## 7. WARRANTY

- 7.1. **No Malware.** DemandTec applies processes and technologies to prevent the DemandTec Products (in the format delivered to Customer) from containing any viruses or any other contaminants (including codes, commands, instructions, devices, techniques, bugs, web bugs, or design flaws) that access (without authorization), alter, delete, threaten, infect, assault, vandalize, defraud, disrupt, damage, disable, inhibit, or shut down computer systems, networks, infrastructures, devices, websites, databases, software or other data or property ("**Malware**"). DemandTec warrants that it will apply the above preventative processes and technologies and will not knowingly insert any Malware into the DemandTec Products.
  - 7.2. **Services Warranty.** DemandTec warrants that the Professional Services performed hereunder shall be performed in a workmanlike and professional manner.
  - 7.3. **DISCLAIMER OF WARRANTIES. ANY AND ALL DEMANDTEC PRODUCTS, PREMIUM SUPPORT SERVICES, PROFESSIONAL SERVICES, DELIVERABLES, CONFIDENTIAL INFORMATION, THIRD-PARTY COMPONENTS (AS DEFINED IN THE SUPPLEMENT), DEMANDTEC OPEN-SOURCE COMPONENTS (AS DEFINED IN THE SUPPLEMENT) AND ALL OTHER TECHNOLOGY, SOFTWARE, SERVICES, DATA AND MATERIALS PROVIDED BY DEMANDTEC (COLLECTIVELY, "DEMANDTEC MATERIALS") ARE PROVIDED "AS IS", "WHERE IS", AND "AS AVAILABLE" AND WITHOUT WARRANTY OF ANY KIND. EXCEPT AS EXPRESSLY STATED IN THIS ARTICLE 7 (WARRANTY) OR ELSEWHERE IN THE AGREEMENT, DEMANDTEC MAKES NO OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING EXPRESS OR IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR WARRANTIES OF ANY KIND WITH RESPECT TO RESULTS TO BE DERIVED FROM THE USE OF OR INTEGRATION WITH ANY DEMANDTEC MATERIALS. NEITHER DEMANDTEC (NOR ANY OF ITS SUBSIDIARIES, AFFILIATES, SUPPLIERS OR LICENSORS) WARRANTS OR REPRESENTS THAT THE DEMANDTEC MATERIALS WILL BE UNINTERRUPTED, ERROR-FREE, OR SECURE. NO ORAL OR WRITTEN INFORMATION, ADVICE, MARKETING OR PROMOTIONAL MATERIALS PROVIDED BY DEMANDTEC WILL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THE EXPRESS WARRANTIES PROVIDED HEREIN.**
  - 7.4. **Warranty Exclusions.** Notwithstanding anything to the contrary in the Agreement, any and all warranties are void if (a) Customer has made changes to the DemandTec Products or Deliverables or has permitted any changes to be made other than by or with the express, written approval of DemandTec; (b) the DemandTec Products are not used in accordance with the Agreement, including
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the DemandTec Documentation; (c) any nonconformity is caused by Customer or by any product or service not provided by DemandTec; or (d) the DemandTec Products are provided at no charge.

- 7.5. **Warranty Remedy.** Customer's sole and exclusive remedies and DemandTec's entire liability for breach of the warranties under this Article 7 (Warranty) will be: (a) the reperformance of the deficient DemandTec Products or Professional Service(s), and (b) if DemandTec fails to reperform, Customer may terminate its subscriptions to the affected DemandTec Product(s) upon five (5) days' written notice in which instance DemandTec will refund to Customer, as Customer's sole remedy and DemandTec's sole liability for such termination, the amount of the unused portion of prepaid fees for the terminated DemandTec Products calculated as of the effective date of termination. Any such termination notice will be deemed invalid unless it is served within two (2) months of DemandTec's failure to reperform.

## 8. INDEMNIFICATION

- 8.1. **Customer Indemnity.** Customer will defend at its expense any cause of action brought against DemandTec, to the extent that such cause of action is based on any claim by a third party arising out of Customer Assets. Customer will pay those costs and damages finally awarded against DemandTec pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance by Customer. DemandTec may retain its own counsel at DemandTec's own expense.
- 8.2. **DemandTec Indemnity.** DemandTec will defend at its expense any cause of action brought against Customer, to the extent that such cause of action is based on a claim by a third party that any of the DemandTec Products, as provided by DemandTec to Customer, infringe a patent, copyright, or trade secret of a third party. DemandTec will pay those costs and damages finally awarded against Customer pursuant to any such claim or paid in settlement of any such claim if such settlement was approved in advance by DemandTec. Customer may retain its own counsel at Customer's own expense.
- 8.3. **No Liability.** DemandTec will have no obligation or liability for any claim of infringement based on: (a) use of the DemandTec Products, as applicable, in combination with data, software, hardware, equipment, technology or other materials not provided by DemandTec or authorized by DemandTec in writing; (b) modifications to the DemandTec Products or Deliverables not made by DemandTec; (c) Customer Assets; or (d) Third-Party Services.
- 8.4. **Indemnity Remedy.** Should the DemandTec Product(s) become, or if in DemandTec's opinion is likely to become, the subject of a claim of infringement, DemandTec may, at its option, (a) obtain the right for Customer to continue using the DemandTec Product(s), (b) replace or modify the DemandTec Product(s) so it is no longer infringing or reduces the likelihood that it will be determined to be infringing, or (c) if neither of the foregoing options is commercially reasonable, terminate the access and Use of the DemandTec Product(s). Upon such termination, Customer shall cease Using the DemandTec Product(s) and DemandTec will refund to Customer, as Customer's sole remedy and DemandTec's sole liability for such termination, the amount of the unused portion of prepaid fees for the terminated DemandTec Product(s) calculated as of the effective date of termination. The provisions of this Article 8 (Indemnification) state the sole, exclusive, and entire liability of the parties, their Affiliates, and subcontractors to the other party, and is the other party's sole remedy, with respect to claims subject to indemnification under this Article 8 (Indemnification).
- 8.5. **Indemnification Procedures.** Each party's obligations as set forth in this Article 8 (Indemnification) are subject to the other party: (a) giving the other party prompt written notice of any such claim or the possibility thereof; (b) giving the other party sole control over the defense and settlement of any such claim; and (c) providing full cooperation in good faith in the defense of any such claim. Failure to give prompt notice shall not constitute a waiver of a party's right to indemnification and shall affect the indemnifying party's obligations under this Agreement only to the extent that the indemnifying party's rights are materially prejudiced by such failure or delay. Any settlement requiring the party seeking indemnification to admit liability or make any financial payment shall require such party's prior written consent, not to be unreasonably withheld or delayed.

## 9. LIMITATION OF LIABILITY

- 9.1. **LIABILITY CAP. EXCEPT FOR CUSTOMER'S AND DEMANDTEC'S OBLIGATIONS UNDER SECTIONS 8.1 (CUSTOMER INDEMNITY) AND 8.2 (DEMANDTEC INDEMNITY) RESPECTIVELY, CUSTOMER'S OBLIGATION TO PAY FOR FEES DUE UNDER THE AGREEMENT, AND CLAIMS BY ONE PARTY THAT THE OTHER PARTY HAS INFRINGED OR MISAPPROPRIATED SUCH PARTY'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT WILL EITHER PARTY BE LIABLE**
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UNDER ANY THEORY OF LIABILITY, WHETHER IN AN EQUITABLE, LEGAL, OR COMMON LAW ACTION ARISING HEREUNDER FOR CONTRACT, STRICT LIABILITY, INDEMNITY, TORT (INCLUDING NEGLIGENCE), ATTORNEYS' FEES AND COSTS, OR OTHERWISE, FOR DAMAGES WHICH, IN THE AGGREGATE, EXCEED THE AMOUNT OF THE FEES PAID BY CUSTOMER FOR THE DEMANDTEC PRODUCTS, PREMIUM SUPPORT SERVICES, OR PROFESSIONAL SERVICES, GIVING RISE TO SUCH DAMAGES IN THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT WHICH GAVE RISE TO THE CLAIM. NOTWITHSTANDING THE FOREGOING, IN THE EVENT OF A DISCLOSURE OF CUSTOMER ASSETS CAUSED BY THE WILLFUL OR GROSSLY NEGLIGENT ACTS OR OMISSIONS OF DEMANDTEC, THE LIMITATION OF LIABILITY FOR DIRECT DAMAGES HEREIN SHALL BE RAISED TO TWO (2) TIMES THE AMOUNT OF FEES PAID BY CUSTOMER FOR THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT OF DISCLOSURE THAT GAVE RISE TO THE CLAIM.

- 9.2. **DISCLAIMER OF DAMAGES.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY SPECIAL, INCIDENTAL, INDIRECT, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND AND HOWEVER CAUSED INCLUDING, BUT NOT LIMITED TO, ATTORNEYS' FEES AND COSTS, BUSINESS INTERRUPTION OR LOSS OF PROFITS, BUSINESS OPPORTUNITIES, OR GOODWILL.
- 9.3. **APPLICABILITY OF LIMITATIONS.** THE FOREGOING LIMITATIONS APPLY EVEN IF NOTIFIED OF THE POSSIBILITY OF SUCH DAMAGE AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.
- 9.4. **LAWFUL PERMISSIBILITY OF LIMITATIONS.** THE LIMITATIONS SET FORTH ABOVE SHALL ONLY APPLY TO THE EXTENT THAT THEY ARE PERMITTED BY APPLICABLE LAW.

## 10. TERM AND TERMINATION

- 10.1. **Subscription Term.** The term of the Agreement shall be set forth in the Order. Each Order shall renew automatically for the period set forth in the Order unless either party provides written notice to the other party of its intent not to renew the Order at least thirty (30) days prior to the end of the then current term set forth in the Order.
  - 10.2. **Termination by DemandTec.** The Agreement or any Order may be terminated by DemandTec: (a) if Customer fails to make any payments due hereunder and Customer does not make payment within fifteen (15) days after having received a late payment notification (including by email) from DemandTec; or (b) on thirty (30) days' written notice to Customer if Customer fails to perform any other material obligation set forth in the Agreement, and such failure is not cured within such thirty (30) day period.
  - 10.3. **Termination by Customer.** The Agreement or Order(s), as applicable, may be terminated by Customer on thirty (30) days' written notice to DemandTec if DemandTec fails to perform any material obligation set forth in the Agreement or applicable Order(s), and such failure is not cured within such thirty (30) day period.
  - 10.4. **Suspension due to Customer Breach of Agreement or Violation of Law.** DemandTec has the right to immediately suspend Customer's Use of the DemandTec Product(s), Premium Support Services, Professional Services, and/or other services or remove any data or content transmitted via the DemandTec Product(s) or other services without liability if Customer fails to make timely payment and/or DemandTec reasonably believes that the DemandTec Product(s) or services are being used in violation of the Agreement or applicable Law. Any suspension under this Section 10.4 (Suspension due to Customer Breach of Agreement or Violation of Law) shall not excuse Customer from Customer's obligation to make payments under the Agreement. Subject to DemandTec's rights under Section 10.2 (Termination by DemandTec), DemandTec will lift the suspension promptly after Customer providing evidence to DemandTec's reasonable satisfaction of Customer's remediation the breach of the Agreement or violation of Law.
  - 10.5. **Suspension.** DemandTec has the right to suspend Customer's Use of the DemandTec Product(s), Premium Support Services, Professional Services, or other services or remove any data or content transmitted via the DemandTec Product(s) or other services without liability (a) if there is a significant threat to the functionality, security, integrity, or availability of the DemandTec Product(s), services or any content, data, or applications in the DemandTec Product(s) or services; (b) if requested by a law enforcement or government agency or otherwise to comply with applicable Law; or (c) as otherwise specified in the Agreement (each a "**Valid Basis**"). DemandTec will use commercially reasonable efforts to give Customer notice of a suspension unless DemandTec determines in its commercially reasonable judgment that a suspension on shorter or contemporaneous notice is necessary to protect
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DemandTec or its customers. DemandTec will use commercially reasonable efforts to lift the suspension promptly after DemandTec determines that the Valid Basis has expired. Customer shall be excused from Customer's obligation to make payments under the Agreement pertaining to the period of suspension pursuant to this Section 10.5 (Suspension) unless DemandTec is able to provide reasonable justification for the Valid Basis.

- 10.6. **Effect of Termination.** Upon termination or expiration of the Agreement, howsoever occurring, Customer shall no longer Use the DemandTec Product(s) and Customer's rights to the DemandTec Materials will cease. Customer shall immediately stop using such DemandTec Materials and shall return such DemandTec Materials to DemandTec or destroy all copies thereof (except for the copies retained for archival purposes). Upon termination by DemandTec pursuant to Sections 10.2 (Termination by DemandTec) and 12.5 (Force Majeure), all amounts unpaid by Customer under a terminated Order (including amounts payable in the future) shall be paid to DemandTec within thirty (30) days of the date of DemandTec's invoice following termination. Upon termination by Customer pursuant to Section 10.3 (Termination by Customer), DemandTec will refund to Customer, as Customer's sole remedy and DemandTec's sole liability for such termination, the amount of the unused portion of prepaid fees for the terminated DemandTec Products under a terminated Order calculated as of the effective date of termination.
- 10.7. **Other Remedies.** Subject to Sections 2.8 (Modifications), 7.5 (Warranty Remedy), 8.4 (Indemnity Remedy), 10.6 (Effect of Termination) and 12.5 (Force Majeure), termination of the Agreement or subscriptions thereunder, will not limit either party from pursuing other remedies available to it, including injunctive relief, nor will such termination relieve Customer's obligation to pay all fees that have accrued or are otherwise payable by Customer under the Agreement.

## 11. CUSTOMER OBLIGATIONS

- 11.1. **Compliance.** DemandTec agrees that, in providing the DemandTec Products and services hereunder, it will comply with Laws applicable to the provision of the DemandTec Products and services. Customer shall comply with all applicable Laws in connection with (a) Customer's use of the DemandTec Products, and (b) Customer Assets. Customer shall ensure that each website for which the DemandTec Products is engaged contains or is linked to a privacy policy that governs its data collection and use practices and which complies with applicable Laws. Customer shall not provide to DemandTec any technical data as that term is defined in the International Traffic in Arms Regulations at 22 CFR 120.10.
- 11.2. **Secure Access.** Customer shall keep the login names and the passwords required for the use of the DemandTec Product(s) ("**Credentials**") confidential and in a secure location, take appropriate precautions to protect Credentials against unauthorized access by third parties, and instruct and require its Authorized Users to do the same.
- 11.3. **Customer Assets.** Before entering Customer Assets in DemandTec Products, Customer shall identify and remove all Malware. Customer is responsible for the entry, integrity, and the maintenance of Customer Assets entered into the DemandTec Product(s). Customer shall ensure that personal information is only entered and stored in DemandTec Product(s) data fields that are designated for such information.

## 12. MISCELLANEOUS

- 12.1. **Assignment.** Neither party may assign, license, sub-license, or transfer this Agreement or any of its rights or obligations hereunder, without the prior written consent of the other party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, either party may assign this Agreement without such consent (a) to an Affiliate; (b) in connection with a merger, consolidation, reorganization, sale of all or substantially all of such party's assets or voting securities, or any other transaction in which more than fifty percent (50%) of such party's assets, control, or voting securities are transferred; or (c) to the successor in interest to all or substantially all of that part of the business to which this Agreement relates. All terms and provisions of this Agreement will be binding upon and inure to the benefit of the parties hereto and their respective permitted transferees, successors, and assigns.
- 12.2. **Subcontractors.** DemandTec will have the right to use third parties, including DemandTec's Affiliates in performance of its obligations and services.
- 12.3. **Survival.** The provisions set forth in Articles and Sections 3 (Payment), 5 (Ownership), 6 (Confidentiality), 7.4 (Warranty Exclusions), 8 (Indemnification), 9 (Limitation of Liability), 10.6 (Effect
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of Termination), 10.7 (Other Remedies) and 12 (Miscellaneous) of these GTC will survive termination or expiration of the Agreement.

- 12.4. **Notices.** All notices required under the Agreement shall be given in writing by registered mail or internationally recognized courier service and, if to DemandTec, with email notice to [legal@demandtec.com](mailto:legal@demandtec.com) and will be deemed effective upon delivery to the party to whom addressed at the address specified on the Order or to such other address as the parties may designate in writing.
- 12.5. **Force Majeure.** Neither party will be liable to the other for any delay or failure to perform its obligations hereunder (other than for the payment of amounts due) if such delay or failure arises from any cause or causes beyond the reasonable control of the affected party, including acts of God, flood, fire, loss of electricity or other utilities, epidemic, pandemic, act of a public enemy or terrorist, act of any military, civil, regulatory or governmental authority, change in law or regulation, labor problem or unavailability of supplies and any other cause, whether similar or dissimilar to any of the foregoing that could not have been prevented by such party with reasonable care (each a “**Force Majeure Event**”). If a Force Majeure Event prevents DemandTec from providing certain DemandTec Products for a period of thirty (30) or more consecutive days, Customer may terminate its subscriptions to the affected DemandTec Products by providing written notice to DemandTec prior to expiration on the Force Majeure Event. Any such termination notice served after expiry of the Force Majeure Event shall be invalid. A Force Majeure Event shall not excuse Customer from Customer’s obligation to make payments under the Agreement unless Customer validly terminates its subscriptions to the affected DemandTec Products pursuant to this Section 12.5 (Force Majeure) in which instance DemandTec will refund to Customer, as Customer’s sole remedy and DemandTec’s sole liability for such termination, the amount of the unused portion of prepaid fees for the terminated DemandTec Products calculated as of the effective date of termination.
- 12.6. **Amendments.** Except as provided in Section 2.8 (Modifications), the parties agree that the Agreement cannot be altered, amended or modified, except by a writing signed by an authorized representative of each party.
- 12.7. **Non-Solicitation.** During the term of this Agreement and for a period of six (6) months thereafter, Customer shall not hire, solicit, nor attempt to solicit, the services of any employee of DemandTec providing services to Customer without the prior written consent of DemandTec. The foregoing limitation shall not apply to a hiring pursuant to general solicitations for employment.
- 12.8. **Headings.** Headings are for reference purposes only, have no substantive effect, and will not enter into the interpretation hereof.
- 12.9. **No Waiver.** Subject to Section 8.5 (Indemnification Procedures), no failure or delay in enforcing any right or exercising any remedy will be deemed a waiver of any right or remedy.
- 12.10. **Severability and Reformation.** Each provision of the Agreement is a separately enforceable provision. If any provision of the Agreement is determined to be or becomes unenforceable or illegal, such provision will be reformed to the minimum extent necessary in order for the Agreement to remain in effect in accordance with its terms as modified by such reformation.
- 12.11. **Customer Purchase Orders and Onboarding Documentation.** Any and all terms contrary to or expanding upon this Agreement, including terms set forth in a Customer’s purchase order or vendor onboarding documentation, will be void and of no effect.
- 12.12. **Independent Contractor.** DemandTec is an independent contractor and nothing in the Agreement will be deemed to make DemandTec an agent, employee, partner, or joint venturer of Customer.
- 12.13. **No Third-Party Beneficiaries.** The Agreement is for the sole benefit of the parties and their respective successors and permitted assigns and nothing in the Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit, or remedy of any nature whatsoever, under or by reason of the Agreement.
- 12.14. **Governing Law; Venue; Language.** The laws of the State of Delaware, USA govern the interpretation of the Agreement, regardless of conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods (1980) and the Uniform Computer Information Transactions Act (UCITA) are hereby excluded in their entirety from application to the Agreement. The parties agree that the federal and state courts located in New Castle County, Delaware, USA will have exclusive jurisdiction for any dispute arising under, out of, or relating to the Agreement. Notwithstanding the foregoing, the parties agree that any court located in the state or nation in which Customer is domiciled or incorporated shall have non-exclusive jurisdiction for any claim initiated solely by DemandTec for breach of Customer’s payment obligations under, out of, or
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relating to the Agreement. All communications and notices made or given pursuant to this Agreement must be in the English language. If a translation of the English language version of this Agreement is provided, the English language version of the Agreement will control if there is any conflict.

- 12.15. **Electronic Signatures.** Electronic signatures that comply with applicable Law are deemed original signatures.
  - 12.16. **Interpretation.** References to “include” and “including” means including without limiting the generality of any description preceding such term and “or” or “and/or” is not exclusive.
  - 12.17. **Entire Agreement.** The Agreement constitutes the entire agreement between the parties regarding the subject matter thereof.
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