

MASTER TERMS AND CONDITIONS

1. **Customer Data; Data Security:** Customer Data means any content, materials, data and information that Customer or its Users provide to Della or the Della Services, including, but not limited to, any Customer or User personal data and information, and information relating to Customer or a User's use of the Della Services. Della will use commercially reasonable industry standard security technologies in providing the Della Services. Della has implemented and will maintain appropriate technical and organizational measures, including information security policies and safeguards, designed to preserve the security, integrity, and confidentiality of Customer Data and Customer personal data and to protect against unauthorized or unlawful disclosure. Customer Data processed using the Della Services is and will remain, as between Customer and Della, owned by Customer. Customer hereby grants Della the right to process, use, transmit, store, and disclose Customer Data in order to provide the Della Services to Customer, solely in accordance with the Agreement and this Section 1. Della may track, collect, and use data, information, or insights generated or derived from Customer's or User's use of the Della Services ("Usage Data") for its internal business purposes, including industry analysis, benchmarking, analytics, developing, training, and improving its products and services. Customer grants Della a worldwide, limited, non-exclusive, non-transferable right and license to track, collect, and use the Usage Data. Upon Customer's request, Della shall share with Customer the Usage Data of Customer and its Users. Further, Customer grants to Della a worldwide, perpetual, irrevocable, royalty-free license to use, distribute, disclose, and make and incorporate into its services any suggestion, enhancement request, recommendation, correction, or other feedback provided by Customer or Users relating to the use or operation of the Della Services.
2. **Third-Party Services:** The Della Services may include, or perform in connection with, third-party applications, products or services, ("Third-Party Services"). Customer acknowledges that the Third-Party provider owns the Third-Party Services, including all corresponding intellectual property rights, and Customer is responsible for obtaining any required right to use the Third-Party Services. Customer acknowledges that Della has no control over any Third-Party Services performance. DELLA WILL HAVE NO LIABILITY BY REASON OF ANY ACT OR OMISSION RELATING TO ANY THIRD-PARTY PRODUCT, SERVICE, OR PERFORMANCE. Any acquisition or use by Customer of such Third-Party Services, and any exchange of data between Customer and any third-party provider, product or service is solely between Customer and the applicable third-party provider. Della does not warrant, support, or assume liability or other obligation with respect to such Third-Party Services, unless expressly provided otherwise in this Agreement. Della is not responsible for any disclosure, modification or deletion of Customer Data resulting from access by such Third-Party Services or its Third-Party provider. In the event Customer chooses to use or integrate Third-Party Services with Della Services in a manner that requires Della or Della Services to exchange customer data or information with such Third-Party Service or provider, Customer: (a) grants Della permission to allow the Third-Party Service and Third-Party provider to access customer data and information, including Customer's usage of the Third-Party Services as appropriate and necessary to enable the interoperability of that Third-Party Service with the Della Services; (b) acknowledges that any exchange of data between Customer and any Third-Party Service is solely between Customer and the Third-Party provider and is subject to the Third-Party provider's terms and conditions governing the use and provision of such Third-Party Service; and (c) agrees that Della is not responsible for any disclosure, modification or deletion of Customer Data resulting from access to such data by Third-Party Services and Third-Party providers.
3. **Warranties and Limitation of Liability:** DELLA MAKES NO REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, AS TO ANY MATTER WHATSOEVER, INCLUDING WITHOUT LIMITATION THE DESIGN, CONDITION, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE DELLA SERVICES. DURING THE TERM THE DELLA SERVICES ARE PROVIDED "AS-IS" WITHOUT ANY WARRANTY, EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT. DELLA WILL HAVE NO LIABILITY BY REASON OF ANY ACT OR OMISSION RELATING TO THE INSTALLATION, MAINTENANCE, OPERATION, PERFORMANCE, OR USE OF THE DELLA SERVICES, INCLUDING WITHOUT LIMITATION ANY LOSS OF USE, LOST REVENUE OR LOST PROFITS. DELLA SHALL HAVE NO LIABILITY TO CUSTOMER FOR ANY CLAIM, LOSS OR DAMAGE ("LOSS") DIRECTLY, INDIRECTLY, INCIDENTALY OR CONSEQUENTIALY ARISING FROM, CONNECTED WITH OR CAUSED BY THE INSTALLATION OR USE OF THE DELLA SERVICES, BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH, ARISING IN CONTRACT, STRICT LIABILITY, NEGLIGENCE OR OTHERWISE, OR IN ANY WAY RELATED TO OR ARISING OUT OF THIS AGREEMENT. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DELLA'S TOTAL LIABILITY TO YOU FOR ANY CLAIM ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF THE DELLA SERVICES, DELLA PLATFORM OR SOFTWARE SHALL NOT EXCEED THE AMOUNT PAID BY YOU, IF ANY, FOR ACCESSING OR USING THE DELLA SERVICES.
4. **Taxes:** The Monthly Fee as provided above does not include applicable sales, use and other taxes and all applicable export and import fees, customs duties, and similar charges. Customer will be responsible for payment of, and shall pay, all such taxes, fees, duties and charges, and any related penalties and interest, arising from the payment of any amounts hereunder, the grant of rights hereunder, or the delivery of services (including without limitation, and for the avoidance of doubt, taxes resulting from Customer's or any Representative's purchase of Della Services or Additional Services). Customer will make all payments required hereunder to Della free and clear of, and without reduction for, any withholding taxes..
5. **Collection Charges:** Whenever any amount due under this Agreement is not made when due, you will upon our demand pay us the following, or if less, the maximum allowed by applicable law: (a) a late charge equal to the greater of 10% of such amount or \$25, and (b) a charge of \$30 for each check returned or ACH debit not honored for any reason and (c) if we have had to perform collection activities in connection with such late payment, our specified collection charges then in effect for such activities. The foregoing will not be construed as interest but as reimbursement to us to cover administrative and overhead expenses related to the processing and collection of the late amount. Any restrictive endorsement on any check you give us in payment of any amount due hereunder shall be void.
6. **Insurance:** During the Term, each Party will, at its sole expense, be responsible to procure and maintain comprehensive commercial general liability, Employer's liability, automobile, and worker's compensation insurance coverage as necessary in relation to the Della Services.
7. **Confidentiality, Restricted Use and NonDisclosure, Required Disclosure, Ownership, Remedies:** "Confidential Information" means all information disclosed by a party ("Disclosing Party"), including: (a) for Della and its Affiliates, the Della Services, business and marketing plans, technology and related technical information, documentation, security policies and processes, product plans, designs, roadmaps, business processes, and pricing; (b) for Customer and its Affiliates, Customer Data; (c) any other information of a Party or its Affiliates that is disclosed in writing or orally and is designated as confidential or proprietary at the time of disclosure to the Party, including its Affiliates, receiving Confidential Information ("Receiving Party") (and, in the case of oral disclosures, summarized in writing and delivered to the Receiving Party within thirty (30) days of the initial disclosure), or that due to the nature of the information the Receiving Party should reasonably understand it to be confidential information of the disclosing Party; and (d) the terms and conditions of the Agreement between the Parties. Confidential Information does not include any information that: (i) was or becomes generally known to the public through no fault or breach of the Agreement by the Receiving Party; (ii) was rightfully in the Receiving Party's possession at the time of disclosure without restriction on use or disclosure; (iii) was independently developed by the Receiving Party without use of or reference to the Disclosing Party's Confidential Information; or (iv) was rightfully obtained by the Receiving Party from a third party not under a duty of confidentiality and without restriction on use or disclosure. During and after the Term, Receiving Party will: (a) use the Confidential Information of the Disclosing Party solely as provided under this Agreement; (b) not disclose such Confidential Information to a third party, except on a need-to-know basis to its Affiliates, attorneys, auditors, and consultants who are under confidentiality obligations at least as restrictive as those contained herein; and (c) protect such Confidential Information from unauthorized use and disclosure to the same extent (but using no less than a reasonable degree of care) that it protects its own Confidential Information of a similar nature. If Receiving Party is required by law to disclose Confidential Information of the Disclosing Party, Receiving Party will give prompt written notice to the Disclosing Party before making the disclosure, unless prohibited from doing so by legal or administrative process, and cooperate with the Disclosing Party to obtain where reasonably available an order protecting the Confidential Information from public disclosure. Receiving Party acknowledges and agrees that, as between the Parties, all Confidential Information it receives from the Disclosing Party, including all copies thereof in Receiving Party's possession or control, in any media, is proprietary to and exclusively owned by the Disclosing Party. Nothing in the Agreement grants Receiving Party any right, title or interest in or to any of the Disclosing Party's Confidential Information. Receiving Party's incorporation of the Disclosing Party's Confidential Information into any of its own materials will not render Confidential Information non-confidential. Receiving Party acknowledges that any actual or threatened breach of this Section may cause irreparable, non-monetary injury to the Disclosing Party, the extent of which may be difficult to ascertain. Accordingly, the Disclosing Party is entitled to (but not required to) seek injunctive relief in addition to all remedies available to the Disclosing Party at law and/or in equity, to prevent or mitigate any breaches of this Agreement or damages that may otherwise result from those breaches. Absent written consent of the Disclosing Party to the disclosure, the Receiving Party, in the case of a breach of this Section, has the burden of proving that the Disclosing Party's Confidential Information is not, or is no longer, confidential or a trade secret and that the disclosure does not otherwise violate this Section.

8. **Indemnification: Indemnification by Della.** Della shall defend, indemnify, and hold Customer harmless against all costs and reasonable expenses (including reasonable attorneys' fees if Della does not assume such defense), damages, and liabilities arising out of any claim by a third party that any use of, or access to, the SaaS IP by Customer as expressly authorized under this Agreement infringes or misappropriates, as applicable, any U.S. patent issued as of the Effective Date or any copyrights or trade secrets under applicable laws of any jurisdiction within the United States, provided that Customer gives Della (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim; and (iii) such information and assistance as Della may reasonably request, at Della's expense, in connection with such defense and/or settlement. Della shall only be obligated to provide the foregoing indemnity so long as Customer has paid in full all accrued Fees under this Agreement. Notwithstanding the foregoing, Della shall have no obligation or liability to the extent that the alleged infringement arises from (1) the combination, operation, or use of the SaaS IP with products, services, information, materials, technologies, business methods or processes not permitted by Della; (2) modifications to the SaaS IP, which modifications are not made by Della; (3) failure to use updates to the SaaS IP provided by Della; or (4) use of the SaaS IP except in accordance with any Documentation or specifications (circumstances under the foregoing clauses (1), (2), (3) and (4), collectively, "Customer Indemnity Responsibilities"). Upon the occurrence of any claim for which indemnity is or may be due under this Section 8, or in the event that Della believes that such a claim is likely, Della may, at its option (i) appropriately modify the relevant portion of the SaaS IP so that it becomes non-infringing, or substitute functionally (in all material respects) equivalent software or services; (ii) obtain a license to the applicable third party Intellectual Property Rights; or (iii) terminate this Agreement on written notice to Customer and refund to Customer a portion of the Hosted Services fees pre-paid by Customer for access to the SaaS IP that Customer has not yet used. The obligations set forth in this Section 8 shall constitute Della's entire liability and Customer's sole remedy for any actual or alleged infringement or misappropriation.

Indemnification by Customer. Customer shall indemnify, hold harmless, and, at Della's option, defend Della, its employees, representatives, agents, officers, directors, partners, members, subsidiaries, and affiliates, and their respective successors and assigns (collectively, the "Della Indemnified Parties") from and against all losses, expenses (including reasonable attorneys' fees), damages, and liabilities resulting from any claim by any third party arising from or in connection with (i) any Customer Indemnity Responsibilities, (ii) any breach of this Agreement by Customer, its Affiliates or Representatives, (iii) any breach by Customer, its Affiliates, or Representatives of applicable data protections laws, whether state or federal (including but not limited to the CCPA and TCPA), (iv) a Self-Install, including, without limitation, any and all claims of bodily injury or death, or damage to physical property related thereto, (v) any use or misuse of Della Services or APIs by Customer to integrate with any third party or Customer application; and (vi) any and all claims of an Affiliate or Representative against Della under any Third-Party Agreement, whether or not executed by Della. Notwithstanding anything contained in this Agreement or a Vendor Agreement, upon Della's reasonable request, Customer shall cause its Affiliates to promptly release all claims for indemnification under any Vendor or Third-Party Agreement. Della agrees to give Customer (i) prompt written notice of such claim; (ii) authority to control and direct the defense and/or settlement of such claim for which Della tenders the defense to Customer; and (iii) such information and assistance as Customer may reasonably request, at Customer's expense, in connection with such defense and/or settlement. Notwithstanding the foregoing, Customer shall not settle any third-party claim against Della unless such settlement completely and forever releases Della with respect thereto and imposes no obligation on Della, or unless Della provides its prior written consent to such settlement. In any action for which Customer provides defense on behalf of Della, Della may participate in such defense at its own expense by counsel of its choice.

9. **Default; Remedies:** If any one of the following events occurs, Customer ("you") will be in default and Della ("we") can exercise any of the remedies described below: (i) you fail to pay any Payment or other amount due under this Agreement when due, (ii) you materially breach any Section of this Agreement and fail to cure the breach within thirty (30) days' notice, (iii) you cease doing business as a going concern, make an assignment for the benefit of creditors, admit your inability to pay your debts as they become due or are insolvent, or you file or have filed against you a petition under the Bankruptcy Code, (iv) you breach any covenant contained in this Agreement or any representation or warranty made in connection with this Agreement was false or misleading when made, or (v) any guarantor of this Agreement defaults on any obligation to us or any of the above-listed events of default occur with respect to any guarantor. Upon the occurrence of a default, we may at our option do any or all of the following: (a) by notice to you, terminate this Agreement, including access to the Della Services and/or any connected Third-Party Services; (b) declare all owed sums due hereunder immediately due and payable together with any owed collection charges or interest; (c) exercise any other right or remedy which may be available to us under the applicable law including without limitation the right to recover damages for breach hereof. In the event we are required to enforce the Agreement, you are responsible for reimbursing us for all costs we incur including our attorneys' fees. The rights afforded us in this Agreement are in addition to any rights or remedies provided by law. The selection of one remedy does not preclude the exercise of any other remedy. A waiver of default will not be a waiver of any other or subsequent default.
10. **Third-Party Billing and Collecting Services:** When agreed upon by the Parties, a third-party may perform billing and collecting services for the Della Monthly Fees and all other amounts owed under this Agreement, which may provide for the collection of the Monthly Fees owed by Customer to Della as a matter of administrative convenience only, which Monthly Fees are simply passed through to Della if and to the extent collected by the third-party. Customer's obligations with respect to all Monthly Fees and any Additional Fees owed to Della is governed solely and exclusively by this Agreement. Customer acknowledges that either Della or the third-party may terminate this billing and collecting pass through arrangement at any time without liability to Customer for doing so. In the event this Agreement, or the third-party agreement, is terminated, then the pass through billing and collecting arrangement with respect to Della Fees shall be deemed to automatically terminate (unless otherwise expressly agreed in writing by Della).
11. **Governing Law: THIS AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND INTERPRETED UNDER THE LAWS OF THE STATE OF UTAH WITHOUT REFERENCE TO ITS PRINCIPLES OF CONFLICTS OF LAWS. YOU CONSENT TO THE EXCLUSIVE JURISDICTION OF THE FEDERAL AND STATE COURTS LOCATED IN THE STATE OF UTAH IN ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT AND YOU AGREE THAT NEITHER YOU NOR DELLA WILL BE LIABLE FOR SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES IN ANY SUCH ACTION OR PROCEEDING. YOU WAIVE ANY OBJECTION BASED ON IMPROPER VENUE AND/OR FORUM NON CONVENIENS WITH RESPECT TO ANY SUCH ACTION OR PROCEEDING AND THE PARTIES WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY SUCH ACTION OR PROCEEDING.**
12. **Assignment; Representations & Warranties:** You agree that without our prior written consent, you will not assign or transfer your rights under this Agreement, or sublease or permit the Della Services to be used by anyone other than you or your authorized User. Della may assign this Agreement, in whole or in part, without notice to you or your consent, including as necessary to perform the Della Services. You represent and warrant to us that all information conveyed to us in connection with this Agreement and all related documents whether by you, a guarantor, the supplier or any other person, is true, accurate, complete and not misleading. If you are entity, the person executing this Agreement on your behalf represents to us they are authorized to do so making the Agreement the valid and binding act of the entity.
13. **Force Majeure:** Della shall be excused from performance of its obligations under this Agreement if such a failure to perform results from compliance with any requirement of applicable law, acts of god, strike, embargo, terrorist attack, war, physical or electronic sabotage, embargo, earthquake, fire, explosion, flood, drought, severe weather, natural disaster, supplier failures, power failure, internet or communications failures, third party internet services provider failures, denial-of-service attacks, epidemics, pandemics, public health emergencies, strikes or other labor issues, supply issues, travel bans, acts of government or governmental agencies, insurrection or riot or other causes beyond the reasonable control of Della. Any delay resulting from any of such causes shall extend performance accordingly or excuse performance, in whole or in part, as may be reasonable under the circumstances. Additionally, timely performance will be excused, and Della will not be liable for any delays in performance under this Agreement, when Della is unable, despite diligent efforts to obtain required personnel, materials, or Equipment on terms Della deems commercially acceptable.
14. **Warranties; Representations:** Each Party hereby represents and warrants that (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of incorporation or organization; (b) the execution and performance of this Agreement will not conflict with or violate any provision of any law having applicability to such Party; and (c) this Agreement, when executed and delivered, will constitute a valid and binding obligation of such Party and will be enforceable against such Party in accordance with its terms.
15. **Facsimile; Electronic Signature:** A facsimile or other image of this Agreement shall be admissible in any action or proceeding relating to this Agreement and shall be deemed an original for all purposes. You agree this Agreement may be signed electronically pursuant to the Electronic Signatures in Global and National Commerce Act and other applicable law.

16. **Entire Agreement:** This Agreement sets forth the entire understanding of the parties with respect to its subject matter exclusively governs, supersedes, and controls over all prior or subsequent oral and written agreements, discussions and understandings between the Parties, their Affiliates and Representatives with respect to the subject matter hereof. This Agreement and may only be amended by a written instrument executed by both you and us and any other purported amendment shall be void.
17. **Counterparts:** This Agreement may be executed in separate counterparts which together shall constitute one and the same instrument.
18. **Headings:** Section headings are for convenience and are not a part of this Agreement.
19. **Successors:** This Agreement will be binding upon and inure to the benefit of the heirs, executors, administrators, successors and permitted assigns of the parties hereto.
20. **Notice:** Any notice given under this Agreement shall be in writing and be deemed given 2 business days after being delivered to the US Postal Service or a reputable overnight delivery service, postage prepaid, addressed to the recipient at its address set forth in the Schedule, order form, or proposal, or such other address as a party may hereafter designate by written notice.
21. **Severability:** If any provision of this Agreement is invalid or unenforceable for any reason in any jurisdiction, such provision shall be construed to have been adjusted to the minimum extent necessary to cure such invalidity or unenforceability. The invalidity or unenforceability of one or more of the provisions contained herein or therein shall not have the effect of rendering any such provision invalid or unenforceable in any other case, circumstance, or jurisdiction, or of rendering any other provisions of this Agreement whatsoever, and the remaining provisions shall continue in full force and effect.
22. **Construction:** This Agreement has been negotiated by the parties and their respective legal counsel, and any legal or equitable principles that might require or permit the construction of this Agreement or any provision hereof against the party drafting this Agreement shall not apply in any construction or interpretation of this Agreement. In the event of any conflict between the provisions of any Agreement and any Third-Party Agreement, the provisions of this Agreement shall prevail. Notwithstanding anything to the contrary set forth in this Agreement, to the extent Della has more than one right and/or remedy under this Agreement, or at Law or in equity, Della shall be entitled to exercise each and all of, or any portion of, such rights and remedies as Della determines in its sole discretion, and the election of one or more such rights or remedies shall not restrict or diminish Della's other rights and remedies under this Agreement, or at law or in equity.