



## Next DLP® SERVICES AGREEMENT

BY ACCEPTING THIS AGREEMENT, EITHER BY CLICKING A BOX INDICATING ACCEPTANCE OR EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, SUBSCRIBER (AS DEFINED BELOW) ACCEPTS THIS AGREEMENT. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT IS ACCEPTING ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH INDIVIDUAL REPRESENTS THAT THEY HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERM "SUBSCRIBER" SHALL REFER TO SUCH ENTITY AND ITS AFFILIATES. IF THE INDIVIDUAL ACCEPTING THIS AGREEMENT DOES NOT HAVE SUCH AUTHORITY, OR DOES NOT AGREE WITH THESE TERMS AND CONDITIONS, SUCH INDIVIDUAL MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE SERVICE

### 1. DEFINITIONS.

Unless defined elsewhere in this Agreement, the capitalized terms are as defined below:

- 1.1. **"Account"** means a unique administrator account that controls Subscriber's access to the Next DLP Products.
- 1.2. **"Affiliate"** means, with respect to either Party, any legal entity that directly or indirectly controls, is controlled by or is under common control with such Party, where "control" means (a) ownership of more than 50% of the equity of such Party or entity or (b) the power to direct or cause the direction of the management and policies of such Party or entity.
- 1.3. **"Confidential Information"** means any and all information disclosed or made accessible by or on behalf of one Party or its Affiliates to the other Party or its Affiliates (or any representative of any of them), whether orally, in writing or in any other form, which is either (a) marked or identified as "confidential" at the time of disclosure or (b) of a nature that a reasonable business person would expect, to be confidential or proprietary provided that the disclosing Party generally treats it as confidential, including all technical, product, service, business, marketing, sales, financial and pricing information and data, techniques, methodologies, processes, algorithms, know-how, ideas, concepts, inventions, discoveries and trade secrets. The following information is Next DLP's Confidential Information whether or not marked or identified as such: (i) the terms of this Agreement including all Order Forms and pricing; and (ii) Next DLP's product roadmaps, product designs, architecture, technology and technical information, however disclosed.
- 1.4. **"Documentation"** means the published Next DLP user manuals, guides, policies and instructions regarding Next DLP Products that are made generally available by Next DLP to its customers as posted in the customer portal and updated by Next DLP from time to time.
- 1.5. **"Endpoint"** means any physical or virtual device that connects to a computer network. Endpoints may include a computer, server, tablet, Internet of Things (IoT) device, Point-of-Sale system, digital printer, laptop, desktop computer, mobile device, or any other device that communicates with the computer network.
- 1.6. **"Fees"** means the fees specified in the Order Form and/or invoice for Next DLP Products, related Support Services and/or Next DLP Services.
- 1.7. **"Next DLP Products"** means the software-as-a-service modules and processes made available by Next DLP to which Subscriber actually purchases a subscription pursuant to one or more Order Forms.
- 1.8. **"Next DLP Services"** means training, configuration or any other professional services performed by Next DLP pursuant to a mutually agreeable SOW signed by the Parties.
- 1.9. **"Order Form"** means a mutually executed order form that describes the Next DLP Products purchased by Subscriber. For Next DLP Services, the term "Order Form" includes the applicable Statement of Work, if any. The Parties may enter into multiple Order Forms. Each Order Form is hereby incorporated into and made a part of this Agreement.
- 1.10. **"Privacy Policy"** means the practices set forth regarding Next DLP's collection, use and disclosure of personal data currently located at <https://www.nextdpl.com/privacy-policy>, as the same may be modified by Next DLP from time to time to reflect the latest protocols on the data collected, used and disclosed by Next DLP.
- 1.11. **"Statement of Work"** or **"SOW"** means a statement of work for Next DLP Services, signed by both Parties, setting forth the Next DLP Services to be performed by Next DLP and the corresponding Fees to be paid by Subscriber.
- 1.12. **"Subscriber"** means in the case of an individual accepting this Agreement on his or her own behalf, such individual, or in the case of an individual accepting this Agreement on behalf of a company or other legal entity, the company or other legal entity for which such individual is accepting this Agreement, and Affiliates of that company or entity (for so long as they remain Affiliates) which have entered into Order Forms.



- 1.13. **“Subscriber Data”** means any data, information and materials submitted to Next DLP Products by Subscriber and any Subscriber-specific data that is derived from Subscriber’s use of Next DLP Products in accordance with this Agreement (e.g., Subscriber-specific reports) as long as such derivative work is not a component of Next DLP Products itself or other Next DLP intellectual property.
- 1.14. **“Subscription Term”** means the period of time specified in the applicable Order Form during which Subscriber is authorized by Next DLP to access and use the Next DLP Products.
- 1.15. **“Support Services”** means the English-language technical support services for Next DLP Products set forth in the Next DLP support policy, as updated by Next DLP from time to time, currently located at <https://support.nextdlp.com/support/home>
- 1.16. **“Term”** means the period beginning on the first day of the Initial Term (defined in Section 5.1 (Term)) and ending on the date that this Agreement terminates in accordance with the terms herein.
- 1.17. **“User”** means an individual (a) who is an active employee, consultant, contractor or agent of Subscriber, (b) who is authorized by Subscriber to use Next DLP Products solely on behalf of Subscriber for Subscriber’s internal business purposes. Subscriber shall be liable and responsible for any breach of the terms of this Agreement by a User.

## 2. TERMS OF ACCESS.

- 2.1. **Grant of Right to Access and Use.** In consideration of Subscriber’s payment in full of the applicable Fees and subject to the terms and conditions of this Agreement and the applicable Order Form, Next DLP hereby grants Subscriber the limited, non-exclusive, revocable, non-transferable and non-assignable (except as expressly permitted pursuant to Section 11.4 (Assignment)) right to access and use, and to permit Users to access and use, Next DLP Products and the Documentation for the term identified in the applicable Order Form, by up to the number and type of Endpoints specified in the Order Form(s), for Subscriber’s internal business purposes only, and in accordance with this Agreement and the Documentation. Subject to payment of the Fees set forth in the Order Form, Next DLP will provide Support Services for Next DLP Products.
- 2.2. **Access and Use Restrictions.** Except for the rights expressly granted herein, Next DLP does not grant, license nor transfer to Subscriber or any User or other third party any ownership or other rights to any Next DLP Products or Next DLP intellectual property. No implied licenses are granted herein and all rights not expressly granted to Subscriber herein are reserved by Next DLP, its affiliates and respective suppliers or licensors where applicable. Subscriber shall not, and shall not attempt to:
- 2.2.1. (i) reverse engineer, decompile, disassemble or otherwise attempt to discern or derive the source code or underlying ideas or algorithms of Next DLP Products (unless and then only to the extent required to be permitted by applicable law); (ii) modify, copy, duplicate, translate, adapt or create derivative works of or based on Next DLP Products or any portion thereof; (iii) rent, lease, share, lend, sell, resell, license, sublicense, distribute or otherwise transfer any rights to Next DLP Products or any portion thereof; (iv) use or permit access to Next DLP Products by any third party (other than Users as expressly permitted by this Agreement) or otherwise for the benefit of a third party; (v) misappropriate Next DLP Products or any portion thereof; (vi) access or use Next DLP Products or information provided pursuant to any Next DLP Service to create a competing product or service; (vii) perform or disclose any benchmark tests relating to Next DLP Products; or (viii) remove, relocate, alter or obscure any trademark, copyright or other proprietary or restrictive marking or legend on Next DLP Products or other materials delivered or made available by Next DLP to Subscriber or any copies thereof;
  - 2.2.2. (i) violate the security of Next DLP Products, including attempting to probe, scan or test the security or vulnerability thereof, or breach any security or authentication measures, or otherwise avoid, bypass, remove, deactivate, impair, descramble or otherwise circumvent any technological measure; (ii) bypass or disable any protections that may be put in place against unlicensed use of Next DLP Products, or otherwise gain access to or use any unauthorized portion of Next DLP Products or gain unauthorized access to any related system, software, service or network or the data contained therein, or actually or effectively circumvent any contractual usage or other limit whether via automated means or otherwise; or (iii) use or access Next DLP Products in any way that might interfere with, disrupt the integrity of or adversely affect the security, stability, performance or functions of Next DLP Products;
  - 2.2.3. send automated queries of any kind to Next DLP Products without the express, advance, written permission of Next DLP, including using any software that sends queries to Next DLP Products to determine how a website or web page “ranks” for various queries, “meta-searching” and performing “offline” searches on Next DLP Products, or use manual or automated software, devices, scripts, robots, backdoors or other means or processes to access, “scrape,” “crawl” or “spider” any web pages or other services offered at Next DLP Products;
  - 2.2.4. upload to or use Next DLP Products to store or transmit infringing, obscene, threatening, libelous or otherwise unlawful or tortious material, including material that is harmful to children or that violates third-party rights, or use Next DLP Products for or in connection with any unlawful, harmful or fraudulent use or activities; or



2.2.5. upload to or use Next DLP Products to store or transmit viruses, worms, time bombs, Trojan horses or other harmful or malicious code, files, scripts, agents or programs, or use Next DLP Products in any way that disrupts or risks disrupting the overall performance and up-time of Next DLP Products due to Subscriber's use of excessive storage capacity or bandwidth outside of the ordinary course of business, or otherwise use Next DLP Products in any other manner that may cause Next DLP to have legal liability or disrupt others' use of Next DLP Products.

- 2.3. **Subscriber Responsibilities.** Use of the Next DLP Products is dependent on Subscriber's proper implementation, configuration and use of the Next DLP Products, the availability and performance of technology from third-party software and hardware vendors (including any products and custom applications from Microsoft, Google and the providers of various internet browsers) and other factors outside of Next DLP's control. Next DLP has no control over and is not liable for performance issues or downtime of Next DLP Products or any inability to access the Account to the extent caused by any of the foregoing factors or any action or inaction on the part of Subscriber or any User that is not in accordance with this Agreement and the Documentation.
- 2.4. **Endpoints.** Subscriber shall designate an administrator who will have access to Next DLP Products through its Account. Subscriber shall be responsible for activating and de-activating Endpoint licenses via its Account. One unique Endpoint license shall be required for each unique device. Endpoints may not be shared among devices. If a device is permanently removed from the computer network, the designated Endpoint license may be reassigned to new Endpoint, provided that Subscriber shall be responsible for disabling access of the prior device and reassigning the Endpoint license to a new device. The quantity of Endpoints deployed shall not exceed the number of Endpoint licenses specified in an Order Form. If at any point Subscriber deploys Endpoints in excess of purchased Endpoint licenses, Subscriber shall: (i) notify Next DLP; and (ii) pay for any additional Endpoint licenses from the date such use began.
- 2.5. **Passwords** Administrator are responsible for maintaining the confidentiality of all passwords and any other access controls within Next DLP Products that are managed by Subscriber, and for ensuring that each password is used only by the assigned User.
- 2.6. **Changes.** Next DLP may change, update, alter and/or supplement all or any portion of Next DLP Products and all or any portion of the information provided in connection therewith at its sole discretion and will provide commercially reasonable notice to Subscriber of any such material change.
- 2.7. **Affiliates.** During the Term, a Subscriber Affiliate may purchase subscriptions to Next DLP Products (and related Support Services) and Next DLP Services from Next DLP for such purpose by entering into an Order Form with Next DLP that incorporates the terms and conditions of this Agreement in a manner that binds such purchasing Affiliate to the terms and conditions hereof. Subscriber shall be liable and responsible for any breach of the terms of this Agreement by an Affiliate.

### 3. NEXT DLP SERVICES.

- 3.1. **General.** Next DLP will provide Subscriber with the requisite hours of Next DLP Services identified within a Statement of Work. The Parties may choose to define a set of deliverables within a Statement of Work, provided that Next DLP will not be obligated to provide Next DLP Services beyond the total number of hours set forth in the SOW.
- 3.2. **Fees and Expenses; Delays.** Next DLP will invoice Subscriber in advance for Next DLP Services as specified in the applicable SOW. Subscriber shall reimburse Next DLP for actual and verifiable out-of-pocket expenses (including travel and related expenses) reasonably incurred by Next DLP in connection with any Next DLP Services. Next DLP shall not be responsible for any delay caused by Subscriber or any third party under contract with Subscriber. Subscriber may delay the commencement of Next DLP Services by written notice to Next DLP specifying the requested length of the delay (it being understood that the Parties will need to reschedule the Next DLP Services at a mutually satisfactory time), provided that if Subscriber delays upon less than two weeks prior written notice and Next DLP is unable to reallocate the applicable Next DLP personnel on a billable basis to another customer project (which Next DLP will use reasonable efforts to do), then Next DLP will invoice Subscriber for any Next DLP Services that are delayed by Subscriber without such two week notice, at the applicable daily rate for such Next DLP Services.
- 3.3. **License.** In consideration of Subscriber's payment in full of all Fees due under an SOW, Next DLP hereby grants to Subscriber a non-exclusive, non-transferable, non-assignable license to use the Next DLP Services (if any) during the Term solely in connection with the applicable Next DLP Products subscriptions and for Subscriber's internal business purposes.

### 4. PAYMENTS.

- 4.1. **Payment.** In consideration of the rights and services granted and provided hereunder, Subscriber shall pay Next DLP the Fees set forth in the Order Form(s). All Fees will be invoiced and paid in US Dollars except as otherwise mutually agreed in an Order Form. Fees will be invoiced annually in advance except as otherwise provided in the applicable Order Form or, with respect to Next DLP Services, Subscriber shall remit payment to Next DLP within 30 days of receipt of invoice. If Subscriber



fails to pay any amounts when due, then, in addition to any other available rights and remedies, Next DLP shall have the right to (a) assess a late payment charge on such overdue amounts equal to the lesser of (i) two percent per month or (ii) the highest rate allowed by applicable law and/or (b) upon five days prior written notice to Subscriber, suspend providing Next DLP Products, Support Services and Next DLP Services to Subscriber, without liability, in each case until such overdue amounts are paid in full. Additional payment and usage terms for the Next DLP Products may be set forth in the Order Form. All payments are non-refundable, and all subscriptions and services are non-cancelable except as otherwise expressly provided herein. If Next DLP seeks legal recourse for the collection of any unpaid Fees from Subscriber (other than amounts disputed as aforesaid), Next DLP will be entitled to an award of reasonable attorneys' fees and other costs incurred by Next DLP in such matter. Upon execution of an Order Form, if required for Subscriber's internal financial controls, Subscriber shall issue a valid purchase order for the Next DLP Products subscriptions, Support Services and Next DLP Services set forth in such Order Form. Subscriber's failure to issue such purchase order shall not relieve Subscriber of its obligation to purchase and pay for such subscriptions and services.

- 4.2. **Taxes.** All Fees are exclusive of all taxes and duties. If Next DLP is required to pay or account for any sales, use, value added, withholding or other taxes, public fees, duties, deductions or other withholdings (collectively "Taxes"), then such Taxes shall be borne by Subscriber. If Subscriber is required to withhold or deduct any Tax from any payment due hereunder, Subscriber will increase the sum payable to Next DLP such that Next DLP receives an amount equal to the sum it would have received had Subscriber made no withholding or deduction. Taxes shall not include taxes based upon Next DLP's income.

## 5. TERM AND TERMINATION.

- 5.1. **Term.** The initial term of this Agreement, and the initial term of the subscriptions initially purchased by Subscriber hereunder, will commence on the "Order Start Date" and end on the applicable "Order End Date" specified in the initial Order Form ("Initial Term"). Unless either Party gives written notice, pursuant to Section 11.1 and 11.12, of its intent not to renew this Agreement and such subscriptions at least 45 days prior to the end of the then-current term, this Agreement and such subscriptions shall automatically renew for a subsequent 12-month period.
- 5.2. **Termination for Cause.** Either Party may terminate this Agreement upon written notice to the other Party if the other Party materially breaches this Agreement and fails to cure such breach within 30 days of its receipt of written notice thereof. Notwithstanding the foregoing, Next DLP may terminate this Agreement upon written notice to Subscriber if Subscriber fails to cure any payment default within 10 days of delivery of written notice thereof. Either Party may terminate any Statement of Work (but not this Agreement) upon written notice to the other Party if the other Party materially breaches such Statement of Work and fails to cure such breach within 30 days of delivery of written notice thereof.
- 5.3. **Effect of Termination.** Upon termination of this Agreement: (a) all Order Forms, and all rights, subscriptions and licenses granted by Next DLP hereunder and under all Order Forms (including Subscriber's right to access and use the Next DLP Products and Subscriber Data contained in Next DLP Products, shall automatically terminate; (b) Subscriber shall immediately cease all use of Next DLP Products; and (c) each Party shall within a reasonable time return or destroy all Confidential Information of the other Party in its possession, except that each Party may retain one copy of such Confidential Information to the extent required to comply with applicable laws or regulations, applicable professional standards of conduct or bona fide written internal document retention practices or policies. All payment obligations of Subscriber incurred, accrued or arising prior to the effective date of termination shall survive and be payable in accordance with the applicable payment terms herein.
- 5.4. **Survival.** The following provisions shall survive any termination of this Agreement: Sections 1 (Definitions), 2.2 (Access and Use Restrictions), 4 (Payments), 5.3 (Effect of Termination), 5.4 (Survival), 6 (Confidentiality), 7.4 (Disclaimer), 8 (Limitation of Liability), 9 (Indemnification), 10.1 (Ownership of Subscriber Data), 11 (Miscellaneous).

## 6. CONFIDENTIALITY.

- 6.1. **Obligations.** Each Party shall: (a) treat as confidential, and shall not disclose, any Confidential Information of the other Party other than to its employees, Affiliates, contractors, consultants or advisors (each, a "Representative") who have a bona fide need-to-know such Confidential Information, provided that (i) such Representatives are bound by legally enforceable obligations consistent with and at least as restrictive as the provisions of this Section 6 and (ii) the receiving Party shall be responsible for any breach by its Representatives; (b) use the same degree of care to protect the other Party's Confidential Information as it uses to protect its own Confidential Information of a similar nature, but in no event less than reasonable care; and (c) use the other Party's Confidential Information only for the purposes described in this Agreement.
- 6.2. **Exceptions.** (a) Confidential Information shall not include: (i) any information that is or becomes generally available to the public (provided that such information did not become public as a result of the receiving Party's or its Representative's disclosure thereof in breach of this Agreement); (ii) any information received by the receiving Party (without restriction on use or disclosure) from sources other than the disclosing Party or its Representatives (provided that such source is not subject to a confidentiality obligation with regard to such information); (iii) any information that is independently developed by the receiving Party without use of or reference to Confidential Information of the other Party; or (iv) any information that was in the receiving Party's possession (without restriction on use or disclosure) prior to the time of its disclosure by or on behalf of



the disclosing Party. (b) Notwithstanding the foregoing, either Party may disclose Confidential Information of the other Party to any regulatory agency or court of competent jurisdiction if and to the extent: (i) approved by the other Party in advance and in writing; or (ii) required to comply with applicable law, regulatory agency or court order, provided that such Party provides prompt prior written notice of such required disclosure to the other Party (to the extent legally permitted) and reasonably cooperates with the other Party (at such other Party's cost and expense) to limit the extent of such disclosure.

## 7. REPRESENTATIONS AND WARRANTIES.

7.1. **Due Organization, Conflicting Agreements.** Each Party represents that: (a) it is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization; (b) it has full corporate power and authority to execute and deliver this Agreement and comply with its obligations herein; and (c) it has no outstanding agreement that would conflict in any material way with the provisions of this Agreement or preclude it from complying with the provisions hereof.

### 7.2. Next DLP Warranties.

7.2.1. **Next DLP Products.** Next DLP warrants during the applicable Subscription Term that the Next DLP Products will perform substantially in accordance with the Documentation. Subscriber must inform Next DLP of any non-conformance within thirty (30) days from the date it first became aware of the non-conformance. In the event of a breach of the foregoing warranty, and as Subscriber's sole and exclusive remedy and Next DLP's sole and exclusive obligation and liability, Next DLP shall either, at its option: (A) correct the non-conforming component of Next DLP Products; or (B) terminate this Agreement and refund to Subscriber up to any prepaid unused subscription Fees covering the remainder of the then-current Term.

7.2.2. **Next DLP Services.** Next DLP warrants to Subscriber that, during the period of performance and for 30 days thereafter, Next DLP's Next DLP Services and Support Services hereunder will be performed in a competent, professional and workmanlike manner by personnel of adequate training and experience. Subscriber's sole and exclusive remedy and Next DLP's sole and exclusive obligation and liability for any failure of services to conform to this warranty shall be for Next DLP to: (a) re-perform the non-conforming services, or (b) refund the portion of fees paid attributable to the non-conforming Next DLP Services.

7.2.3. **Disclaimer.** The aforementioned warranties do not apply if the Next DLP Products and/or Next DLP Services has been modified, except by Next DLP or has not been used or maintained in accordance with this Agreement or Documentation. SUBSCRIBER ACKNOWLEDGES, UNDERSTANDS, AND AGREES THAT NEXT DLP DOES NOT GUARANTEE OR WARRANT THAT IT WILL FIND, LOCATE, OR DISCOVER ALL OF SUBSCRIBER'S OR ITS AFFILIATES' SYSTEM THREADS, VULNERABILITIES, MALWARE, AND MALICIOUS SOFTWARE, AND SUBSCRIBER AND ITS AFFILIATES WILL NOT HOLD NEXT DLP RESPONSIBLE THEREFOR.

7.3. **Subscriber Warranties.** Subscriber represents and warrants that Subscriber or its licensors own all right, title and interest in and to all Subscriber Data. Subscriber warrants that it is compliant with all applicable laws as well as any and all privacy policies, agreements or other obligations Subscriber may maintain or enter into.

7.4. **Disclaimer.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, NEXT DLP PRODUCTS, NEXT DLP SERVICES AND ALL DOCUMENTATION AND SUPPORT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE", AND NEXT DLP MAKES NO OTHER REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED IN FACT OR BY OPERATION OF LAW, OR STATUTORY, AS TO ANY MATTER WHATSOEVER. NEXT DLP (FOR ITSELF AND ITS AFFILIATES, LICENSORS AND OTHER PROVIDERS) EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS, INCLUDING ALL IMPLIED WARRANTIES, TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, NON-INFRINGEMENT, OWNERSHIP, QUIET ENJOYMENT, SECURITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY EXCLUDED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, NEXT DLP DOES NOT WARRANT THAT NEXT DLP PRODUCTS, NEXT DLP SERVICES OR THE SUPPORT SERVICES WILL PERFORM CONTINUOUSLY OR WITHOUT INTERRUPTION, BE ERROR FREE, MEET SUBSCRIBER'S REQUIREMENTS, OR BE TIMELY OR SECURE, OR THAT DATA PROVIDED THROUGH NEXT DLP PRODUCTS WILL BE ACCURATE, UP-TO-DATE, COMPLETE OR FREE OF HARMFUL COMPONENTS OR NOT LOST OR DAMAGED. SUBSCRIBER SHALL NOT MAKE OR PASS ON ANY REPRESENTATION OR WARRANTY ON BEHALF OF NEXT DLP TO ANY THIRD PARTY.

## 8. LIMITATION OF LIABILITY.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR SUBSCRIBER'S (A) NON-COMPLIANCE WITH THE PAYMENT OBLIGATIONS OR THE ACCESS OR USE LIMITATIONS OF THIS AGREEMENT, (B) BREACHES OF SECTION 6 (CONFIDENTIALITY) OR (C) VIOLATION, MISAPPROPRIATION OR MISUSE OF NEXT DLP'S INTELLECTUAL PROPERTY RIGHTS, IN NO EVENT SHALL NEXT DLP (OR ITS AFFILIATES, LICENSORS OR OTHER



PROVIDERS) OR SUBSCRIBER BE LIABLE TO THE OTHER FOR: (I) ANY DAMAGES FALLING WITHIN ANY OF THE FOLLOWING CATEGORIES: (a) LOST PROFITS; (b) LOST BUSINESS, REVENUES OR SAVINGS; (c) BUSINESS INTERRUPTION; (d) LOSS OF GOODWILL; (e) LOSS OF ANTICIPATED SAVINGS; OR (f) LOSS, CORRUPTION OR MODIFICATION OF DATA OR OTHER INFORMATION; OR (II) ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES WHATSOEVER; IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ANY ORDER FORM), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IN THE EVENT OF FAILURE OF AN EXCLUSIVE REMEDY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEXT DLP AND ITS AFFILIATES' AGGREGATE AND CUMULATIVE LIABILITY UNDER OR IN CONNECTION WITH THIS AGREEMENT (INCLUDING ALL ORDER FORMS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY OR OTHERWISE, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF THE FEES PAID BY SUBSCRIBER FOR NEXT DLP PRODUCTS HEREUNDER DURING THE SIX MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE EVENT GIVING RISE TO LIABILITY. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, NEXT DLP AND ITS AFFILIATES SHALL NOT BE LIABLE FOR, AND NEXT DLP (FOR ITSELF AND ITS AFFILIATES) HEREBY DISCLAIMS, ANY DAMAGES OR LOSSES CAUSED BY OR RESULTING FROM THE CONDUCT, SOFTWARE, CONTENT, PRODUCTS, SERVICES OR INFORMATION OF ANY THIRD PARTY OR ANY FAILURE OF SUBSCRIBER OR ANY USER TO COMPLY WITH THE TERMS OF THIS AGREEMENT. Nothing in this Agreement (including any Order Form) shall limit or exclude either Party's or its Affiliates' liability for (a) death or personal injury caused by its gross negligence or the gross negligence of its or their employees, agents or subcontractors, (b) fraud or fraudulent misrepresentation or (c) any other liability to the extent that it cannot be limited or excluded by applicable law.

## 9. INDEMNIFICATION.

- 9.1. **Next DLP Intellectual Property Infringement.** Notwithstanding anything to the contrary in this Agreement, and subject to Section 9.3, Next DLP agrees to defend, or, at its option, settle, any third-party claim, suit or proceeding against Subscriber to the extent based on a claim that Next DLP Products infringes or misappropriates any third-party copyright, patent, trademark or trade secret that relates to Subscriber's use of Next DLP Products or Next DLP Services (a "**Third-Party IP Claim**"). Next DLP shall pay the damages and reasonable and verifiable costs and expenses which are finally awarded against Subscriber by final judgment of a court of competent jurisdiction (or pursuant to settlements agreed to in writing by Next DLP) directly attributable to such Third-Party IP Claim. If Next DLP Products or Next DLP Services become, or in Next DLP's opinion are likely to become, the subject of a claim of infringement or injunction, Next DLP shall have the right, at its option and expense, to: (a) procure the necessary rights to enable Subscriber's continued use of Next DLP Products or Next DLP Services as set forth in this Agreement; (b) replace or modify Next DLP Products or Next DLP Services so that it is no longer infringing; or (c) terminate this Agreement and the Order Form(s) and refund to Subscriber any prepaid unused portion of the subscription Fees paid by Subscriber for such affected portion for the remainder of the then-current Term. Next DLP shall have no liability under this Section 9.1 or otherwise to the extent that a Third-Party IP Claim arises out of or relates to: (i) use of Next DLP Products in a manner that does not comply with this Agreement; (ii) use of Next DLP Products or Next DLP Services in combination with products, services, applications, content or data not provided by Next DLP; or (iii) modifications to Next DLP Products or Next DLP Services not made by Next DLP. THIS SECTION 9.1 STATES NEXT DLP'S AND ITS AFFILIATES' SOLE AND EXCLUSIVE OBLIGATION AND LIABILITY, AND SUBSCRIBER'S SOLE AND EXCLUSIVE REMEDY, REGARDING INFRINGEMENT OR MISAPPROPRIATION BY ANY PART OF NEXT DLP PRODUCTS OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS
- 9.2. **Subscriber Indemnification.** Notwithstanding anything to the contrary in this Agreement, and subject to Section 9.3, Subscriber shall defend, or, at its option, settle, any third-party claim, suit or proceeding against Next DLP to the extent arising out of or related to: Subscriber Data; any of Subscriber's products or services; or negligent, reckless, illegal or improper conduct of any User(s) or the Subscriber. Subscriber shall pay the damages and reasonable and verifiable costs and expenses which are finally awarded against Next DLP by final judgment of a court of competent jurisdiction (or pursuant to settlements agreed to in writing by Subscriber) directly attributable to such claim.
- 9.3. **Conditions.** Each Party's indemnification obligations under this Section 9 are subject to the conditions that: (a) the indemnified Party provides the indemnifying Party with prompt written notice of the indemnifiable claim; (b) the indemnifying Party retains sole control of the defense and settlement of the indemnifiable claim; (c) the indemnified Party does not prejudice the defense of the indemnifiable claim; and (d) the indemnified Party provides the indemnifying Party with such cooperation, assistance, documents, authority and information as the indemnifying Party may reasonably require in relation to any indemnifiable claim and the defense and/or settlement thereof. The indemnified Party shall have the right, at its own expense, to participate in such litigation or defense and to retain its own separate counsel and advise the indemnifying Party on any proposed settlements, but only to the extent that such participation and advice do not unreasonably interfere with the indemnifying Party's ability to perform its obligations under this Section 9. The indemnifying Party shall not, without the indemnified Party's prior written consent (not to be unreasonably withheld), settle, compromise or consent to the entry of any judgment in any indemnifiable claim unless such settlement, compromise or consent is solely monetary in nature and does not include a statement, or an admission of fault by or on behalf of, the indemnified Party.



## 10. DATA AND DATA SECURITY.

- 10.1. **Ownership of Subscriber Data.** As between the Parties, Subscriber retains sole ownership of all Subscriber Data. Subscriber has sole responsibility for the content, accuracy, quality, integrity, legality, reliability, appropriateness and ownership or right to use of all Subscriber Data, and Next DLP is not responsible or liable for Subscriber's actions related to the deletion, correction, destruction, damage, loss or failure to store any Subscriber Data. Subscriber acknowledges that when using Next DLP Products, Next DLP may access, use, transmit, modify and copy Subscriber Data from time to time as necessary solely for the purpose of providing Next DLP Products, Support Services and Next DLP Services to Subscriber and related support and administration or otherwise as requested by Subscriber or permitted hereunder.
- 10.2. **Third Party Software.** The Next DLP Products may incorporate or otherwise access certain open source or other third-party software, data, services, or other materials for the hosting and delivery of the Next DLP Products, which are identified can be found at <https://qush.reveal.avasecurity.com/licenses>. Next DLP makes no representation, warranty, or other commitment regarding such third party materials, and hereby disclaims any and all liability relating to Subscriber's use thereof.
- 10.3. **Security.** Next DLP will implement, as part of Next DLP Products, appropriate technical and organizational measures designed for the protection of the security and confidentiality of Subscriber Data resident in Next DLP Products against accidental or unlawful loss, access or disclosure. Next DLP's security policies and practices can be found at <https://www.nextdpl.com/internal-security> which may be updated from time to time. Next DLP 's hosting service providers will implement appropriate technical and organizational measures for the protection of the security and confidentiality of Subscriber Data resident on such service providers' systems against accidental or unlawful loss, access or disclosure. Subscriber shall use commercially reasonable efforts to prevent unauthorized access to and use of the Account and Next DLP Products and shall immediately notify Next DLP of any such unauthorized access or use or any other breach of security known to Subscriber. Next DLP reserves the right to suspend access to Next DLP Products in the event of a security breach or threat. Subscriber acknowledges that Subscriber Data may leave the Next DLP Products when using Next DLP Products (e.g. when downloaded by Subscriber or in connection with the use of modules and/or processes hosted on Google) and that Next DLP has no responsibility for Subscriber Data that is not resident within the Next DLP Service.
- 10.4. **Data Processing and Transfer.** To the extent that Next DLP processes any personal data within, or originating from the European Economic Area, the UK and/or Switzerland ("**EEA/UK/Swiss Personal Data**") in the course of providing Next DLP Products, Support Services and/or Next DLP Services to Subscriber, any such processing shall be governed by Next DLP 's then current Data Processing Agreement (or such other agreement as Next DLP may agree). Any and all transfers of **EEA/UK/Swiss Personal Data** that are made to Next DLP in the US or another GDPR non-adequate country ("Restricted Transfers") shall be governed by one or more of the following data transfer mechanisms (at Next DLP 's option): (a) binding contractual or other provisions, such as the controller-to-processor standard contractual clauses approved by the European Commission and in the UK the IDTA (and the IDTA Addendum) approved by the UK Government from time to time; (b) Next DLP 's certification to any program approved by a competent authority and permitting the transfer of **EEA/UK/Swiss Personal Data**, such as binding corporate rules, or any successor to the US-EU/US- Swiss Privacy Shield Framework; or (c) any other data transfer mechanism that is valid in the jurisdiction from which the **EEA/UK/Swiss Personal Data** originates. For personal data originating from any other jurisdiction, the Privacy Policy shall apply.

## 11. MISCELLANEOUS.

- 11.1. **Notices.** Notwithstanding anything to the contrary, notices may be given or made pursuant to this Agreement electronically including via Next DLP 's customer portal. Notwithstanding the foregoing, any notice concerning a material breach or termination of this Agreement (including the Order Forms) must be in writing and delivered by certified or registered mail or internationally recognized express courier or overnight delivery service, and shall be deemed given upon personal, confirmed or documented delivery. All written notices or other written communications to Next DLP shall be provided to the relevant address identified in Section 11.12 and addressed to: **ATTENTION: LEGAL DEPARTMENT**. All written notices to Subscriber shall be sent to the address first listed in the applicable Order Form that references this Agreement and addressed to the individual who signed such Order Form. With respect to notices and other communications by Next DLP regarding Next DLP 's Privacy Policy, the Support Policy or any other information provided via the Account, such notices shall be deemed given when posted on Next DLP 's customer portal or e-mailed to the Subscriber's Account administrator(s).
- 11.2. **Entire Agreement; Order of Precedence.** (a) This Agreement contains the entire understanding of the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, and all other communications between the Parties relating to such subject matter. (b) This Agreement and the Order Forms may not be amended or modified, nor any of its provisions waived, except by mutually signed written agreement. Any failure or delay to enforce or exercise any right or remedy shall not be deemed a waiver of such or any other right or remedy. Any waiver of any breach shall not be deemed to be a waiver of any other or subsequent breach. (c) If any court of competent jurisdiction holds any provision of this Agreement or any Order Form as null, void or otherwise ineffective or invalid, such provision shall be deemed to be restated to reflect as nearly as possible the original intentions of the Parties in accordance with applicable law, and the remaining provisions shall remain in full force and effect and shall not be affected thereby. (d) Section headings in this Agreement are used solely for convenient reference and shall not be deemed to define or limit the provisions of this Agreement. (e) Any terms appearing on



any purchase order, acknowledgment or confirmation that are different from or in addition to the terms of this Agreement or any applicable Order Form shall not be binding on the Parties, even if signed and returned. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (i) this Agreement; and (ii) the applicable Order Form except to the extent the Order Form expressly supersedes a specified provision of this Agreement.

- 11.3. **Independent Contractors.** The Parties are independent contractors. This Agreement does not create any partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. Next DLP shall be solely responsible for the conduct and supervision of its personnel in the performance of its obligations hereunder. Neither Party shall have any right or authority to assume or create any obligation or responsibility, express or implied, on behalf of the other Party or to bind the other Party in any way whatsoever.
- 11.4. **Assignment.** Neither this Agreement nor any Order Form nor any right or obligation hereunder or thereunder may be assigned, transferred or delegated, by operation of law or otherwise, in whole or in part, by Subscriber without Next DLP's prior written consent. A Change of Control of Subscriber shall be deemed an assignment of this Agreement. "Change of Control" of Subscriber means a transaction or series of transactions (a) pursuant to which direct or indirect control of Subscriber is acquired by persons or entities other than those who, directly or indirectly, control Subscriber as of the Effective Date or (b) resulting in the sale of all or substantially all of Subscriber's business or assets utilizing any part of Next DLP Products. Subject to the foregoing, this Agreement (including the Order Forms) shall be binding upon and inure to the benefit of the Parties and their successors and assigns.
- 11.5. **Trademarks.** Next DLP and its licensors reserve all rights in and to their trademarks, trade names, service marks and logos (collectively "Marks") and no right to use, modify or reproduce such Marks are granted. Subscriber agrees not to take or permit any action that may jeopardize the owner's rights in and to the Marks. Any and all uses of the Marks, or applications for or registrations of such Marks, shall inure to the benefit of Next DLP or such licensors.
- 11.6. **Publicity.** Neither Party may issue or make any press release, announcement or publication containing or otherwise use any of the other Party's Marks without the other Party's prior written approval; provided that, during the Term, Next DLP may list Subscriber along with Subscriber's logo as a customer of Next DLP Products on Next DLP's website and in other Next DLP marketing materials.
- 11.7. **Non-solicitation.** During the Term, Subscriber shall not employ nor solicit the employment or services of any employee of Next DLP or any of its Affiliates without the prior written consent of Next DLP. For purposes of this provision, the general advertisement of employment opportunities by Subscriber in any public forum (including magazines, trade journals, publicly accessible internet services, classified advertisements or job fairs open to the public) shall not be considered "solicitation", and the hiring of an individual as a result of his or her response to such a general employment advertisement or in response to his or her unsolicited employment inquiry shall not constitute a breach of this Agreement.
- 11.8. **Force Majeure.** Except for payment obligations, neither Party will be liable for, or be considered to be in breach of this Agreement (including the Order Forms) on account of, any delay or failure to perform as a result of any cause or condition beyond such Party's reasonable control, including, for example, an act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, epidemic, pandemic, Internet failure or delay, or denial of service attack. The affected Party shall use commercially reasonable efforts to avoid or remove such cause of non-performance or delay. If such cause or condition continues for a period of more than 60 days, then the other Party may terminate this Agreement for convenience upon 10 days' written notice to the affected Party.
- 11.9. **Compliance with Laws.** (a) Subscriber shall not, and shall not permit Users to, access, use, export or re-export Next DLP Products, or use Next DLP Products to access, use, export or re-export Subscriber Data, in or to a U.S.-embargoed country or in violation of any applicable export law, regulation, order or sanction. Subscriber shall at all times comply and cause its Users to comply with all applicable laws and regulations in its use of Next DLP Products, including the United States' Foreign Corrupt Practices Act and the United Kingdom's Bribery Act 2010. (b) Without limiting the generality of the foregoing, through utilization of each of Next DLP Products, Support Services and Next DLP Services (collectively, the "Offerings"), Subscriber represents that neither it nor any of its Affiliates nor any User is (i) named on a governmental denied party or restricted list, including but not limited to: the Office of Foreign Assets Control ("OFAC") list of Specially Designated Nationals and Blocked Persons ("SDN List"), the OFAC Sectoral Sanctions Identifications List ("SSI List"), and the sanctions list under any other Sanctions Laws; (ii) organized under, ordinarily resident in, or physically located in a jurisdiction subject to comprehensive sanctions administered by OFAC, (currently, as of the latest date of signature of the applicable Order Form that references this Agreement, Cuba, Iran, North Korea, Syria, and the Crimea region); or (iii) owned or controlled, directly or indirectly, 50% or more in the aggregate, by one or more individuals described in (i) or (ii) (collectively, "Sanctioned Persons"). Subscriber also represents that its, its Affiliates', and any User's utilization of the Offerings will comply with all applicable sanctions laws administered by OFAC, other U.S. regulatory agencies, the European Union and its Member States, the United Kingdom, and the United Nations ("Sanctions Laws"). Subscriber, its Affiliates, and Users will not (and will not assist, enable or permit others to), directly or indirectly: (x) permit Sanctioned Persons to use, to access, or to benefit from the Offerings; (y) export, re-export, or otherwise transfer the Offerings for any purpose prohibited by Sanctions Laws; or (z) submit to the Offerings any data subject to the U.S. International Traffic in Arms Regulations or other Sanctions Laws. Subscriber's or any of its Affiliates' or





any User's violation of this provision will be a material breach of this Agreement. Subscriber agrees to notify Next DLP immediately in writing of any actual or reasonably suspected violations. Notwithstanding any provision of this Agreement or any Order Form to the contrary, Next DLP may limit, suspend, or terminate Subscriber's or any of its Affiliates' or any User's access to or delivery of the Offerings or take other actions reasonably necessary to comply with applicable export laws and Sanctions Laws without liability. Subscriber agrees to indemnify Next DLP if Next DLP becomes subject to liability because of Subscriber's or any of its Affiliates' or any User's non-compliance with applicable export laws or Sanction Laws.

- 11.10. **No Legal Advice.** Subscriber acknowledges and agrees that Next DLP does not and shall not provide Subscriber with any legal advice regarding compliance with laws, rules or regulations in the jurisdictions in which Subscriber uses Next DLP Products and Next DLP Services, including those related to data privacy. Subscriber acknowledges that Next DLP Products may be used in ways that do and do not comply with such laws, rules or regulations. It is Subscriber's sole responsibility to monitor its (including Users') compliance with all such relevant laws, rules or regulations. Subscriber is solely responsible for such Subscriber-specific use decisions and Next DLP and its Affiliates disclaim all liability for such decisions.
- 11.11. **Third Party Beneficiaries.** Except as otherwise provided in Section 10.2 or in any transfer mechanism under Section 10.4 (Data Processing and Transfer), nothing in this Agreement shall be construed as giving any right, remedy or claim hereunder to any person or entity that is not a Party hereto, and any person or entity that is not a Party hereto shall have no right to enforce any part of it.
- 11.12. **Next DLP Entity, Governing Law and Dispute Resolution.** The Next DLP Entity that is a Party to this Agreement, the laws that will apply to this Agreement, and which courts can adjudicate any such lawsuit, depend on where the Subscriber is domiciled as follows:
- 11.12.1. Subject to the limitations of Section 11.9, If the Subscriber is domiciled in the United States of America, Canada or Mexico: the Next DLP Entity is Next DLP Inc., with offices at 75 State Street Suite 100 Boston, MA 02109. This Agreement (including the Order Forms and this Section 11.12 but excluding the Third-party terms Agreement) and any disputes, controversies or differences arising out of or in connection with this Agreement, including the breach hereof, shall be governed by the substantive laws of the State of Delaware applicable to agreements made and wholly performed Delaware, without regard to the application of any conflicts of laws principles. Any dispute relating to or arising out of this Agreement shall be heard in the state or federal courts of the State of Delaware, and the Parties agree to jurisdiction and venue therein. Each of the Parties hereby waives, to the fullest extent permitted by law, any right to trial by jury of any claim, demand, action or cause of action relating to or arising out of this Agreement or in any way connected with or related or incidental to the dealings of the Parties. Application of the United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act is expressly excluded. Except as otherwise expressly provided in this Agreement, all remedies shall be cumulative and shall be in addition to every other remedy given in this Agreement or existing at law or in equity, by statute or otherwise.
- 11.12.2. Except for users prohibited from use of the Next DLP Products pursuant to Section 11.9, if the Subscriber is domiciled in the United Kingdom, a Member State of the European Union or any other country not stated in Section 11.12.1: the Next DLP Entity is Next DLP Limited, company number 13785405, with offices at Huckletree West, Mediaworks, 191 Wood Lane, London, England, W12 7FP. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the law of England and Wales. Each Party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (including non-contractual disputes or claims) arising out of or in connection with this Agreement or its subject matter or formation.
- 11.13. **Counterparts.** Each Order Form may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which together shall constitute only one agreement. The execution and delivery of counterparts by electronic mail, electronic form (including execution by way of an electronic or other signature stamp ("E-signature")), website submission, facsimile or original manual signature, regardless of the means or any variation in pagination or appearance, shall be binding upon the Parties.

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