If you have not, separately and in writing, executed an agreement for the license and/or use of the Densify Subscription Offering, then the following terms and conditions will apply.

DENSIFY CUSTOMER SUBSCRIPTION AGREEMENT

GENERAL TERMS AND CONDITIONS

*PLEASE READ THE FOLLOWING **CUSTOMER SUBSCRIPTION AGREEMENT** CAREFULLY. BY CLICKING THE "AGREE" BUTTON AND PROCEEDING WITH THE ORDER FOR THE DENSIFY SUBSCRIPTION OFFERING, YOU, ON BEHALF OF THE COMPANY OR ORGANIZATION FOR WHOSE BENEFIT YOU ACT ("CUSTOMER") ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE TERMS AND CONDITIONS AS DEFINED IN THE **CUSTOMER SUBSCRIPTION AGREEMENT** ("AGREEMENT") BETWEEN CUSTOMER AND EVENKEEL INC. D/B/A DENSIFY ("DENSIFY") (TOGETHER THE "PARTIES" AND INDIVIDUALLY A "PARTY").*

BY CLICKING "DO NOT AGREE", THIS ORDER FOR THE DENSIFY SUBSCRIPTION OFFERING WILL NOT PROCEED. YOU MAY NOT USE THE DENSIFY SUBSCRIPTION OFFERING UNLESS YOU ACCEPT THESE TERMS AND CONDITIONS.

IF YOU CLICK THE "AGREE" BUTTON, THAT ACTION IS THE EQUIVALENT OF YOUR SIGNATURE AND INDICATES YOU HAVE READ THIS AGREEMENT, UNDERSTAND AND ACCEPT ALL THE TERMS AND CONDITIONS AND THAT YOU INTEND TO BE LEGALLY BOUND BY THEM AND THAT YOU HAVE THE AUTHORITY TO BIND THE COMPANY OR ORGANIZATION FOR WHOSE BENEFIT YOU ACT.

This Densify Customer Subscription Agreement (including the terms, DPA, Schedules, Orders and other documents included by reference herein) ("**Agreement**") is made by and between Evenkeel Inc. d/b/a Densify ("**Densify**"), an Ontario corporation located at 120 East Beaver Creek Road, Suite 200, Richmond Hill, Ontario, Canada, L4B 4V1 and the customer entity ("**Customer**") for whom you act and becomes effective on the date of acceptance of the Agreement by you ("**Effective Date**").

1. **Interpretation.**

    a. **Definitions**

       In this Agreement, the following terms and expressions will have the following meanings:

       - "**Affiliate**" means every corporation in which Customer holds, or which holds in Customer, directly or indirectly, whether through one or more subsidiaries or otherwise, other than by way of security only, securities to which are attached more than 50% of the votes that may be case to elect directors of such corporation and the votes attached to those securities are sufficient, if exercised, to elect a majority of the directors of such corporation.

       - "**Authorized Users**" means Customer's and its Affiliates' employees and Contractors who are authorized to access and use the Densify Technology in accordance with the terms and conditions of this Agreement.

       - "**Commercial Third Party Software**" means the commercial third party computer programs, in object code format only, that are included by Densify with the Densify Technology and accessed through the Densify Subscription Offering. The current list of Commercial Third Party Software is set forth in Part 2 of Schedule E - Third Party Software, located at

http://www.densify.com/legal/schedule-e-cco, which Schedule is incorporated into this Agreement by reference and deemed to be a part hereof. This Schedule may be updated from time to time by Densify as part of any Updates and included in the link referenced above and in the Documentation.

- "**Confidential Information**" means: (i) all information of Densify or Customer that is marked confidential, restricted or proprietary or that may reasonably be considered as confidential from its nature or from the circumstances surrounding its disclosure; (ii) the Customer Data, (iii) the Densify Technology; (iv) the Commercial Third Party Software; and (v) the specific terms and conditions of this Agreement, any Order and any amendment and attachment thereof between the parties.

- "**Customer Data**" means electronic data uploaded by or for Customer and Customer's agents, employees and contractors, and processed using the Densify Subscription Offering.

- "**Densify Add-On Options**" means the list and description of add-on options available for the Densify Subscription Offering, which can be found in Schedule B – Add-On Options, located at http://www.densify.com/legal/schedule-b-cco, which Schedule is incorporated into this Agreement by reference and deemed to be a part hereof. This Schedule may be updated by Densify from time to time.

- "**Densify Software**" means the proprietary computer programs of Densify, in object code format only, that are accessed by the Densify Subscription Offering.

- "**Densify Technology**" means: (a) the Densify Subscription Offering; Densify Software; Documentation and Densify technology and methodologies and third party software (including, without limitation, products, software tools, algorithms, templates, software (in source and object forms), architecture, class libraries, objects and documentation) existing as of the Effective Date; (b) Updates, upgrades, improvements, configurations, extensions, and derivative works of the foregoing and related technical or end user documentation or manuals; and (c) intellectual property anywhere in the world relating to the foregoing.

- "**Densify Subscription Offering**" means the Densify cloud and container software as a service (SaaS) offering hosted by Densify or its subcontractors and ordered by Customer pursuant to an Order. A description of the principal features of the Densify Subscription Offering is set out in Schedule A – Product Description, located at http://www.densify.com/legal/schedule-a-cco, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Densify from time to time. The Densify Subscription Offering shall also include all Densify Add-On Options that have been provided by Densify to Customer, whether or not specified on an Order or its related Quote.

- "**Documentation**" means the user documentation for the Densify Subscription Offering that is made generally available by Densify to customers of the Densify Subscription Offering and which may include technical program or interface documentation, user manuals, operating instructions and release notes, as updated from time to time by Densify. The Documentation is provided in electronic form and is accessible through the Densify Subscription Offering and may also be found at https://www.densify.com/legal/docs-cco.

- "**DPA**" means the Data Processing Agreement available at https://www,densify.com/legal/dpa, which may be updated by Densify from time to time and which supplements and forms part of this Agreement.

- "**Instance**" means a discrete unit of compute capacity, including but not limited to physical servers, virtual machines (VMs), cloud-based compute instances or containers (whether Standalone Containers or Replicated Containers), deployed within Customer's infrastructure environment. An Instance is any such compute resource that is actively analyzed, managed, or otherwise supported by the Densify Subscription Offering, as described in the Documentation.

- "**Intellectual Property Rights**" means all worldwide intellectual and industrial property rights including all rights in each country to copyrights, trademarks, patents, inventions, industrial designs, trade secrets, trade dress and all other proprietary rights.

- "**Open Source Third Party Software**" means the open source third party computer programs, in object code format only, that are included by Densify with the Densify Technology and accessed through the Densify Subscription Offering. The current list of Open Source Third Party Software is set forth in Part 1 of Schedule E - Third Party Software, located at

http://www.densify.com/legal/schedule-e-cco, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated from time to time by Densify as part of any Updates and included in the link referenced above and in the Documentation.

- "**Order**" means the purchase order or other ordering document submitted to Densify (either directly by Customer or through Reseller), and accepted by Densify (which may be by notice to Customer or Reseller, or by the processing of the Order by Densify). All Orders must reference the applicable Quote.

- "**Quote**" means a quote containing the details for Customer's access to the Densify Subscription Offering, as well as for any Densify Add-On Options requested by the Customer, which is provided to Customer by Densify or by Reseller.

- "**Replicated Container**" means those containers where 2 or more Instances are created from the same definition.

- "**Reseller**" means Densify's authorized reseller for the resale or distribution of the Densify Subscription Offering to customers.

- "**Restricted Countries**" means any of the countries listed in Schedule F – List of Restricted Countries, located at http://www.densify.com/legal/schedule-f-cco, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Densify from time to time.

- "**Service Level Agreement**" means the service levels that are applicable to the Densify Subscription Offering list in Schedule G – Service Level Agreement, located at http://www.densify.com/legal/schedule-g-cco, which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Densify from time to time.

- "**Standalone Container**" means those containers where there is only ever one Instance running (or zero).

- "**Subscription Term**" means the term of authorized use of the Densify Subscription Offering as set forth in a Quote and/or Order and as may be further described in Section 5(a) hereof.

- "**Technical Support**" shall have the meaning set forth in Section 8 hereof.

- "**Territory**" means worldwide.

- "**Updates**" means any new versions and releases of the Densify Subscription Offering, which Densify makes generally available to its licensees from time to time, and is more specifically described in Section 7 of the Technical Support. For certainty, Updates shall exclude any new functionality for the Densify Subscription Offering that Densify generally provides to its customers for an additional charge.

b. **Schedules**

The following Schedules are incorporated into this Agreement by reference and are deemed to be a part hereof.

Schedule A	-	Product Description
Schedule B	-	Add-On Options
Schedule C	-	[omitted]
Schedule D	-	Technical Support
Schedule E	-	Third Party Software
Schedule F	-	List of Restricted Countries
Schedule G	-	Service Level Agreement

2. **Grant of Use Rights**

a. <u>Densify Subscription Offering</u>. Subject to the terms of this Agreement, Densify hereby authorizes Customer to access and use the Densify Subscription Offering, including the features and functions provided by the software programs and programming, applications, operating systems, networks, utilities, hardware and interfaces (other than those components comprising Customer's computing and network systems), in each case solely as made accessible to Customer through the client-facing portion of the Densify Subscription Offering, and including any Updates thereto, such right of access and use to be

during the Subscription Term and for the number of Instances (including the Densify Add-On Options) set forth in an applicable Quote and/or Order. Customer shall use the Densify Subscription Offering in accordance with the Documentation and only for its internal business purposes. Customer shall not use or access the Densify Subscription Offering in a manner that exceeds Customer's authorized use as set forth in this Agreement and the applicable Quote and/or Order.

3. **Supplementary License Rights**

a. <u>Restrictions</u>. Customer shall not (and shall not permit others to) do any of the following with respect to the Densify Technology: (i) use the Densify Subscription Offering with external programs in a manner that intentionally circumvents contractual usage restrictions; (ii) license, sublicense, sell, resell, rent, lease, transfer, distribute, use for time sharing, or otherwise make any of it available for access by third parties; (iii) access it for the purpose of developing or operating products or services intended to be offered to third parties in competition with Densify or the Densify Subscription Offering; (iv) disassemble, decompile, translate or convert into human readable form or into another computer language, reconstruct or decrypt, or reverse engineer all or any part of it; (v) copy, create derivative works based on or otherwise modify it, except as may be expressly authorized hereunder; (vi) remove or modify a copyright or other proprietary rights notice on it; or (vii) use the Densify Subscription Offering for the purpose of benchmarking, performance analysis or in any manner to compete with the business of Densify; or (viii) use it to create, use, send, store or run viruses or other harmful computer code, files, scripts, agents or other programs or otherwise engage in a malicious act or disrupt its security, integrity or operation. In addition and notwithstanding anything to the contrary in the Agreement, (A) Customer shall not intentionally disclose or provide access to any Confidential Information of Densify to any person or entity located in any Restricted Countries; and (B) Customer shall use reasonable efforts to ensure that only its Authorized Users have access to the Densify Subscription Offering, whether via Customer's access credentials or otherwise and, in the event that Customer becomes aware of any unauthorized use of Customer's access credentials, Customer shall so notify Densify in writing and shall work together in good faith with Densify to address the situation in a timely manner. For clarity, the foregoing in clause (A) in this Section 3(a) shall not prevent an Authorized User located in a Restricted Country from accessing and using the Densify Subscription Offering via its web-based user interface unless its access is prohibited by applicable law and provided that in no case may any Densify Technology or Densify Confidential Information be physically located in a Restricted Country.

b. <u>Open Source</u>. The Open Source Third Party Software is also subject to certain terms and conditions that the licensor of such software imposes on Densify (the "Open Source Provisions"). The licenses applicable to the Open Source Third Party Software are identified in the definition of the Open Source Third Party Software in Section 1 hereof and in the Documentation. Customer's right to use the Open Source Third Party Software provided hereunder is solely as accessed through the Densify Subscription Offering. In the event that Customer elects to use any Open Source Third Party Software provided hereunder other than as integrated by Densify and accessed through the Densify Subscription Offering, then Customer shall be responsible for such use and the Open Source Provisions shall govern such use. Customer hereby agrees not to make any modification to any Open Source Third Party Software for use with the Densify Subscription Offering.

c. <u>Documentation</u>. The Documentation may be used by Customer for the purpose of assisting in its use of the Densify Subscription Offering for the internal business purposes of Customer. No reproduction or other use of the Documentation is permitted.

d. <u>Access and License by Affiliates</u>.

    i. Upon Customer's written request, Densify agrees to grant access to the Densify Subscription Offering and a license to any Affiliate, in accordance with the terms and conditions of this Section 4 and the other terms and conditions of this Agreement, as if such access and license were provided directly to Customer. To the extent that Customer has obligations or responsibilities to be fulfilled under this Agreement to Densify, Customer shall likewise be responsible for the performance of such obligations or responsibilities by any Affiliate to which such access and license is granted, and any breach of such obligations by any Affiliate will be deemed a breach by Customer under this Agreement.

    ii. Without limiting Section 4(d)(i), if the conduct on the part of Densify constitutes a breach that causes damages to an Affiliate, then Customer may enforce such rights or remedies against Densify as if Customer had suffered such damages and such Affiliate shall not be entitles to enforce such rights or remedies directly against Densify on its own behalf.

    iii. Densify's provision of access and a license to an Affiliate will not render such Affiliate a third party beneficiary under this Agreement.

iv. If a dispute arises between Densify and an Affiliate, the dispute will be resolved by Customer on behalf of the Affiliate.

v. Neither the provision of access and licenses to Affiliates nor the extension of this Agreement to Affiliates shall have the effect of altering the liability limitations set forth in Section 11 applicable to either Densify or Customer, it being understood that damages incurred by any Affiliate arising from any act or omission on the part of Densify in fulfilling its obligations under this Agreement shall be deemed to be incurred by Customer.

vi. Customer shall be responsible for ensuring that Affiliates agree to be bound by the provisions of this Section 4(d) and shall indemnify and hold Densify harmless from any failure of Customer to meet this obligation.

e. Third Party Access Rights. Customer shall have the right to provide access to the Densify Subscription Offering and Documentation to third party contractors or consultants of Customer, and/or any third party to whom Customer outsources its business operations (together, "Contractors"), for the purpose of performing and/or exercising any applicable Customer rights with respect to the Densify Subscription Offering and Documentation granted hereunder, provided that: (i) such Contractors do not include any entities (or their employees or contractors) that are in direct competition with Densify; (ii) such use of the Densify Subscription Offering by Contractors together with use by Customer does not exceed the aggregate number of Instances authorized for use by Customer hereunder; and (iii) Customer shall be responsible for the Contractor's compliance with the terms and conditions of this Agreement.

f. Service Level Agreement. Densify's service level agreement in connection with the operation of the Densify Subscription Offering shall be as set forth in the Service Level Agreement.

4. Ordering and Payment.

a. Orders. Orders may be submitted by Customer, either directly to Densify or through Reseller. Ordering terms for Orders submitted by Customer through a Reseller shall be governed by the terms of the applicable agreement between Reseller and Customer. Upon submission of an Order by Customer directly to Densify and acceptance of the Order by Densify, which may be by notice to Customer by Densify or by processing of the Order by Densify:

i. each Order is non-cancellable and non-refundable, other than as provided in this Agreement;

ii. prices stated in each Quote and/or Order are final;

iii. except as expressly set forth in the applicable Quote and/or Order, fees for the Densify Subscription Offering are invoiced annually in advance;

iv. each Subscription Term as set forth in the Quote and/or Order is a continuous and non-divisible commitment for the full duration of the Subscription Term, regardless of the invoice schedule;

v. upon the expiration of any initial or subsequent renewal Subscription Term, each Order shall automatically renew for the period of the Subscription Term and for the fees set forth in the Order, unless Customer provides Densify with written notice not less than thirty (30) days prior to the expiration of such initial or renewal Subscription Term of its intention not to renew the Order, except that if Densify wishes to change the fees for such Order, Densify shall provide Customer with written notice of such change not less than sixty (60) days prior to the end of such initial or renewal Subscription Term; and

vi. the fees for Technical Support are included in the fees for the Densify Subscription Offering payable by Customer.

b. Invoicing and Payment for Densify Orders. The following provisions apply in the case of Orders placed by Customer directly to Densify (and not through Reseller, for which invoicing and payment terms shall be governed by the agreement between Customer and Reseller):

i. Customer shall pay each invoice in full within thirty (30) days after the invoice date;

ii. Customer may issue a purchase order (submitted to orders@densify.com) consistent with the terms of the Order, but a purchase order is not required;

iii. If Customer issues a purchase order, then it shall be for the full amount of the Order, it shall reference the Quote on the purchase order, and any additional or conflicting terms appearing on the purchase order shall not amend the Order or this Agreement; and

iv. Upon request, Densify shall reference the purchase order number on its invoices, solely for administrative convenience, provided that Customer provides the purchase order at least five (5) business days prior to the date of invoice.

v. Late Payments. All overdue amounts shall bear interest on the amounts outstanding from the time such amounts become due until payment is received by Densify and shall be calculated based upon the lesser of: (i) a rate of two percent (2%) per month; and (ii) the highest interest rate allowable under applicable law.

vi. Taxes. All payments required by this Agreement are stated exclusive of all taxes, duties, levies, fines or similar governmental assessments, including sales and use taxes, value-added taxes ("VAT"), goods and services taxes ("GST"), excise, business, service, withholding and similar transactional taxes imposed by any jurisdiction and the interest and penalties thereon (collectively, "Taxes"). Customer shall be responsible for and bear Taxes associated with its purchase of, payment for, access to or use of the Densify Subscription Offering. If Densify has the legal obligation to collect and remit Taxes, Densify shall invoice Customer for any Taxes due on Orders placed. In all other instances, Customer will be responsible for self-assessing for any such Taxes due and remitting same to the applicable tax authority. Taxes shall not be deducted from the payments to Densify, except as required by law, in which case Customer shall increase the amount payable as necessary so that after making all required deductions and withholdings, Densify receives and retains, free from any Tax liability, an amount equal to the amount it would have received had no such deductions or withholdings been made. Each party is responsible for and shall bear taxes imposed on its net income.

vii. Currency. All amounts referred to herein are in the lawful currency of the United States of America (U.S. Dollars), provided that upon request from Customer, if Customer is located in: (A) the United Kingdom, the lawful currency of the United Kingdom shall apply (Pound Sterling – GBP); or (B) the European Economic Community, the currency of the Euro shall apply; or (C) Canada, the lawful currency of Canada shall apply (Canadian Dollars).

5. Proprietary Rights and Confidential Information.

a. As between Densify and Customer, all right, title and interest in and to all intellectual property rights in the Densify Technology are, as between Densify and Customer, owned exclusively by Densify notwithstanding any other provision in this Agreement. Customer acknowledges and agrees that nothing herein transfers or conveys to Customer any ownership right, title or interest in or to all or any part of the Densify Technology or any Intellectual Property Rights therein, or to any copy thereof or any license right with respect to same not expressly granted herein. Nothing in this Agreement constitutes a sale of the Densify Technology to Customer and no copies are being sold to Customer. All rights not expressly granted to Customer hereunder are retained by Densify.

b. As between Customer and Densify, Customer shall retain all of its right, title and interest in and to its intellectual property rights in the Customer Data. Customer hereby grants to Densify a royalty-free, fully paid up, non-exclusive, non-transferrable (except as set forth in Section 13.c (Assignment)), sub-licensable right in the Territory to use Customer Data solely for the purpose of providing the Densify Subscription Offering to Customer, which for certainty includes providing Customer the ability to use the Densify Subscription Offering, as well as for Densify to use the Customer Data in a user acceptance test ("UAT") environment for the purpose of responding to and resolving specific issues reported by Customer concerning the Densify Subscription Offering or for the purpose of validating upgrades to the Densify Subscription Offering prior to such upgrades being made available to Customer. Such UAT environment shall contain all the same security and protections that Densify employs for the production environment.

c. Densify encourages Customer to provide suggestions, proposals, ideas, recommendations or other feedback regarding improvements to the Densify Subscription Offering and other Densify products. To the extent Customer provides such feedback, Customer grants to Densify a royalty-free, fully paid up, sublicensable, transferrable (notwithstanding Section 13.c (Assignment)), non-exclusive, irrevocable, perpetual, worldwide right and license to make, use, sell, offer for sale, import and otherwise exploit feedback (including by incorporation of such feedback into the Densify Technology) without restriction.

d. Each party agrees to maintain the confidentiality of the Confidential Information of the other party that has been disclosed or made available by the other party or otherwise received by the receiving party, whether prior to, subsequent to or on the Effective Date hereof, and to use same only as expressly authorized herein. Each party shall safeguard and maintain the other party's Confidential Information in strict confidence and shall not disclose, provide, or make the Confidential Information or any part thereof available in any form or medium to any person except to such party's employees, agents, contractors and

consultants who have executed an agreement in writing to protect such Confidential Information and who have a need to access such Confidential Information for the purpose of this Agreement. Customer shall ensure that all persons to whom it gives access to the Confidential Information, including employees, agents, contractors and consultants, shall comply with the provisions of this Section 6 and the other provisions of this Agreement related to the use of the Densify Technology.

e. The provisions of Section 6.d shall not apply to any information which: (i) was at the time of disclosure to a party, in the public domain; (ii) after disclosure to a party becomes part of the public domain through no fault of the receiving party; (iii) was in the possession of the receiving party prior to the time of disclosure to it without any obligation of confidence or any breach of confidence; (iv) was received after disclosure to a party from a third party who had a lawful right to disclose such information to it; (v) was independently developed by a party without reference to the Confidential Information of the other party; or (vi) was ordered to be disclosed by a court, administrative agency, or other governmental body with jurisdiction over the parties hereto, provided that, to the extent legally permissible, the ordered party will have first provided the disclosing party with prompt written notice of such required disclosure and will take reasonable steps to allow the disclosing party to seek a protective order with respect to the confidentiality of the information required to be disclosed. Further, the ordered party will promptly cooperate with and assist the disclosing party in connection with obtaining such protective order.

f. Customer shall not remove any proprietary copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the Densify Technology.

g. Customer shall not export or re-export any part of the Densify Technology or any copies thereof, either directly or indirectly, outside of the Territory. Customer shall have the exclusive obligation to ensure that any export of the Densify Technology is in compliance with all applicable export laws and the laws of any foreign country.

6. **Passwords.**

a. Customer agrees to (and shall ensure that its personnel shall) keep Passwords absolutely confidential and ensure that Passwords are never disclosed, accidentally or otherwise, to anyone at any time. Customer is solely responsible for the maintenance and security of Passwords assigned or controlled by it and its personnel.

b. Customer is responsible for all consequences and losses relating to the use of Passwords assigned or controlled by Customer or its personnel, whether or not Customer authorized that use. If you know or suspect a Password is being misused, you must as soon as possible notify Densify and immediately change the Password. Customer agrees that until we receive such notice and have had a reasonable opportunity to implement measures to prevent unauthorized use of your Password, Customer will remain liable for all unauthorized use of your Password.

7. **Technical Support.**

a. Subject to the provisions of Section 8.d and provided that Customer has paid to Densify (either directly or through Reseller) the fees for the Densify Subscription Offering when due hereunder, Densify shall provide technical support to Customer for the Densify Subscription Offering as further described in Schedule D – Technical Support, located at www.densify.com/legal/schedule-d-cco, (the "Technical Support"), which Schedule is incorporated into this Agreement by reference and is deemed to be a part hereof. This Schedule may be updated by Densify from time to time.

b. Customer shall:

    i. Provide to Densify all necessary information, support and co-operation as is necessary for the performance of the Technical Support;

c. Densify shall notify Customer of any scheduled maintenance downtime for the Densify Subscription Offering in accordance with the policy set forth in Section 5 of the Technical Support.

d. Technical Support does not include or apply to any of the following: (i) making modifications to the Densify Subscription Offering for Customer; (ii) user training; (iii) consultation for new programs or equipment; (iv) hardware problems including any malfunction of hardware, or to any external causes affecting the Densify Subscription Offering (including the media upon which they are provided), such as accident, disaster, electrostatic discharge, fire, flood, lightning, water or wind; or (v) correction of errors attributable to software other than the Densify Subscription Offering. Any services required by Customer and provided by Densify to address any of the above exclusions shall be chargeable to Customer by Densify or Reseller (as applicable), which for orders placed with Densify shall be at Densify's then-applicable list

price for such services. Densify (or Reseller, as applicable) may also charge Customer for analysis or removal of errors that are caused by improper operation or handling of the Densify Subscription Offering or caused by circumstances unrelated to Densify. Payment for these services shall be made by Customer in accordance with Section 5.b hereof. All professional services rates are exclusive of travel and related expenses, which will be billed at cost and subject to any applicable taxes.

8. **Warranties and Disclaimer.**

   a. Densify warrants that it has the right to grant the rights and privileges to the Densify Subscription Offering to Customer. Densify warrants that during the Subscription Term, Customer's production instances of the Densify Subscription Offering shall materially conform to the subscription descriptions and the Documentation therefor, provided that Customer's exclusive remedy and Densify's sole obligation with respect to any breach of this warranty is for Densify to provide Technical Support to correct or provide a workaround to any nonconformity identified by Customer, provided that Customer has specified in writing for each such nonconformity how the Densify Subscription Offering failed to conform to the subscription descriptions and the Documentation.

   b. OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 9.a, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, DENSIFY DISCLAIMS ALL REPRESENTATIONS, WARRANTIES AND/OR CONDITIONS, EXPRESS OR IMPLIED, CONCERNING OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, PERFORMANCE, RESULTS, TITLE, NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, DENSIFY DOES NOT WARRANT THAT THE DENSIFY SUBSCRIPTION OFFERING, DENSIFY TECHNOLOGY OR DOCUMENTATION WILL MEET THE REQUIREMENTS OF CUSTOMER OR OTHERS OR THAT THEY WILL BE ACCURATE OR OPERATE WITHOUT INTERRUPTION OR ERROR. CUSTOMER ACKNOWLEDGES THAT IN ENTERING INTO THIS AGREEMENT IT HAS NOT RELIED ON ANY PROMISE, WARRANTY OR REPRESENTATION NOT EXPRESSLY SET FORTH HEREIN.

9. **Indemnification.**

   a. Subject to the exclusions set forth below, Densify shall: (i) defend Customer, its officers, directors and employees against any third party suit, claim, action or demand (each, a "Claim") to the extent arising from an allegation that the Densify Subscription Offering, used in accordance with this Agreement, infringes any third party patent, copyright or trademark or misappropriates any third party trade secret, and (ii) pay any settlement made by Densify or pay any damages awarded by a court by final order from which no appeal is taken or the time for appealing has expired, provided that (1) Customer notifies Densify promptly in writing of the Claim; and (2) Customer permits Densify to control the litigation and to defend, compromise or settle the Claim and provides all available information, assistance and authority to enable Densify to do so. Densify shall not be liable to reimburse Customer for any compromise or settlement made by Customer without Densify's prior written consent or for any legal fees or expenses incurred by Customer in connection with such Claim. Customer shall have no authority to settle any Claim on behalf of Densify.

   b. Should any portion of the Densify Subscription Offering become or in Densify's sole opinion be likely to become the subject of a Claim, Densify may: (i) contest the Claim; (ii) obtain permission from the claimant for Customer's continued use of the Densify Subscription Offering; (iii) replace or modify the Densify Subscription Offering to avoid infringement, if such replacement or modification has substantially the same capabilities as the Densify Subscription Offering; or, if the foregoing (i), (ii), and (iii) are not available on commercially reasonable terms in Densify's sole judgment, then (iv) terminate Customer's use of the Densify Subscription Offering and pay Customer a refund of any prepaid subscription fees covering the remaining portion of the applicable Subscription Term for the affected Densify Subscription Offering after the date of termination.

   c. Notwithstanding the above in this Section 10, Densify shall have no obligation or liability for any Claim under Section 10.a arising in whole or in part from: (i) any use of the Densify Subscription Offering which exceeds the authorized use permitted under this Agreement or not in accordance with the Documentation; (ii) Customer Data; (iii) use of the Densify Subscription Offering after termination in accordance with Section 10.b(iv); (iv) use of the Densify Subscription Offering in combination with any hardware, software, application or service that was not provided by Densify, if the Claim would have been avoided by the non-combined or independent use of the Densify Subscription Offering.

   d. This Section 10 states Densify's entire liability and Customer's exclusive remedy with respect to any intellectual property rights of any third party.

10. **Limitation of Liability.**

    a. FOR ANY BREACH OR DEFAULT BY DENSIFY OF ANY OF THE PROVISIONS OF THIS AGREEMENT, OR WITH RESPECT TO ANY CLAIM ARISING HEREFROM OR RELATED HERETO, EACH PARTY'S AGGREGATE LIABILITY TO THE OTHER PARTY, REGARDLESS OF THE FORM OF ACTION, WHETHER BASED ON CONTRACT OR TORT, INCLUDING NEGLIGENCE, SHALL IN NO EVENT EXCEED THE AMOUNTS PAID OR PAYABLE BY CUSTOMER (WHETHER TO DENSIFY OR RESELLER, AS APPLICABLE) FOR THE PRODUCTS OR SERVICES GIVING RISE TO THE CLAIM DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE CLAIM (THE "LIABILTY CAP"). THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT INCREASE THIS LIMIT. THE LIABILITY CAP SHALL NOT APPLY TO: (1) EACH PARTY'S OBLIGATIONS UNDER SECTION 6 (PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION); (2) CUSTOMER'S OR AFFILIATES' BREACH OF SECTION 4(A) (RESTRICTIONS); (3) CUSTOMER'S OR AFFILIATES' FAILURE TO PAY THE FEES OWING UNDER THIS AGREEMENT (TO THE EXTENT A CUSTOMER/AFFILIATE OBLIGATION AND NOT A RESELLER OBLIGATION); (4) DENSIFY'S OBLIGATIONS UNDER SECTION 10 (INDEMNIFICATION): (5) INFRINGEMENT OR MISAPPROPRIATION BY CUSTOMER OF DENSIFY'S INTELLECTUAL PROPERTY RIGHTS; (6) INFRINGEMENT OR MISAPPROPRIATION BY DENSIFY OF CUSTOMER'S INTELLECTUAL PROPERTY RIGHTS; AND (6) A PARTY'S FRAUD, GROSS NEGLIGENCE OR WILFULL MISCOUNDUCT .

    b. OTHER THAN FOR A BREACH OF SECTION 4.A (LICENSE RESTRICTIONS) OR SECTION 6 (PROPRIETARY RIGHTS AND CONFIDENTIAL INFORMATION), IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY IN CONNECTION WITH THIS AGREEMENT FOR ANY SPECIAL, INCIDENTAL, INDIRECT OR CONSEQUENTIAL LOSS OR DAMAGE, LOST BUSINESS REVENUE, LOSS OF PROFITS, OR LOSS OF DATA, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE.

    c. THE LIMITATIONS, EXCLUSIONS AND DISCLAIMERS IN THIS AGREEMENT SHALL APPLY IRRESPECTIVE OF THE NATURE OF THE CAUSE OF ACTION, DEMAND, OR ACTION BY CUSTOMER, INCLUDING BUT NOT LIMITED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR ANY OTHER LEGAL THEORY AND SHALL SURVIVE A FUNDAMENTAL BREACH OR BREACHES OR THE FAILURE OF THE ESSENTIAL PURPOSE OF THIS AGREEMENT.

    d. Neither Densify nor Customer may bring an action, regardless of form, arising out of or related to this Agreement more than two (2) years after the cause of action has arisen or the date of discovery of such cause, whichever is later.

11. **Termination.**

    a. This Agreement continues until terminated under the terms of this Agreement. Either party may terminate this Agreement in its entirety either: (i) upon thirty (30) days' prior written notice to the other party, if at the time of notice there are no Orders in effect; or (ii) upon written notice if the other party becomes insolvent, makes an assignment for the general benefit of creditors, files for protection or makes a proposal to creditors generally under any insolvency, bankruptcy or creditors' relief legislation, if the other party is subject to an accepted petition for an involuntary bankruptcy, if any proceedings are commenced by or against the other party under any bankruptcy or insolvency laws or if proceedings for the appointment of a trustee, custodian, liquidator, receiver or receiver manager for the other party are commenced, or if the other party ceases or threatens to cease to carry on business. Either party may terminate this Agreement or an applicable Order upon written notice if the other party materially breaches this Agreement or the applicable Order for the affected service and does not cure the breach within thirty (30) days after receiving written notice thereof from the non-breaching party.

    b. Upon termination of the Densify Subscription Offering for any reason, Customer shall stop using, and Densify shall stop providing, the Densify Subscription Offering and all rights granted to Customer in this Agreement shall terminate. Densify shall within thirty (30) days following the effective date of termination by Customer for Densify's breach, refund to Customer all prepaid fees received by Densify for the remaining portion of the Subscription Term for the affected Densify Subscription Offering after the date of termination. Within thirty (30) days following the effective date of a termination by Densify for Customer's breach, Customer shall pay (to Densify or Reseller, as applicable) all remaining amounts (if any) payable under this Agreement for the Subscription Term applicable to the terminated Densify Subscription Offering regardless of the due dates specified in the Order.

    c. Densify shall provide Customer Data in an industry standard database export format (e.g. CSV) (excluding for certainty any Densify Technology) to Customer within thirty (30) days of Customer's written request and at no additional cost to Customer. After forty-five (45) days following the expiration or termination

of this Agreement or all Orders for the Densify Subscription Offering, if Customer has not requested the return of its Customer Data, Densify shall have no obligation to maintain or provide any Customer Data and shall thereafter, unless legally prohibited, have the right to delete all Customer Data in its systems or otherwise in its possession or under its control and delete Customer's instances of the Densify Subscription Offering.

12. Miscellaneous.

a. <u>Notices</u>. Except as otherwise provided herein, all notices shall be in writing and deemed given upon: (i) personal delivery; (ii) when received by the addressee if sent by a recognized overnight courier (receipt requested); (iii) the second business day after mailing; or (iv) the first business day after sending by email with confirmation of receipt, except that email shall not be sufficient for notices regarding a claim. Notices shall be sent to the parties as set forth in this Agreement or as otherwise advised by a party.

b. <u>FAR/DFARS Requirements.</u> The Parties agree that the Densify Technology was developed exclusively at private expense and are Commercial Items as that term is defined in Federal Acquisition Regulation (FAR) 48 C.F.R. §2.101. Use, duplication, release, modification, transfer or disclosure ("Use") of the Densify Technology is restricted by the terms of this Agreement and the Densify Technology is Licensed hereunder (i) only as commercial items, and (ii) with only those rights as are typically granted to commercial end users, consistent with the terms and conditions of this Agreement. Such Use is further restricted in accordance with FAR 52.227-14 for civilian Government agency purposes and 252.227-7015 of the Defense Federal Acquisition Regulation Supplement ("DFARS") for any Government agency within the U.S. Department of Defense of the similar acquisition regulations of other applicable Government organizations, as applicable and amended. Use of the Densify Technology shall be in accordance with DFARS Section 227.7202 and FAR Sections 12.211 and 12.212. Except as described herein, all other use is prohibited. Thus, pursuant to the FAR 48 C.F.R. §§12.211 and 12.212 and 227.7202-4, this section describing U.S. Government use is in lieu of, and supersedes, any other FAR, DFARS, or other clause or provision that addresses Government rights in Densify computer software, computer software documentation, or technical data under this Agreement and in any contract or subcontract under which the Densify Technology is acquired or licensed.

c. <u>Assignment</u>. Neither party may assign its rights or obligations under this Agreement, whether by operation of law or otherwise, without the prior written consent of the other party. Notwithstanding the foregoing, either party may, without the other party's consent, assign this Agreement: (i) to a successor in connection with a merger, reorganization or sale of all or substantially all of the assets or equity of such party; or (ii) to any affiliate. The assigning party shall provide the non-assigning party with prompt written notice of any such assignment. Any attempted or purported assignment in violation of this Section 13.c will be null and void. Subject to the foregoing, this Agreement shall bind and enure to the benefit of the parties, their respective successors and permitted assigns.

d. <u>Force Majeure.</u> If the performance of this Agreement, or any obligation thereunder, except the making of payments hereunder, is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labour disputes; inability to procure or obtain delivery of parts, supplies, power, equipment or software from suppliers; war or other violence; any law, order, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take all reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

e. <u>Severability</u>. The parties agree that it is the intention of each party not to violate any public policy, statutory or common law or government regulation. To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent shall be severed and deleted herefrom or limited so as to give effect to the intent of the parties insofar as possible and the parties will use their best efforts to substitute a new provision of like economic intent and effect for the illegal, invalid or unenforceable provisions and each remaining provision shall be enforced.

f. <u>Waiver</u>. No modification, addition to or waiver of any rights, obligations or defaults shall be effective unless in writing and signed by the party against whom the same is sought to be enforced. One or more waivers of any right, obligation or default shall not be construed as a waiver of any subsequent right, obligation or default. No delay or failure of either party in exercising any right hereunder and no partial or single exercise thereof shall be deemed of itself to constitute a waiver of such right or any other rights hereunder.

g. <u>Governing Law</u>. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the laws of Canada applicable therein. With respect to any action, suit or proceeding brought by either party hereto under or relating to this Agreement, each party irrevocably submits to the exclusive jurisdiction of the courts of the Province of Ontario. The Uniform Computer Information Transaction Act shall not apply to this Agreement. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods.

h. <u>Dispute Resolution</u>. All disputes arising out of or in connection with this Agreement, or in respect of any legal relationship associated with or derived from this Agreement, shall be arbitrated and finally resolved pursuant to the National Arbitration Rules of the ADR Institute of Canada, Inc. The place of arbitration shall be Toronto, Ontario. The language of the arbitration shall be English. This provision shall not apply to disputes involving Section 6 (in which case either party shall be free to seek available remedies in any forum).

i. <u>No Partnership or Agency</u>. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, nor authorize any party to make or enter into any commitments for or on behalf of another party.

j. <u>Use of Aggregate Data</u>. Customer agrees that Densify may collect, use and disclose quantitative data derived from the use of the Densify Subscription Offering for industry analysis, benchmarking, analytics, marketing, and other business purposes. All data collected, used and disclosed will be in aggregate form only and will not identify Customer or its users.

k. <u>Survival</u>. The provisions of this Agreement which by their nature should survive, shall survive any termination or this Agreement, including, without limitation, Sections 4.a, 5, 6, 9.b, 10, 11, 12.b, 12.c, and 13.

l. <u>Third Party Beneficiaries</u>. No third party will be deemed to be an intended or unintended third party beneficiary of this Agreement.

m. <u>Headings</u>. The division of this Agreement into Sections and the insertion of headings are for convenience of reference only and shall not affect the construction or interpretation of the Agreement.

n. <u>Entire Agreement</u>. This Agreement, together with the DPA, Orders and other information included by reference herein, contains the entire agreement of the parties with respect to the subject matter hereof and supersedes any prior agreements or understandings of the parties concerning the subject matter hereof. The terms of this Agreement apply to the exclusion of any other terms that Customer seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing. Any purchase order submitted by Customer to Densify is for Customer's internal purposes only and its terms and conditions are superseded and replaced by this Agreement, and the purchase order terms and conditions have no force or effect. Customer acknowledges that is has not relied on any statement, promise or representation made or given by or on behalf of Densify that is not set out in this Agreement. Customer's Orders are not contingent on, and Customer has not relied on, the delivery of any future functionality regardless of any verbal or written communication about Densify's future plans. Customer agrees not to commence any action, suit or proceeding in respect of any matters contemplated herein against Reseller. This Agreement may be executed in counterparts, each of which shall be deemed to be an original.