

# DELTA FIVE SYSTEMS, LLC

## SUBSCRIPTION PLAN TERMS AND CONDITIONS

### 1. DEFINITIONS

Capitalized terms used in this Agreement and not otherwise defined herein shall have the meaning set forth below:

**“Agreement”** means these Subscription Plan Terms and Conditions.

**“Deliverables”** means all documents, Products, equipment, Software and other materials developed and/or supplied by DELTA FIVE to CUSTOMER in connection with this Agreement.

**“Intellectual Property Rights”** means, without limitation, and whether or not patentable, all ideas, discoveries, inventions, improvements, patents, patent applications and issued patents, designs, design applications and design registrations, trademarks, trade mark applications, trade mark registrations, trade names (whether registered or unregistered), copyright, copyright applications and registrations, processes, data, studies, trade secrets and Proprietary Information related to the Services (or their research, development, manufacture, use or commercialization), including any enforcement rights, in each case in any jurisdiction in the world, and all the rights to apply for the same.

**“Party”** or **“Parties”** means DELTA FIVE or CUSTOMER, as applicable.

**“Portal”** means DELTA FIVE’s web-based portal that provides users with access to information and alerts relating to the Product, including alerts when the Product detects that a pest entered the Product.

**“Products”** mean the equipment, hardware, components and devices provided by DELTA FIVE to CUSTOMER as part of the Services.

**“Services”** means Customer’s access to the Portal and the provision of Deliverables by DELTA FIVE to CUSTOMER, which may include (by way of example) the delivery and installation of Products and other professional services, to provide solutions as described in one or more Schedules.

**“Schedule”** means a transactional document entered into pursuant to this Agreement and executed by both Parties that sets forth, among other things, a description of the Services, Deliverables, pricing, payment terms, and a schedule for delivery. Each such Schedule, when executed by an authorized representative of both Parties shall incorporate therein all of the terms and conditions of this Agreement.

**“Software”** means the proprietary software developed by DELTA FIVE (including any updates, fixes, upgrades or revisions) that is embedded in the Products or installed as part of the Services.

### 2. SERVICES

2.1 Subject to the terms of this Agreement, DELTA FIVE SYSTEMS, LLC (“**DELTA FIVE**”) shall provide the Services to CUSTOMER as set forth in a Schedule during the term of the applicable Schedule. The Product includes a component that attracts insects through the use of a lure (the “**Lure**”). The Lure must be replaced from time to time for the Product and Services to operate properly. CUSTOMER shall replace the Lure in accordance with the instructions and time intervals provided by DELTA FIVE in order for the Product to retain efficacy. Title to and ownership of the Product, Portal, all materials developed by DELTA FIVE in the course of providing the Services to CUSTOMER, and all Intellectual Property Rights embodied therein, as well as all computer programs, program listings, programming tools, documentation, reports, drawings and other materials developed by DELTA FIVE in the course of providing Services to CUSTOMER shall remain vested in DELTA FIVE. CUSTOMER may

continue to access and use the Portal, Services, and Deliverables only during the term of its subscription set forth in the applicable Schedule(s). CUSTOMER is solely responsible for the designation and administration of passwords for its access to the Portal, and shall keep its password confidential and not share its password with any other person. CUSTOMER shall be responsible for maintaining its own technical environment, including but not limited to the hardware and internet access to access the Portal, and providing compatible wireless internet access for the Product.

### 3. SOFTWARE LICENSE

3.1 Subject to the terms of this Agreement, DELTA FIVE hereby grants to CUSTOMER the right to access and use the Portal, Deliverables, and Software solely in connection with the Services during the term set forth in the applicable Schedule(s). Title to the Portal, Deliverables, and Software (and each copy thereof), and the right to grant licenses to use the Portal, Deliverables, and Software shall at all times remain vested in DELTA FIVE. CUSTOMER shall not: (i) lease, rent, sublicense, sell, assign, convey or transfer the Portal, Deliverables, or Software to, or otherwise permit use of, the Portal, Deliverables, or Software by or for any unaffiliated third party; (ii) distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify the Portal, Deliverables, or Software, or permit any third party to engage in any of the foregoing; (iii) remove or have removed from any copies of the Deliverables or Software DELTA FIVE’s proprietary rights notices in the forms set forth in the Deliverables or Software; (iv) use any DELTA FIVE Proprietary Information to create any product, software, or documentation that is similar to any portion of the Portal, Deliverables, or Portal; or (v) attempt to create or permit others to attempt to create, by reverse compiling or reverse assembling or otherwise, any part of the Portal, Deliverables, or Software source programs from the object programs or other information provided to CUSTOMER by DELTA FIVE.

### 4. TERM; TERMINATION

4.1 **Term.** The term of this Agreement shall commence upon the effective date of the first Schedule and shall continue until the expiration or termination of the last Schedule, unless sooner terminated in accordance with this Agreement (the “**Term**”). The initial term of each Schedule shall be as stated in the applicable schedule (the “**Initial Term**”), and thereafter shall automatically renew for successive periods of twelve (12) months each (each, a “**Renewal Term**”), unless either Party provides notice of non-renewal at least thirty (30) days in advance of the end of the then-current Renewal Term, or unless otherwise terminated by a Party as provided herein.

4.2 **Termination.** Either Party (“**Terminating Party**”) may terminate this Agreement or any Schedule immediately without liability to the other and without prejudice to its other rights at any time by giving notice in writing to the other Party (“**Defaulting Party**”) if the Defaulting Party is in material breach of any of the terms of this Agreement which is not capable of remedy or where remedial action has failed to remedy that breach within thirty (30) days of being notified in writing of it; Termination of this Agreement or any Schedule (or any element of it) shall not affect any rights, obligations, or liabilities of either Party which have accrued before termination or which are intended to continue to have effect beyond termination.

Upon termination of the applicable Schedule, CUSTOMER will immediately cease to have access to the Portal, Deliverables, and the Services, and shall immediately pay to DELTA FIVE all unpaid fees incurred prior to the date of termination. If the Agreement or any Schedule is terminated early for any reason other than by CUSTOMER for DELTA FIVE'S material breach of the Agreement, within thirty (30) days following the date of termination, CUSTOMER shall pay to DELTA FIVE all fees due to DELTA FIVE pursuant to this Agreement and the applicable Schedule(s) for the remainder of the unused portion of the applicable Term.

## 5. FEES; PAYMENT TERMS

5.1 Fees. DELTA FIVE shall invoice CUSTOMER in accordance with the terms set forth in each Schedule. Unless otherwise set forth on the applicable Schedule, CUSTOMER shall be responsible for all fees for shipping; insurance; and sales, use, excise, or other taxes, tariffs, duties, fees, or assessments imposed by any jurisdiction, which are additional to the Product and Services pricing set forth in each Schedule.

5.2 Fees for Renewal Terms. Unless otherwise set forth in the applicable Schedule, the fees for each Renewal Term shall continue at the same price as the immediately prior term (prorated for the length of the actual Renewal Term); provided, however, that DELTA FIVE may increase the applicable price prior to the commencement of the applicable Renewal Term upon written notice to CUSTOMER (the "Renewal Fees").

5.3 Fees for Replacement Lures and Portal Access. The fees for replacement Lures and access to and use of the Product and the Portal during the Initial Term are included in the fees set forth in the applicable subscription Schedule, and DELTA FIVE will ship replacement Lures to CUSTOMER at required intervals during this term at no additional cost to CUSTOMER. During any Renewal Term, replacement Lures and access to and use of the Product and Portal are included in the Renewal Fees, and DELTA FIVE will ship replacement Lures during this term at no additional cost to CUSTOMER.

5.4 Payment Terms. Unless otherwise specified in a Schedule, all amounts due and payable hereunder shall be payable by CUSTOMER within thirty (30) days of the date of the invoice. CUSTOMER shall pay all fees in U.S. Dollars by check or ACH transfer. DELTA FIVE may assess, and CUSTOMER shall pay, a service charge accruing on past due amounts at a rate of the lesser of the rate of one and one-half percent (1.5%) per month or the maximum lawful interest rate.

## 6. CONFIDENTIALITY

6.1 Each Party hereby agrees that during the term of this Agreement and for a period of three (3) years thereafter to hold in confidence all information concerning the other Party or its business, including, but not limited to contract terms, financial information, operating data, or business plans or models, whether for existing, new or developing businesses, and any other proprietary information (collectively referred to as the "Proprietary Information"), whether communicated orally or in documentary or other tangible form. Proprietary Information does not include (i) the fact that the Parties are conducting business; (ii) information that was already known to the receiving Party without obligation of confidentiality; (iii) information that is or becomes properly available to the receiving Party (under conditions which do not restrict further disclosure) from a third party source who did not obtain such information directly or indirectly from the disclosing Party; or (iv) information that is or becomes part of the public domain through no fault of the receiving Party. The Parties to this

Agreement recognize that each Party has invested considerable amounts of time and money in attaining and developing all of the information described above, and any unauthorized disclosure or release of such Proprietary Information in any form would irreparably harm the non-breaching party. Both Parties agree that upon termination and/or expiration of this Agreement, all Proprietary Information, Products, documents, files, and any other material or work product shall be returned to the requesting Party.

## 7. WARRANTY; DISCLAIMER

7.1 Warranty. During the term of the applicable subscription set forth in the Schedule (the "Warranty Period"), DELTA FIVE warrants to CUSTOMER that the Products will be free of defects in materials and workmanship and shall perform the functions according to the applicable documentation. In the event a breach of this warranty is reported to DELTA FIVE during the Warranty Period, DELTA FIVE's sole liability and CUSTOMER's sole remedy shall be for DELTA FIVE, at its sole option, to (i) use commercially reasonable efforts to correct any instance in which the Product fails to perform substantially in accordance with the documentation, or (ii) replace the Product or any non-conforming component thereof. The warranty shall not apply if the Product has been: (i) modified in any manner by CUSTOMER not authorized by DELTA FIVE; (ii) used in a manner other than as expressly authorized in this Agreement; (iii) damaged through no fault of DELTA FIVE; or (iv) used on or with hardware, software or middleware other than that specified in the applicable documentation. If DELTA FIVE replaces any devices pursuant to the warranty set forth in this Section 7.1, CUSTOMER shall be responsible for all shipping and handling costs and taxes for the defective devices and replacement devices. In the event that a Product is damaged or stolen and is not subject to the warranty set forth in this Section 7.1, CUSTOMER is responsible for the cost of the replacement device at a cost per device as set forth in the applicable Schedule, plus shipping, handling, and taxes. CUSTOMER is responsible for installing all new or replacement devices using DELTA FIVE's plug-and-register, self-installation process.

7.2 Disclaimer. THE WARRANTIES SET FORTH IN THIS AGREEMENT ARE EXCLUSIVE AND EXPRESSLY IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY: (I) IMPLIED WARRANTY OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE; OR (II) IMPLIED WARRANTY ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING, OR USAGE OF TRADE. DELTA FIVE DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE SECURITY ASSOCIATED WITH THE PRODUCTS OR SERVICES, OR ASSOCIATED WITH THE TRANSMISSION OF INFORMATION TO OR THROUGH THE PRODUCTS OR SERVICES. THE PRODUCT IN COMBINATION WITH THE PORTAL IS INTENDED AS AN EARLY WARNING SYSTEM TO DETECT THE PRESENCE OF BED BUGS; PROVIDED, HOWEVER, DELTA FIVE DOES NOT GUARANTEE THAT THE PRODUCTS OR SERVICES WILL PREVENT BED BUGS OR BED BUG INFESTATIONS, AND EXPRESSLY DISCLAIMS ALL LIABILITY RELATING TO THE PRESENCE OF BED BUGS.

## 8. INDEMNIFICATION; LIMITATION OF LIABILITY

8.1 Indemnification. To the fullest extent permitted by law, each Party shall defend, indemnify and hold harmless the other Party and its affiliates, (and the officers, directors, employees, contractors, and agents of each of them), from and against all damages, liabilities, claims, losses, costs and expenses (including but not limited to reasonable attorney and expert witness fees and expenses), arising from third party claims ("Claims") which the indemnified parties may incur, suffer, become liable for, or which

may be asserted or claimed against the indemnified parties as a result of: (i) the acts, errors, or omissions of a Party resulting in a misrepresentation or breach of any warranty set forth in this Agreement; or (ii) any claim or threatened claim by any third party that a Party infringes upon the other Party's Intellectual Property Rights. CUSTOMER shall defend, indemnify and hold harmless DELTA FIVE and its affiliates (and its officers, directors, employees, contractors, and agents), from and against all Claims relating to the presence of bed bugs. The indemnified Party may participate in the defense of any claim with counsel of its choosing, at its own expense. The indemnifying Party will not enter into any settlement of a claim without the prior written consent of the indemnified Party.

**8.2 Limitation of Liability.** IN NO EVENT AND UNDER NO CIRCUMSTANCES SHALL DELTA FIVE HAVE ANY LIABILITY FOR (I) CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION DAMAGES FOR LOST PROFITS), PUNITIVE DAMAGES, EXEMPLARY DAMAGES, OR OTHER SPECIAL DAMAGES OF ANY KIND, INCLUDING (WITHOUT LIMITATION) ANY DAMAGES INCURRED BY CUSTOMER FOR ITS FAILURE TO USE (OR NOT USE) THE DELIVERABLES AS RECOMMENDED BY DELTA FIVE, OR (II) ANY DAMAGES ARISING FROM DATA LOSS RELATING TO THE USE OF THE PRODUCTS OR SERVICES, OR UNAUTHORIZED ACCESS TO OR ALTERATION OF CUSTOMER'S SYSTEMS OR DATA. THE TOTAL AGGREGATE LIABILITY OF DELTA FIVE FOR DIRECT DAMAGES SHALL NOT EXCEED THE FEES PAID BY CUSTOMER TO DELTA FIVE FOR THE SPECIFIC SERVICES UNDER THE INDIVIDUAL SCHEDULE THROUGH WHICH THE EVENT GIVING RISE TO SUCH CLAIM AROSE.

## **9. GENERAL TERMS**

**9.1 Integration.** This Agreement, its Schedules, attachments and all other documents referred to herein constitute the complete agreement of the parties relating to the subject matter hereof and supersedes any and all prior or contemporaneous agreements or understanding relating to the same subject matter. References to this Agreement shall include its Schedules and attachments in effect from time to time. Neither Party shall be bound by, nor liable to the other Party for, any representation, promise or inducement made by any agent or person on behalf of such Party that is not contained in this Agreement or its Schedule(s). No amendment or modification of this Agreement shall be valid or binding unless it is made in writing and signed by an authorized representative of each Party. If there is a conflict or inconsistency between the various documents forming this Agreement, such conflict shall be resolved by giving precedence in the following order: the Schedule; this Agreement; and the order acknowledgement(s).

**9.2 Waiver and Severability.** A waiver of any breach or provision of this Agreement shall only be effective if it is made in writing and signed by an authorized representative of the Party who is waiving the breach or provision. Any waiver so given will not be deemed a waiver of that provision or any subsequent breach and shall not affect the enforceability of any other term of this Agreement. To **9.8 Counterparts.** Either the originals or copies, including facsimile transmissions, of this Agreement and the Schedules hereto, may be executed as counterparts, each of which is deemed an original and all of which constitute one and the same agreement. The signatures of all of the parties need not appear on the same counterpart, and delivery of an executed counterpart signature page by facsimile or other electronic means is as effective as executing and delivering the Schedule(s) to this Agreement in the presence of the other Party to this Agreement.

the fullest extent possible, each provision of this Agreement shall be interpreted in such a manner as to be effective and valid under applicable law. If any provision of this Agreement is finally determined to be invalid or unenforceable such provision shall be deemed to be severed from this Agreement and every other provision of this Agreement shall remain in full force and effect.

**9.3 Remedies.** If either Party fails to exercise a right or remedy that it has or which arises in relation to this Agreement, such failure shall not prevent that Party from exercising that right or remedy subsequently with respect to that or any other incident.

**9.4 Relationship of the Parties.** Nothing in this Agreement is intended to, or shall, operate to create a partnership or joint venture of any kind between DELTA FIVE and CUSTOMER, nor authorize either Party to act as agent for the other. Neither Party has the authority to act in the name or on behalf of, or otherwise bind, the other Party in any way. Persons or entities who are not a Party to this Agreement shall not have any rights under this Agreement, and the Parties hereby agree that nothing in this Agreement shall be construed as creating a right that is enforceable by any person or entity that is not a Party to this Agreement or a permitted assignee of such Party. Notwithstanding anything contained herein to the contrary, any and all affiliates and joint ventures of CUSTOMER may elect to participate in this Agreement under the terms set forth herein by executing a Schedule referencing this Agreement. In the event of participation by any affiliate or joint venture, reference in this Agreement to CUSTOMER shall mean the CUSTOMER entity that executed the Schedule.

**9.5 Assignment.** Neither Party shall assign, delegate, or otherwise transfer this Agreement or any of its rights under it, or purport to do any of these things, or any interest relating to this Agreement without the prior written approval of the other Party; provided, however, that this Agreement may be assigned to a third party if the assigning Party sells all or substantially all of its assets or equity to such third party. This Agreement is binding upon and inures to the benefit of the Parties and their permitted successors and assigns.

**9.6 Notice.** Any notices (including requests, demands or other communication) to be sent by one Party to the other in connection with this Agreement shall be in writing and shall be delivered personally, by reputable overnight courier, by special delivery post (or equivalent service offered by the postal service from time to time), or by facsimile transmission.

**9.7 Governing Law.** This Agreement will be governed by and interpreted in accordance with the laws of the State of North Carolina in the United States of America, without giving effect to any conflicts of laws rules that would require the application of the law of a different jurisdiction. Any action or proceeding arising from or relating to this Agreement of its Schedule(s) must be brought exclusively in a court of competent jurisdiction in Wake County, North Carolina, and each Party irrevocably submits to the exclusive jurisdiction and venue of any such court in any such action or proceeding.