

## DENALI ADVANCED INTEGRATION BETA TEST AGREEMENT

PLEASE READ THIS AGREEMENT CAREFULLY. BY CLICKING “ACCEPTED AND AGREED TO” YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS AND AGREE TO BE BOUND BY THIS AGREEMENT, INCLUDING THE PRIVACY STATEMENT INCORPORATED HEREIN BY REFERENCE AVAILABLE AT <https://www.denaliai.com/en-us/privacy-statement/> WHICH GOVERNS THE USE AND COLLECTION OF PERSONAL INFORMATION WHICH MAY CHANGE FROM TIME TO TIME. YOU UNDERSTAND AND AGREE THAT WE MAY TRANSFER, PROCESS, AND STORE YOUR DATA TO/IN OTHER COUNTRIES, INCLUDING THE UNITED STATES.

This Beta Test Agreement (“**Agreement**”) is a legally binding contract between 3MD, Inc. d/b/a Denali Advanced Integration (“**Denali**”), and the organization or entity on whose behalf you are authorized to enter this Agreement as an individual end user (collectively “**You**,” or “**Your**”) of Denali’s beta test product.

Denali provides an automation platform software and/or hardware system that accompanies this Agreement (collectively the “**Beta Product(s)**” as further defined below) and Your use and conduct related to the Beta Product. You agree that when You access or use the Beta Product, You will do so subject to this Agreement. DO NOT ACCESS OR USE THE BETA PRODUCT IF YOU ARE UNWILLING OR UNABLE TO BE BOUND BY THIS AGREEMENT.

This Agreement is effective as of the date You click “Accepted and Agreed To” (the “**Effective Date**”).

### **1. GENERAL USE OF THE BETA PRODUCT.**

- 1.1. **Beta Product.** Denali’s Beta Product is an automated management platform that, among other things, facilitates the tracking of inventory and various phases of asset visibility. This includes and is not limited to, a rapid asset management platform (“**RAMP**”), any version or system of Denali’s proprietary, non-commercially available, hosted software application, hardware, platform services, features, functionality, and/or any associated updates that Denali has designated as a Beta Product and distributes to You or through other authorized suppliers. RAMP is a component of the Beta Product which may also include a process management system and may be in references thereto.
- 1.2. **Eligibility.** You represent and warrant that You are 18 years old or older, and You recognize and agree that You must be 18 years old or older to use the Beta Product in accordance with this Agreement.
- 1.3. **Beta Product Subscription and Use.** During the Term (as defined in Section 10.1 below), You may access and use the Beta Product in connection with any instructions, user guidelines, printed, online, written, and/or reference material(s) provided to You in connection with the Beta Product for the purpose of testing, input and other Feedback (as defined below). You may reproduce and use Denali’s information related to the Beta Product solely as necessary to support the use of the Beta Product.
- 1.4. **Beta Product Revisions.** Denali may revise, add, or adjust the features and functions of the Beta Product at any time.

### **2. LICENSE GRANT.**

- 2.1. **License.** Denali hereby grants You a limited nonexclusive license to reproduce and use the Beta Product in accordance with this Agreement, provided You comply with the restrictions set forth below in Section 2.2 (Restrictions on Software Rights). The license in the preceding sentence does

not include use by any third party, and You shall not permit any such use. Denali grants the license in this Section 2 under copyright and patent pending obligations, solely to the extent necessary to exercise such rights, under any other applicable intellectual property rights.

- 2.2. Restrictions on Software Rights. Copies of the Beta Product created or transferred pursuant to this Agreement are licensed, not sold, and You receive no title to or ownership of any copy or of the Beta Product itself. Furthermore, You receive no rights to the Beta Product other than those specifically granted in Section 2 above. Without limiting the generality of the foregoing, You shall not: (a) modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Beta Product; (b) use the Beta Product in any way forbidden by Section 5.1 (Acceptable Use); or (c) reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Beta Product's source code.

### **3. YOUR CONTENT.**

- 3.1. Permission from You. You grant Denali permission to access, process, and otherwise use Your Content (as defined below) to provide Denali's products and/or services to You, to track and analyze Your use of the Beta Product, and make Your Content available to other users of the Beta Product and other third parties if applicable. To the extent that You have intellectual property rights in Your Content, You grant Denali a world-wide, perpetual, non-exclusive, royalty-free, sublicensable, transferable license to use and prepare derivative works from Your Content for the purposes outlined in this Agreement. You agree that Your Content is not any person's or entity's confidential information, including Yours. As between the parties in this Agreement, You retain ownership of Your Content. For the avoidance of doubt, under this Agreement, "**Your Content**" means any Content transmitted by You or on Your behalf to Denali or its agents. "**Content**" means text, images, photos, audio or video files, and other forms of data or communication.
- 3.2. Rights in Your Content. You represent and warrant that You own Your Content or have received a valid license to Your Content and that submitting or transmitting Your Content to or through the Beta Product will not violate the rights of any third party, including without limitation intellectual property, privacy, or publicity rights. Denali is under no obligation to review or screen Your Content or other Beta Product users' Content.
- 3.3. Accuracy. Denali has no responsibility or liability for the accuracy of any Content submitted to or transmitted through the Beta Product by You or another user, including without limitation Your Content.
- 3.4. Right to Retain, Delete or Suspend Access. You must not rely on the Beta Product for backup or storage of Your Content. Denali may retain Your Content even if You are no longer using the Beta Product, but Denali is not required to give You copies of Your Content. Denali may permanently delete or erase Your Content or suspend Your access to Your Content through the Beta Product at any time and for any reason.

### **4. PRIVACY.**

- 4.1. Privacy Compliance. You acknowledge Denali's Privacy Statement at <https://www.denaliai.com/en-us/privacy-statement/>, and you recognize and agree that nothing in this Agreement restricts Denali's right to alter such Privacy Statement. If Denali receives a "right to know," deletion, "right to be forgotten," or similar request related to Your Content, Denali will respond in accordance to Your

request through our secure Privacy Portal, which can be found on Denali's Privacy Policy at <https://www.denalai.com/en-us/privacy-statement/>, and with further questions email nothing in this Agreement precludes Denali from asserting rights or defenses it may have under applicable law related to such requests.

- 4.2. **De-Identified Data.** Denali may use, reproduce, sell, publicize, or otherwise exploit De-Identified Data (as defined below) refers to Your Content with the following removed: information that identifies or could reasonably be used to identify You, an individual person, or a household, in any way, in its sole discretion, including without limitation aggregated with data from other customers ("**De-Identified Data**").
- 4.3. **Risk of Exposure.** **YOU UNDERSTAND AND AGREE THAT SHARING CONTENT ONLINE INVOLVES RISKS OF UNAUTHORIZED DISCLOSURE OR EXPOSURE AND THAT, IN SUBMITTING YOUR CONTENT TO OR TRANSMITTING IT THROUGH THE BETA PRODUCT, YOU ASSUME THOSE RISKS.** Denali offers no representation, warranty, or guarantee that Your Content will not be exposed or disclosed through the Beta Product or through errors or the actions of third parties.

## **5. YOUR RESPONSIBILITIES & RESTRICTIONS.**

- 5.1. **Acceptable Use.** You agree You shall not: (a) provide Beta Product passwords or other log-in information to any third party; (b) share non-public Beta Product features or Content with any third party; (c) access the Beta Product in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Beta Product, or to copy any ideas, features, functions or graphics of the Beta Product; or (d) engage in web scraping or data scraping on or related to the Beta Product, including without limitation collection of information through any software that simulates human activity or any bot or web crawler. If Denali suspects that You have violated the requirements of this Subsection 5.1, Denali may suspend Your access to the Beta Product without advanced notice, in addition to such other remedies as Denali may have. Denali is not obligated to take any action against You or any other Beta Product user or other third party for violating this Agreement, but Denali is free to take any such action it sees fit.
- 5.2. **Unauthorized Access.** You agree to take reasonable steps to prevent unauthorized access to the Beta Product, including by protecting Your passwords and other log-in information. You shall notify Denali at [legal@denalai.com](mailto:legal@denalai.com) immediately if You have knowledge of, or suspect unauthorized use or in breach of its security.
- 5.3. **Compliance with Laws.** In using the Beta Product, You shall comply with all applicable laws that pertain to the Use and Obligations of the Beta Program under this Agreement.
- 5.4. **Beta Product Access.** You are responsible and liable for: (a) Your use of the Beta Product, including unauthorized conduct through Your account and conduct that would violate the requirements of this Agreement; and (b) any use of the Beta Product through Your account or passwords, whether authorized or not.
- 5.5. **Communications from Denali.** You consent to receive communications through email and/or text messages from Denali in connection with Your use of the Beta Product. Standard text messaging charges required by Your mobile carrier may apply to communications Denali send(s) You.

## **6. IP & FEEDBACK.**

- 6.1. IP Rights in the Beta Product. Denali retains all right, title, and interest in and to the Beta Product, including without limitation the RAMP and all other all software or hardware used to provide or enhance with additional features, the Beta Product and all graphics, user interfaces, logos, and trademarks reproduced through the Beta Product, as well as all Content other than Your Content. This Agreement does not grant You any intellectual property license or rights in or to the Beta Product or any of its components, except to the limited extent that this Agreement specifically sets forth Your license rights contained herein. You recognize that the Beta Product and its components are protected by copyright and other laws.
- 6.2. Feedback. Denali has not agreed to and does not agree to treat as confidential any Feedback (as defined below) that You provide to Denali either directly or indirectly as collected by usage of the Beta Product, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Denali's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting You ("**Feedback**"). You hereby grant Denali a perpetual, irrevocable right and license to exploit Feedback in any and every way that refers to any suggestion or idea for improving or otherwise modifying any of Denali's products or services, included but not limited to the use of the Beta Product.

## **7. DISCLAIMERS.**

- 7.1. Warranty Disclaimers. YOU AGREE THAT YOU ACCEPT THE BETA PRODUCT "AS IS" AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) DENALI HAS NO OBLIGATION TO INDEMNIFY OR DEFEND YOU AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) DENALI DOES NOT REPRESENT OR WARRANT THAT THE BETA PRODUCT WILL PERFORM WITHOUT INTERRUPTION OR ERROR; (c) DENALI DOES NOT REPRESENT OR WARRANT THAT THE BETA PRODUCT IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT YOUR CONTENT WILL REMAIN PRIVATE OR SECURE; AND (d) DENALI DISCLAIMS ANY REPRESENTATION OR WARRANTY CONCERNING PRODUCTS OR SERVICES PROVIDED BY OTHER USERS OF THE BETA PRODUCT OR OTHER THIRD PARTIES.
- 7.2. Interactions with Other Users. You agree that You are solely responsible for Your transactions or other interactions, either through the Beta Product or through other means of communication, with other users of the Beta Product. You acknowledge that that Denali has no liability for any such interactions. Denali may monitor or become involved in disputes between You and other users of the Beta Product but has no obligation to do so.
- 7.3. Third Party Sites and Content. You understand that the Beta Product may contain or send You links to third party websites, applications or features not owned or controlled by Denali ("**Third Party Sites**"), and that links to Third Party Sites may also appear in Content available to You through the Beta Product. The Beta Product may also enable interaction between the Beta Product and a third party site through applications that connect the Beta Product, or Your profile on the Beta Product, with a Third Party Site. Through third party sites You may be able to access Content from third parties that Denali does not control and/or share Your Content with others. YOU ACCESS THIRD PARTY SITES ENTIRELY AT YOUR OWN RISK, AND DENALI WILL HAVE NO LIABILITY FOR YOUR USE OF OR ACCESS TO THIRD PARTY SITES AND/OR THIRD PARTY CONTENT.

**8. INDEMNIFICATION.** You agree to defend, indemnify, and hold harmless Denali and the Denali Associates (as defined below) against any (“**Indemnified Claim**”) meaning any third party claim, suit, or proceeding arising out of, related to, or alleging: (a) infringement or violation of third party intellectual property, privacy or publicity rights by Content submitted to or transmitted through the Beta Product from Your account, including without limitation by Your Content; and (b) claims that use of the Beta Product through Your account harasses, defames, or defrauds a third party, infringes or Beta Products, appropriates copyright, trade secret, or other intellectual property rights, or that violate the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Your obligations set forth in this Section 8 include retention and payment of attorneys and payment of court costs, as well as settlement at Your expense and payment of judgments. Denali will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The “**Denali Associates**” are Denali’s officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.

**9. LIMITATION OF LIABILITY.**

- 9.1. Dollar Cap. DENALI’S CUMULATIVE LIABILITY FOR ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED \$\_\_\_\_\_.
- 9.2. Excluded Damages. IN NO EVENT WILL DENALI BE LIABLE FOR LOST PROFITS OR LOSS OF BUSINESS OR FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.
- 9.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 9 RAMPLY TO THE BENEFIT OF DENALI’S OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND THIRD PARTY CONTRACTORS, AS WELL AS: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF DENALI IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF YOUR REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. You acknowledge and agree that Denali has based its pricing on and entered into this Agreement in reliance upon the limitations of liability and disclaimers of warranties and damages in this Article 9 and elsewhere in this Agreement and that such terms form an essential basis of the bargain between the parties. If applicable law limits the application of the provisions of this Section 9, Denali’s liability will be limited to the maximum extent permissible.

**10. TERM & TERMINATION.**

- 10.1. Term. The term of this Agreement (the “**Term**”) will commence on the Effective Date and continue until terminated by either You, your authorized distributor, or Denali.
- 10.2. Termination. Either party may terminate this Agreement for any reason at any time. You may terminate this Agreement by closing and deleting Your account and send a request for confirmation to [privacy@denaliai.com](mailto:privacy@denaliai.com). Denali may terminate this Agreement by notifying You in writing, including without limitation via text to Your mobile device.
- 10.3. Effects of Termination. Upon termination of this Agreement, You shall cease all use of the Beta Product. The following provisions will survive termination of this Agreement: Section 6 (IP and Feedback), Section 7 (Disclaimers), Section 8 (Indemnification), Section 9 (Limitation of Liability), and Section 11 (Miscellaneous); and any other provision of this Agreement that must survive to fulfill its

essential purpose.

## 11. MISCELLANEOUS.

- 11.1. Independent Contractors. The parties are independent contractors. Neither party is the agent of the other, and neither may make commitments on the other's behalf.
- 11.2. Notices & Infringement. Denali may send notices to You by email or by text to Your mobile device at the email address or mobile number You provided, and such notices will be deemed received 24 hours after they are sent. You may send notices pursuant to this Agreement to Denali by email to [legal@denaliai.com](mailto:legal@denaliai.com), and such notices will be deemed received 72 hours after they are sent. You acknowledge Denali's copyrighted products and the implications of infringement policy currently (the "DMCA Policy"). You recognize that: (a) the DMCA Policy addresses infringement of copyright by Your Content and the Content of other Beta Product users; (b) nothing in this Agreement restricts Denali's right to alter the DMCA Policy; (c) for claims of copyright infringement, the complaining party may contact \_\_\_\_\_; and (d) Denali will terminate the accounts of subscribers who are repeat copyright infringers.
- 11.3. Assignment & Successors. You may not assign this Agreement or any of Your rights or obligations under this Agreement without Denali's express written consent. Except to the extent forbidden in this Section 11.3, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.
- 11.4. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 11.5. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 11.6. Choice of Law & Jurisdiction: This Agreement will be governed solely by the internal laws of the State of Washington, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would conflict with the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Seattle, King County, Washington. This Subsection 11.6 and Section 11.10 below (Dispute Resolution) govern all claims arising out of or related to this Agreement.
- 11.7. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by epidemics, acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, government orders responding to any of the foregoing, or other causes beyond the performing party's reasonable control.

- 11.8. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 11.9. Amendment. Denali may amend this Agreement from time to time by posting an amended version at its website and sending You written notice thereof. Such amendment will be deemed accepted and become effective 30 days after such notice (the “**Proposed Amendment Date**”) unless You first give Denali written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions for 30 days following the Proposed Amendment Date (unless either You or Denali first terminates this Agreement pursuant to Article 10, (Term & Termination). Your continued use of the Beta Product following the effective date of an amendment will confirm Your consent to the Amendment. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 11.9, Denali may revise the any of these terms, conditions, and policies at any time by posting a new version at Denali’s website, and such new version will become effective on the date it is posted; provided if such amendment materially reduces Your rights or protections, notice and consent will be subject to the requirements above in this **Section 11.9**.
- 11.10 Dispute Resolution. Any legal disputes or claims arising out of or related to this Agreement (including without limitation claims related to the use of the Beta Product, the interpretation, enforceability, revocability, or validity of the Agreement, or the arbitrability of any dispute) (“**Disputes**”), the parties agree to follow the sections (a), (b), and (c) further described below:
- (a) Informal Dispute Resolution. Prior to the initiation of formal dispute resolution procedures, the parties shall first attempt to resolve any Dispute arising out of or under this Agreement informally, pursuant to the process set forth below: (i) the designated representatives shall meet as often as the parties reasonably deem necessary in order to gather and furnish to the other all information with respect to the matter in issue which the parties believe to be appropriate and germane in connection with its resolution; (ii) during the course of negotiations, all reasonable requests made by one Party to another for non-privileged information reasonably related to this Agreement, shall be honored in order that each of the Parties may be fully advised of the other’s position; (iii) the specific format for the discussions shall be left to the discretion of the designated representatives, but may include the preparation of agreed-upon statements of fact or written statements of position and the designated representatives shall clearly document all agreements between them concerning the Dispute; (iv) this Section 10.9 (Dispute Resolution) provision shall not be construed to prevent (A) a party from instituting, and a party is authorized to institute, formal proceedings earlier to avoid the expiration of any applicable limitations period, or to preserve a superior position with respect to other creditors, or as provided in Subsection 10.90 (Immediate Injunctive Relief) or (B) a party from pursuing immediate injunctive relief as provided in Subsection 10.90 below.
- (b) Immediate Injunctive Relief. The parties agree that the only circumstances in which Disputes

between them shall not be subject to the provisions of Subsection 10.911.10 (Informal Dispute Resolution) above are as follows: (i) where a party seeks equitable remedies as expressly permitted in this Agreement; and (ii) where a party makes a good faith determination that a breach of the terms of this Agreement by the other party is such that the damages to such Party resulting from the breach will be so immediate, so large or severe, and so incapable of adequate redress after the fact that a temporary restraining order or other immediate injunctive relief is the only adequate remedy. If a party files a pleading with a court seeking immediate injunctive relief pursuant to Section 10.9(a) (Dispute Resolution) and such pleading is challenged by the other Party and the injunctive relief sought is not awarded in substantial part, the Party filing the pleading seeking immediate injunctive relief shall pay the reasonable costs and attorneys' fees of the Party successfully challenging the pleading.

- (c) Unresolved Disputes. Unresolved Disputes that cannot be resolved informally shall be submitted, or as otherwise mutually agreed by You and Denali. Claims must be brought within the statute of limitations or other time required by applicable law. You agree that You shall bring any claim, action or proceeding arising out of or related to the Agreement in Your individual capacity, and not as a plaintiff or class member in any purported class, collective, or representative proceeding.