

PRIVACY POLICY

Effective as of September 12, 2025

This Privacy Policy (this “**Policy**”) explains how Demtech Services, Inc. (“**Demtech**,” “**we**,” “**us**,” or “**our**”) collects, uses, discloses, and safeguards information in connection with (i) Pro-Data enabled equipment firmware (“**Pro-Data Firmware**”), (ii) the Pro-Data Tech mobile application, (iii) the Pro-Data Live desktop application, and (iv) the Pro-Data Uploader software (collectively, “**Pro-Data**”). By using Pro-Data, you agree to this Policy.

This Policy does not address the privacy practices of any third party that we do not own or control. We encourage you to read this Policy, and to use the information it contains to help you make informed decisions.

1. Personal Information.

- (a) **Pro-Data Firmware.** You are not required to create an account or log-in to use equipment enabled with Pro-Data Firmware.
- (b) **Pro-Data Tech.** You are not required to create an account or log-in to use Pro-Data Tech's core functionality.
- (c) **Pro-Data Live.** Use of Pro-Data Live requires you to create a user account and password. We collect the below user-provided information to authenticate users, manage user access, and provide personalized services.
 - (i) Business name;
 - (ii) Personal name;
 - (iii) Business contact information, such as business address and business phone number;
 - (iv) Business email address;
 - (v) Login credentials, such as username and password; and,
 - (vi) The date and time of your acceptance of this Policy.
- (d) **Pro-Data Uploader.** Use of Pro-Data Uploader, requires you to enter your username created for your Pro-Data Live user account.

2. Non-Personal Information We Collect or Receive.

We automatically collect certain technical and usage information needed to operate, support, and improve our products and services. Your use of Pro-Data authorizes us to collect and receive such information.

- (a) **Equipment Usage Data.** Pro-Data automatically collects and processes data related to connected Pro-Data Firmware equipment ("Equipment Usage Data"), including but not limited to:
 - (i) Equipment identifiers;
 - (ii) Equipment usage duration and frequency;
 - (iii) Equipment performance metrics;

- (iv) Equipment sensor data;
 - (v) Equipment operational parameters;
 - (vi) Equipment error logs; and,
 - (vii) Geolocational information of the connecting equipment.
- (b) **Geolocational Information.** Certain features and functionalities of Pro-Data are based on equipment location as determined by GPS (e.g., GPS latitude and longitude). To provide these features and functionalities, Pro-Data automatically collects geolocational information whenever a GPS satellite is accessible to equipment installed with Pro-Data Firmware (collectively, "**Geolocational Information**").
- (c) **Other Information.** We also automatically collect or receive additional information regarding you and your use of Pro-Data and information regarding your mobile devices or computers used to access Pro-Data (collectively, the "**Other Information**").
- (i) **From Your Activity.** We may collect or receive information regarding:
 - (A) Your mobile device or computer's IP address, which may consist of a static or dynamic IP address and will sometimes point to a specific identifiable device or location; and
 - (B) Details regarding your activity on Pro-Data.
 - (ii) **About Your Mobile Device (Pro-Data Tech Users).** When you access or use Pro-Data Tech from your mobile device, we may collect or receive technical and usage information:
 - (A) Type of mobile device used when accessing Pro-Data Tech;
 - (B) Operating system and version (e.g., iOS, Android, or Windows) for your mobile device;
 - (C) Your carrier for your mobile services on your mobile device;
 - (D) The network type (Wi-Fi, 3G, 4G, LTE) used by your mobile device while accessing Pro-Data Tech; and
 - (E) The date and time of acceptance of this Policy in Pro-Data Tech.
 - (iii) **About Your Computer or Browser (Pro-Data Live Users).** When you access or use Pro-Data Live, we collect or receive technical and usage information about the device you use:
 - (A) Browser type and version (e.g., Chrome, Safari, Firefox);
 - (B) Operating system and version (e.g., Windows, macOS, Linux);
 - (C) Device type (e.g., desktop, laptop);
 - (D) IP address, which may consist of a static or dynamic IP address and will sometimes point to a specific identifiable device or location;
 - (E) Screen resolution and display settings; and

- (F) Time and date of access, duration of session, and interaction data (e.g., clicks, navigation patterns).

3. How Information Is Used and Shared.

- (a) You authorize us to use your Personal Information to authenticate users, manage accounts, and personalize user experience.
- (b) You authorize us to use your Personal Information, Equipment Usage Data, Geolocational Information, and the Other Information (collectively, the “**Information**”) to:
 - (i) Provide and improve Pro-Data functionality;
 - (ii) Provide our services to you;
 - (iii) Analyze equipment performance and usage patterns;
 - (iv) Troubleshoot technical issues;
 - (v) Provide remote support; and
 - (vi) Develop new features and services.
- (c) In an ongoing effort to better understand our users, Pro-Data, and our products and services, we may analyze certain Information in anonymized and aggregate form to operate, maintain, manage, and improve Pro-Data, and/or our products and services. This aggregate information does not identify you personally. We may disclose aggregated user statistics to describe Pro-Data, and our products and services to current and prospective business partners and investors and to other third parties for other lawful purposes.
- (d) We may share some or all of your Information with any of our parent companies, subsidiaries, joint ventures, or other companies under common control with us.
- (e) As we develop our business, we might sell or buy businesses or assets. In the event of a corporate sale, merger, reorganization, sale of assets, dissolution, or similar event, the Information may be part of the transferred assets.
- (f) To the extent permitted by law, we may also disclose the Information:
 - (i) When required by law, court order, or other government or law enforcement authority or regulatory agency; or
 - (ii) Whenever we believe that disclosing such Information is necessary or advisable, for example, to protect the rights, property, or safety of us or others, including you.
- (g) We do not sell or rent Information to third parties.
- (a) We do not use your personal information for purposes other than those described in this Policy without your consent or as permitted by law.

4. **Accessing and Modifying Information and Communication Preferences.** We may deliver notifications to your computer or mobile device. You can disable these notifications by deleting the relevant service or by changing the settings on your computer or mobile device.
5. **How We Protect Your Information.** We take commercially reasonable steps to protect Information from loss, misuse, and unauthorized access, disclosure, alteration, or destruction. Please understand, however, that no security system is impenetrable. We cannot guarantee the security of our databases or the databases of the third parties with which we may share such Information, nor can we guarantee that the Information you supply will not be intercepted while being transmitted over the internet. In particular, email sent to us may not be secure, and you should therefore take special care in deciding what information you send to us via email.
2. **Data Retention.** We retain personal data only as long as necessary to provide the services, fulfill the purposes outlined in this Policy, and meet our legal, accounting, or reporting obligations. When data is no longer needed, it is securely deleted or anonymized.
3. **Important Notices to Non-U.S. Residents.** Pro-Data and our servers are operated in the United States. If you are located outside the United States, your information may be processed in the United States and other countries. Where required, we use lawful transfer mechanisms—such as the European Commission’s Standard Contractual Clauses (SCCs) and the UK International Data Transfer Addendum—to protect your information. If you are located outside the United States and choose to use Pro-Data, you irrevocably and unconditionally consent to such transfer, processing, and use in the United States and elsewhere.
4. **Region-Specific Disclosures**
 - (a) **European Union/EEA and United Kingdom**
 - (i) **Controller: Demtech Services, Inc.** If we appoint an EU/UK representative or Data Protection Officer (DPO), we will list those details here.
 - (ii) **Rights:**
 - (A) **Right to Be Informed:** You have the right to be notified about the collection and use of your personal information.
 - (B) **Right of Access:** You have the right to be provided with a copy of your personal information that we process.
 - (C) **Right to Rectification:** You have the right to require us to correct mistakes in your personal information.
 - (D) **Right to Erasure ("Right to be Forgotten"):** You have the right to require us to delete your personal information in certain situations.
 - (E) **Right to Restriction of Processing:** You have the right to require us to restrict processing of your personal information in certain circumstances, such as when you contest the accuracy of the data.

- (F) **Right to Data Portability:** You have the right to receive personal information you provided to us in a structured, commonly used, and machine-readable format and to transmit that data to a third party in certain situations.
 - (G) **Right to Object:** You have the right to object at any time to processing of your personal information for direct marketing purposes, including profiling, and in certain other situations.
 - (H) **Right Regarding Automated Decision-Making:** You have the right not to be subject to a decision based solely on automated processing, including profiling, that produces legal effects concerning you or similarly significantly affects you.
 - (iii) **Complaints:** Contact us first by email to privacy@demtech.com. If unresolved, you may lodge a complaint with your local supervisory authority. UK residents may contact the Information Commissioner's Office (ICO).
 - (iv) **International transfers:** We use the European Commission's Standard Contractual Clauses (SCCs) and the UK International Data Transfer Addendum as applicable.
- (b) **Australia.** We handle personal information in accordance with the Privacy Act 1988 (Cth) and the Australian Privacy Principles (APPs).
- (i) **Rights:** Under Australian privacy law, you have the right to:
 - 1. Access your personal information
 - 2. Correct inaccurate, incomplete, or outdated personal information
 - 3. Make a complaint about a breach of the APPs
 - (ii) **Access and correction:** You may request access to and correction of your personal information. We will respond to requests regarding your personal information within 30 days of receipt.
 - (iii) **Cross-Border Disclosures (APP 8):** Our servers are located in the U.S. and your personal information will be transmitted to our servers. We will take reasonable steps to ensure protection of your Information in accordance with the APPs.
 - (iv) **Complaints:** Contact us first by email to privacy@demtech.com. If unresolved, you may contact the Office of the Australian Information Commissioner (OAIC).
- (c) **United States – State Notices.** The following apply to residents of certain U.S. states. To the extent of any conflict, these state notices control for their residents.
- (i) **California Privacy Rights**
 - (A) **California Residents:** Under the California Consumer Privacy Act (CCPA) and California Privacy Rights Act (CPRA), California residents have the following rights:
 - 1. Right to know what personal information we collect about you
 - 2. Right to access a copy of your personal information

3. Right to request deletion of your personal information
4. Right to opt-out of the sale or sharing of your personal information
5. Right to limit use and disclosure of sensitive personal information
6. Right to non-discrimination for exercising your privacy rights

(B) Shine the Light Law. Under California Civil Code Section 1798.83, California residents who have an established business relationship with us may choose to opt out of our sharing their contact information with third parties for direct marketing purposes.

(C) California Privacy Law: Do Not Track. We do not respond to “Do Not Track” signals or similar browser settings

(D) DemTech Response Time. We will respond to verifiable consumer requests within 45 days of receipt. Contact us by sending an email to privacy@demtech.com.

(ii) Virginia (VCDPA), Colorado (CPA), Connecticut (CTDPA), Utah (UCPA)

(A) If you are a Virginia, Colorado, Connecticut, or Utah resident, you have the right to:

1. Access your personal data;
2. Correct inaccurate or outdated personal data;
3. Delete your personal data;
4. Receive a copy of your personal data in a portable format;
5. Opt out of targeted advertising, the sale of your personal data, or profiling that results in significant decisions about you.

You may exercise these rights free of charge up to twice per year. If requests are excessive or repetitive, we may charge a fee or decline the request.

We do not process sensitive data (e. g. , health, race, religion, or biometric data) without your explicit consent, as required by law.

(B) DemTech Response Time. We will respond to verifiable consumer requests within 45 days of receipt. Contact us by sending an email to privacy@demtech.com.

(C) Appeals. If we deny your request, you may appeal to your State Attorney General.

(iii) Nevada. We do not sell “covered information” as defined under Nevada law (NRS 603A). Nevada residents may submit sale-opt-out requests to privacy@demtech.com.

(iv) Washington – Consumer Health Data. We do not intend to collect “consumer health data” as defined by the Washington My Health My Data Act. If our practices change, we will update this Policy and, where required, obtain consent and provide additional disclosures.

6. **App Stores; External Websites.** Your app store (e.g., iTunes or Google Play) may collect certain information in connection with your use of Pro-Data, such as personal information, payment information, Geolocation Information, and other usage-based data. We have no control over the collection of such information by a third-party app store, and any such collection or use will be subject to that third party's applicable privacy policies. As such, we are not responsible for the content or the privacy policies of third parties. You should check the applicable third-party privacy policy and terms of use when visiting any other websites.
7. **Children.** Pro-Data is not directed to children under the age of 13. We adhere to the Children's Online Privacy Protection Act (COPPA) and will not knowingly collect personal information from any child under the age of 13. We ask that minors (under the age of 13) not use Pro-Data Tech or Pro-Data Live. If a child under the age of 13 has provided us with personal information, a parent or guardian of that child may contact us and request that such information be deleted from our records.
8. **Changes to This Privacy Policy.** This Policy is effective as of the date stated at the top of this Policy. We may change this Policy from time to time. Any such changes will be posted on the DemTech website at: Pro-Data Privacy Policy - Demtech Services, Inc. By accessing Pro-Data after we make any such changes to this Policy, you are deemed to have accepted such changes. Please be aware that, to the extent permitted by applicable law, our use of the Information is governed by the Policy in effect at the time we collect the Information. Please refer back to this Policy on a regular basis.
9. **How to Contact Us.** If you have questions about this Policy, please email us at privacy@demtech.com with "Privacy Policy" in the subject line or mail us at the following address: 6414 Capitol Avenue, Diamond Springs, California 95619.

TERMS OF SERVICE AND USE AGREEMENT

This Terms of Service and Use Agreement (this "Agreement") governs your access to and use of (i) Pro-Data enabled equipment firmware ("Pro-Data Firmware"), (ii) the Pro-Data Tech mobile application ("Pro-Data Tech"), (iii) the Pro-Data Live desktop application ("Pro-Data Live"), and (iv) the Pro-Data Uploader software ("Pro-Data Uploader") (collectively, "Pro-Data" or the "Services") provided by DemTech Services, Inc. ("DemTech," "we," "us," or "our").

PLEASE READ THIS AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE SERVICES. BY ACCESSING OR USING ANY PART OF THE SERVICES, YOU AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU MAY NOT ACCESS OR USE THE SERVICES.

1. DEFINITIONS

- 1.1.* **"Agreement"** means these Terms of Service and Use, including any exhibits, schedules, or addenda.
- 1.2.* **"Authorized Users"** means your employees, contractors, and agents who are authorized by you to access and use the Services under your account.
- 1.3.* **"Confidential Information"** means all non-public information disclosed by one party to the other, whether orally, in writing, or by any other means, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure, including but not limited to business plans, customer data, financial information, software, specifications, and other proprietary information.
- 1.4.* **"Content"** means all information, data, text, software, music, sound, photographs, graphics, videos, messages, or other materials submitted, posted, displayed, stored, or transmitted on or through the Services.
- 1.5.* **"Documentation"** means the user guides, online help, release notes, training materials, and other documentation provided or made available by DemTech to you regarding the use or operation of the Services.
- 1.6.* **"Equipment"** means DemTech branded equipment and hardware devices manufactured or supplied by DemTech that are enabled with Pro-Data Firmware.
- 1.7.* **"Intellectual Property Rights"** means all patent rights, copyright rights, mask work rights, moral rights, rights of publicity, trademark, trade dress and service mark rights, goodwill, trade secret rights, and other intellectual property rights as may now exist or hereafter come into existence, and all applications and registrations, renewals, and extensions thereof, under the laws of any state, country, territory, or other jurisdiction.
- 1.8.* **"Subscription Fee"** means the annual cost for access to Pro-Data Live.
- 1.9.* **"Subscription Term"** means the period during which you have agreed to subscribe to Pro-Data Live, pursuant to the Order Form.

- 1.10. **"Order Form"** means, collectively, (a) your purchase order for Equipment and (b) DemTech's corresponding invoice or written order acknowledgment issued in response (which constitutes Company's acceptance). Each Order Form identifies the products/services, quantities, prices/discounts, taxes and fees, bill-to/ship-to, shipping method, and delivery schedule (and any subscription term, if applicable). Preprinted or conflicting terms on your purchase order are rejected and have no effect. In any conflict, DemTech's corresponding invoice or written order acknowledgment controls only as to its express commercial terms (e.g., price, quantity, delivery dates). These Terms of Use govern all other matters for the Services.
- 1.11. **"User Data"** means the Information described in our [Privacy Policy](#), and excludes DemTech's Confidential Information.

2. SERVICES AND ACCESS

- 2.1. **Eligibility and Business Use Only.** Pro-Data is intended for business users only. By using Pro-Data, you represent and warrant that:
1. You are an authorized representative of a business entity that has purchased Pro-Data-enabled equipment from DemTech or its authorized resellers and are authorized to bind the business entity to these Terms of Use.
 2. You are accessing Pro-Data in conjunction with Pro-Data-enabled equipment purchased by you from DemTech or its authorized resellers.
 3. You are not accessing Pro-Data for personal, consumer, or household purposes.
- 2.2. **Pro-Data Firmware.** Pro-Data Firmware is licensed to you when you purchase Equipment from DemTech. You are not required to create an account or log in to use Equipment enabled with Pro-Data Firmware.
- 2.3. **Pro-Data Tech.** Pro-Data Tech is provided to you free of charge. You are not required to create an account or log in to use Pro-Data Tech's core functionality. However, certain advanced features may require you to log in using your Pro-Data Live account credentials.
- 2.4. **Pro-Data Live.** Pro-Data Live is provided to you on a subscription basis and requires payment of fees as set forth in Section 5. Use of Pro-Data Live requires you to create a user account and password. We collect certain user-provided information to authenticate users, manage user access, and provide personalized services as described in our Privacy Policy.
- 2.5. **Pro-Data Uploader.** Pro-Data Uploader is provided to you as part of your Pro-Data Live subscription. Use of Pro-Data Uploader requires you to enter your username created for your Pro-Data Live user account.
- 2.6. **Access to Services.** Subject to your compliance with this Agreement, DemTech grants you a limited, non-exclusive, non-transferable, non-sublicensable right to access and use the Services solely for your internal business purposes during the applicable term.

- 2.7. **Equipment Requirements.** You are responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access, or otherwise use the Services, including, without limitation, hardware, software, and internet connection. You shall also be responsible for maintaining the security of your equipment, account, passwords, and files, and for all uses of your account or your equipment with or without your knowledge or consent.

3. LICENSE GRANTS AND RESTRICTIONS

- 3.1. **License to Pro-Data Firmware.** Subject to the terms and conditions of this Agreement, DemTech hereby grants you a limited, non-exclusive, non-transferable license to use the Pro-Data Firmware solely as embedded in the Equipment purchased from DemTech and solely for your internal business purposes.
- 3.2. **License to Pro-Data Tech.** Subject to the terms and conditions of this Agreement, DemTech hereby grants you a limited, non-exclusive, non-transferable license to download, install, and use the Pro-Data Tech mobile application on compatible mobile devices that you own or control, solely for your internal business purposes.
- 3.3. **License to Pro-Data Live.** Subject to the terms and conditions of this Agreement and your payment of the Subscription Fee, DemTech hereby grants you a limited, non-exclusive, non-transferable license to download, install, and use the Pro-Data Live desktop application on compatible computers that you own or control, solely for your internal business purposes during the Subscription Term.
- 3.4. **License to Pro-Data Uploader.** Subject to the terms and conditions of this Agreement and your payment of applicable fees for Pro-Data Live, DemTech hereby grants you a limited, non-exclusive, non-transferable license to download, install, and use the Pro-Data Uploader software on compatible computers that you own or control, solely for your internal business purposes during the Subscription Term.
- 3.5. **Restrictions.** Except as expressly permitted in this Agreement, you shall not, and shall not permit any Authorized User or third party to:
1. Reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, know-how, or algorithms relevant to the Services or any software, documentation, or data related to the Services;
 2. Modify, translate, or create derivative works based on the Services;
 3. Use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party;
 4. Remove any proprietary notices or labels from the Services;
 5. Sell, resell, license, sublicense, distribute, rent, or lease the Services, or include the Services in a service bureau or outsourcing offering;
 6. Use the Services to store or transmit infringing, libelous, or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party privacy rights;
 7. Use the Services to store or transmit malicious code or viruses;

8. Interfere with or disrupt the integrity or performance of the Services or third-party data contained therein;
 9. Attempt to gain unauthorized access to the Services or their related systems or networks;
 10. Access the Services in order to build a competitive product or service or to benchmark with a non-DemTech product or service;
 11. Copy any features, functions, or graphics of the Services; or
 12. Use the Services in any manner that exceeds the scope of use permitted herein.
- 3.6. **Authorized Users.** You may permit Authorized Users to use the Services in accordance with this Agreement, provided that you shall be responsible for all acts and omissions of your Authorized Users. Any act or omission by an Authorized User that would constitute a breach of this Agreement if committed by you shall be deemed a breach of this Agreement by you.

4. OWNERSHIP AND INTELLECTUAL PROPERTY

- 4.1. **DemTech's Ownership.** DemTech and its licensors own and shall retain all right, title, and interest in and to the Services, including all Intellectual Property Rights therein. No rights are granted to you hereunder other than as expressly set forth herein.
- 4.2. **Your Ownership.** You own and shall retain all right, title, and interest in and to the User Data, including all Intellectual Property Rights therein. You hereby grant to DemTech a worldwide, non-exclusive, royalty-free license to use, reproduce, and display the User Data solely to the extent necessary to provide the Services to you and as otherwise permitted by DemTech's [Privacy Policy](#).
- 4.3. **Feedback.** If you provide DemTech with any suggestions, enhancement requests, recommendations, corrections, or other feedback ("Feedback"), DemTech may use such Feedback without restriction and without obligation to you. You hereby irrevocably assign to DemTech all right, title, and interest in and to the Feedback.
- 4.4. **Reservation of Rights.** All rights not expressly granted to you in this Agreement are reserved by DemTech and its licensors.

5. SUBSCRIPTION FEES AND PAYMENT

- 5.1. **Pro-Data Firmware Fees.** The license fee for Pro-Data Firmware is included in the purchase price of the Equipment.
- 5.2. **Pro-Data Tech Fees.** Pro-Data Tech is provided to you free of charge.
- 5.3. **Pro-Data Live Fees.** You shall pay all fees specified in the Order Form for Pro-Data Live. Except as otherwise specified herein or in the Order Form, (i) fees are based on Services purchased and not actual usage, (ii) payment obligations are non-cancelable and fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Subscription Term.

- 5.4. **Payment Terms.** Unless otherwise specified in the Order Form, Subscription Fees for Pro-Data Live are payable annually in advance. You are responsible for providing complete and accurate billing and contact information to DemTech and notifying DemTech of any changes to such information.
- 5.5. **Overdue Charges.** If any amounts invoiced hereunder are not received by DemTech by the due date, then at DemTech's discretion, (i) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and/or (ii) DemTech may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 5.4.
- 5.6. **Suspension of Service.** If any amount owing by you under this or any other agreement for the Services is 30 or more days overdue, DemTech may, without limiting its other rights and remedies, suspend the Services until such amounts are paid in full.
- 5.7. **Taxes.** Unless otherwise stated, DemTech's fees do not include any taxes, levies, duties, or similar governmental assessments of any nature, including, for example, value-added, sales, use, or withholding taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). You are responsible for paying all Taxes associated with your purchases hereunder. If DemTech has the legal obligation to pay or collect Taxes for which you are responsible under this Section 5.7, DemTech will invoice you and you will pay that amount unless you provide DemTech with a valid tax exemption certificate authorized by the appropriate taxing authority.

6. TERM AND TERMINATION

- 6.1. **Term of Agreement.** This Agreement commences on the date you first accept it and continues until all subscriptions hereunder have expired or have been terminated.
- 6.2. **Pro-Data Firmware Term.** The license for Pro-Data Firmware commences on the date of delivery of the Equipment and continues for as long as you own the Equipment, unless earlier terminated pursuant to this Agreement.
- 6.3. **Pro-Data Tech Term.** The license for Pro-Data Tech commences on the date you download and install the application and continues until terminated by either party pursuant to this Agreement.
- 6.4. **Pro-Data Live Term.** The Subscription Term for Pro-Data Live shall be as specified in the applicable Order Form. Except as otherwise specified in the Order Form, subscriptions will automatically renew for additional periods equal to the expiring Subscription Term or one year (whichever is shorter), unless either party gives the other notice of non-renewal at least 30 days before the end of the relevant Subscription Term.
- 6.5. **Pro-Data Uploader Term.** The license for Pro-Data Uploader commences on the date you download and install the software and continues for the duration of your Pro-Data Live Subscription Term, unless earlier terminated pursuant to this Agreement.

- 6.6. **Termination for Cause.** A party may terminate this Agreement for cause (i) upon 30 days' written notice to the other party of a material breach if such breach remains uncured at the expiration of such period, or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or assignment for the benefit of creditors.
- 6.7. **Termination for Convenience.** DemTech may terminate this Agreement for convenience upon 90 days' written notice to you.
- 6.8. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason:
1. All licenses granted hereunder will immediately terminate;
 2. You shall cease all use of the Services;
 3. You shall promptly return or destroy all DemTech Confidential Information in your possession or control;
 4. DemTech may delete or disable your account and access to the Services; and
 5. DemTech may delete any of your User Data stored in the Services after 30 days following termination, unless legally prohibited.

7. CONFIDENTIALITY

- 7.1. **Confidentiality Obligations.** Each party shall maintain the confidentiality of the other party's Confidential Information and shall not disclose such Confidential Information to any third party or use such Confidential Information for any purpose outside the scope of this Agreement. Each party shall take reasonable measures to protect the confidentiality of the other party's Confidential Information, which measures shall be at least as protective as those it takes to protect its own Confidential Information, but in no event less than reasonable care.
- 7.2. **Exceptions.** Confidential Information shall not include information that (i) is or becomes generally known to the public without breach of any obligation owed to the disclosing party, (ii) was known to the receiving party prior to its disclosure by the disclosing party without breach of any obligation owed to the disclosing party, (iii) is received from a third party without breach of any obligation owed to the disclosing party, or (iv) was independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information.
- 7.3. **Permitted Disclosures.** The receiving party may disclose Confidential Information of the disclosing party if required to do so under any federal, state, or local law, statute, rule, or regulation, subpoena, or legal process, provided that (i) the receiving party gives the disclosing party prompt written notice of such requirement (to the extent legally permitted), (ii) the receiving party provides the disclosing party with reasonable assistance, at the disclosing party's expense, if the disclosing party wishes to contest or limit such disclosure, and (iii) the receiving party only discloses that portion of the Confidential Information that is legally required to be disclosed.

- 7.4. **Remedies.** Each party acknowledges that any breach of its obligations with respect to Confidential Information may cause the other irreparable harm for which there is no adequate remedy at law, and therefore, the non-breaching party shall be entitled to seek immediate injunctive relief in addition to any other remedies available at law or in equity.

8. DATA PRIVACY AND SECURITY

- 8.1. **Privacy Policy.** DemTech's Privacy Policy, available [here](#), is hereby incorporated by reference and applies to the Services. You acknowledge that you have read and understand DemTech's Privacy Policy and agree to the collection, use, and disclosure of information described therein.
- 8.2. **Data Security.** DemTech shall maintain appropriate administrative, physical, and technical safeguards designed to protect the security, confidentiality, and integrity of User Data. DemTech shall not (i) modify User Data, (ii) disclose User Data except as provided in DemTech's [Privacy Policy](#), or (iii) access User Data except as provided in DemTech's [Privacy Policy](#).
- 8.3. **Data Processing.** To the extent that DemTech processes any personal data (as defined by applicable law) contained in User Data, DemTech shall process such personal data only as a data processor acting on behalf of you as the data controller and in accordance with the requirements of DemTech's [Privacy Policy](#), this Agreement, and applicable law.
- 8.4. **Your Responsibilities.** You shall ensure that your use of the Services and all User Data complies with this Agreement and all applicable laws and regulations, including those related to data privacy, data security, and the transmission of technical or personal data. You are solely responsible for the accuracy, quality, integrity, legality, reliability, and appropriateness of all User Data.

9. DISCLAIMER OF WARRANTIES

- 9.1. **Disclaimer.** THE SERVICES AND PRO-DATA ARE PROVIDED “AS IS” AND “AS AVAILABLE” WITHOUT WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED. ALL SERVICES, TECHNOLOGY, SOFTWARE, APPLICATIONS, FUNCTIONS, CONTENT, IMAGES, MATERIALS, AND OTHER DATA OR INFORMATION PROVIDED BY US IN CONNECTION WITH THE APP (COLLECTIVELY THE "APP") ARE PROVIDED "AS IS" AND “WHERE IS”. WE MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE WITH RESPECT TO THE APP. EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, WE DISCLAIM ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. WE DO NOT WARRANT THAT THE APP WILL FUNCTION AS DESCRIBED, WILL BE UNINTERRUPTED OR ERROR-FREE, FREE OF HARMFUL COMPONENTS, OR THAT THE DATA YOU STORE WITHIN THE APP WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. WE A SHALL NOT BE RESPONSIBLE FOR ANY SERVICE INTERRUPTIONS, INCLUDING, WITHOUT LIMITATION, POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS, INCLUDING THOSE THAT AFFECT THE PROCESSING OF ANY EQUIPMENT USAGE DATA. NO ADVICE OR INFORMATION OBTAINED BY YOU FROM US OR FROM ANY THIRD PARTY OR THROUGH THE APP SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS TERMS OF USE. YOU AGREE THAT ANY EFFORTS BY US TO MODIFY OUR APP SHALL NOT BE DEEMED A WAIVER OF THIS GENERAL DISCLAIMER OF WARRANTIES. THE ENTIRE RISK ARISING OUT OF USE OR PERFORMANCE OF THE APP REMAINS WITH YOU.
- 9.2. **Internet Delays.** THE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DEMTECH IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.
- 9.3. **GPS Accuracy.** PRO-DATA GEOLOCATION DATA IS DEPENDENT ON CLEAR SATELLITE ACCESS AND IS ACCURATE ONLY WITHIN A FEW FEET. GEOLOCATIONAL DATA SHOULD NOT BE USED TO CREATE AS-BUILT DRAWINGS OF COMPLETED WELD SEAMS.

10. LIMITATION OF LIABILITY

10.1. Limitation of Liability. WE SHALL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR INTERRUPTION OF BUSINESS, LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER LOSSES (EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, SUCH DAMAGES WERE REASONABLY FORESEEABLE TO US, OR WE WERE GROSSLY NEGLIGENT) IN CONNECTION WITH THE SERVICES, THE APP, OR THE USE THEREOF, INCLUDING, WITHOUT LIMITATION, ANY SUCH DAMAGES RESULTING FROM: (i) THE USE OR THE INABILITY TO USE THE SERVICES OR THE APP; (ii) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS AND SERVICES; OR (iii) UNAUTHORIZED ACCESS TO OR ALTERATION OF YOUR DATA. IN ANY CASE, OUR AGGREGATE LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU TO US HEREUNDER FOR THE SERVICES.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OR ALL OF THE ABOVE EXCLUSIONS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS. IN SUCH JURISDICTIONS, OUR LIABILITY IS LIMITED TO THE GREATEST EXTENT PERMITTED BY LAW.

- 10.2. Exceptions.** The limitations in Sections 10.1 shall not apply to (i) a party's indemnification obligations under Section 11, (ii) a party's breach of its confidentiality obligations under Section 7, (iii) a party's obligations under Section 8.2 (Data Security), or (iv) either party's gross negligence, willful misconduct, or fraud.

11. INDEMNIFICATION

- 11.1. Indemnification by DemTech.** DemTech shall defend, indemnify, and hold you harmless from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to any claim that the Services, when used as authorized under this Agreement, infringe any third-party Intellectual Property Rights. If the Services become, or in DemTech's opinion are likely to become, the subject of an infringement claim, DemTech may, at its option and expense, either (i) procure for you the right to continue using the Services, (ii) replace or modify the Services so that they become non-infringing while maintaining substantially equivalent functionality, or (iii) terminate your right to use the Services and refund any prepaid fees for the remainder of the Subscription Term. The foregoing indemnification obligation shall not apply to the extent the infringement arises from (a) your use of the Services in violation of this Agreement, (b) your combination of the Services with third-party products, services, or business processes not provided by DemTech, or (c) DemTech's compliance with your specifications or instructions.
- 11.2. Indemnification by You.** You shall defend, indemnify, and hold DemTech harmless from and against any and all claims, actions, suits, proceedings, losses, damages, liabilities, costs, and expenses (including reasonable attorneys' fees) arising out of or related to (i) your use of the Services in violation of this Agreement or applicable law, (ii) any User Data, or (iii) your violation of any third-party rights, including without limitation any Intellectual Property Rights or privacy rights.
- 11.3. Indemnification Procedure.** The indemnifying party's obligations under this Section 11 are conditioned upon the indemnified party (i) promptly giving written notice of the claim to the indemnifying party, (ii) giving the indemnifying party sole control of the defense and settlement of the claim (provided that the indemnifying party may not settle any claim without the indemnified party's prior written consent, which shall not be unreasonably withheld, conditioned, or delayed, unless the settlement unconditionally releases the indemnified party from all liability), and (iii) providing the indemnifying party, at the indemnifying party's expense, all reasonable assistance in connection with the defense and settlement of the claim.

12. GENERAL PROVISIONS

- 12.1. Entire Agreement.** This Agreement, including any exhibits, schedules, or addenda, constitutes the entire agreement between the parties concerning its subject matter and supersedes all prior and contemporaneous agreements, proposals, or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment, or waiver is to be asserted.
- 12.2. Third-Party Beneficiaries.** There are no third-party beneficiaries to this Agreement.

- 12.3. **Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.
- 12.4. **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.
- 12.5. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety, without consent of the other party, to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 12.6. **Force Majeure.** Neither party shall be liable for any failure or delay in performance under this Agreement for causes beyond that party's reasonable control, including, but not limited to, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, computer attacks or malicious acts, such as attacks on or through the Internet, any Internet service provider, telecommunications or hosting facility, but excluding a party's financial condition or obligations to make payments.
- 12.7. **Notices.** All notices under this Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery, (ii) the second business day after mailing, (iii) the second business day after sending by confirmed facsimile, or (iv) the second business day after sending by email. Notices to DemTech shall be sent to the address set forth in Section 12.12 below, with a copy to legal@DemTech.com. Notices to you shall be sent to the address you provide in your account information or as specified on the applicable Order Form.
- 12.8. **Export Compliance.** The Services and other technology DemTech makes available, and derivatives thereof, may be subject to export laws and regulations of the United States and other jurisdictions. Each party represents that it is not named on any U.S. government denied-party list. You shall not permit Authorized Users to access or use the Services in a U.S.-embargoed country or in violation of any U.S. export law or regulation.
- 12.9. **Anti-Corruption.** You agree that you have not received or been offered any illegal or improper bribe, kickback, payment, gift, or thing of value from any of DemTech's employees or agents in connection with this Agreement. If you learn of any violation of the above restriction, you shall promptly notify DemTech.
- 12.10. **Governing Law and Jurisdiction.** This Agreement shall be governed by the laws of the State of California without regard to its conflict of law principles. The parties hereby submit to the exclusive jurisdiction of the state and federal courts located in Sacramento County, California for the purpose of resolving any dispute relating to this Agreement.

12.11. Waiver of Jury Trial. YOU FURTHER AGREE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, TO WAIVE ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY CLAIM, COUNTERCLAIM OR ACTION ARISING FROM THE TERMS OF USE OR USE OF THE SERVICES.

12.12. Contact Information. If you have any questions about this Agreement, please contact us at:

DemTech Services, Inc.
6414 Capitol Avenue
Diamond Springs, California 95619
Email: legal@DemTech.com

13. SERVICE LEVEL AGREEMENT

13.1. Scheduled Maintenance. DemTech may perform scheduled maintenance on the Services during which time the Services may be unavailable. DemTech will use reasonable efforts to provide you with prior notice of any scheduled maintenance.

13.2. Technical Support. DemTech will provide technical support for the Services as specified in the applicable Order Form or as otherwise agreed in writing between the parties.

14. ADDITIONAL TERMS FOR SPECIFIC SERVICES

14.1. Pro-Data Firmware. The following additional terms apply to Pro-Data Firmware:

1. You acknowledge that Pro-Data Firmware is designed to operate only on Equipment manufactured or supplied by DemTech.
2. DemTech may, from time to time, provide updates or upgrades to Pro-Data Firmware. You agree to install such updates or upgrades promptly when made available by DemTech.
3. You shall not use Pro-Data Firmware with any equipment or devices not manufactured or supplied by DemTech.

14.2. Pro-Data Tech. The following additional terms apply to Pro-Data Tech:

1. You acknowledge that Pro-Data Tech is designed to operate on mobile devices running compatible operating systems as specified in the Documentation.
2. You are responsible for obtaining and maintaining compatible mobile devices necessary to access and use Pro-Data Tech.
3. You acknowledge that your use of Pro-Data Tech may be subject to the terms and conditions imposed by the app store from which you download Pro-Data Tech, and you agree to comply with all such terms and conditions.

14.3. Pro-Data Live. The following additional terms apply to Pro-Data Live:

1. You acknowledge that Pro-Data Live is designed to operate on computers running compatible operating systems as specified in the Documentation.
2. You are responsible for obtaining and maintaining compatible computers necessary to access and use Pro-Data Live.

3. You shall ensure that the number of Authorized Users accessing and using Pro-Data Live does not exceed the number of user licenses purchased by you.

14.4. Pro-Data Uploader. The following additional terms apply to Pro-Data Uploader:

1. You acknowledge that Pro-Data Uploader is designed to operate on computers running compatible operating systems as specified in the Documentation.
2. You are responsible for obtaining and maintaining compatible computers necessary to access and use Pro-Data Uploader.
3. You shall use Pro-Data Uploader solely for the purpose of uploading data from Equipment to Pro-Data Live.

15. MISCELLANEOUS

- 15.1. **Survival.** The following provisions shall survive termination or expiration of this Agreement: Sections 1 (Definitions), 4 (Ownership and Intellectual Property), 5 (Fees and Payment) for amounts accrued or payable prior to termination, 6.8 (Effect of Termination), 6.9 (Survival), 7 (Confidentiality), 9 (Disclaimer of Warranties), 10 (Limitation of Liability), 11 (Indemnification), and 12 (General Provisions).
- 15.2. **Publicity.** Neither party shall issue any press release regarding this Agreement without the other party's prior written consent. Notwithstanding the foregoing, DemTech may include your name and logo in its customer lists and promotional materials, provided that such use is in accordance with your trademark guidelines and this Agreement.
- 15.3. **Government Rights.** The Services and related documentation are "Commercial Items," as that term is defined at 48 C.F.R. §2.101, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation," as such terms are used in 48 C.F.R. §12.212 or 48 C.F.R. §227.7202, as applicable. Consistent with 48 C.F.R. §12.212 or 48 C.F.R. §227.7202-1 through 227.7202-4, as applicable, the Commercial Computer Software and Commercial Computer Software Documentation are being licensed to U.S. Government end users (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms and conditions herein.
- 15.4. **Equitable Relief.** You acknowledge that any breach of your obligations with respect to DemTech's Intellectual Property Rights or Confidential Information may cause DemTech irreparable harm for which there is no adequate remedy at law. Accordingly, DemTech may seek injunctive or other equitable relief to prevent or stop any breach of this Agreement, without the necessity of posting a bond.
- 15.5. **Headings.** The headings in this Agreement are for convenience only and shall not affect the interpretation of any provision.
- 15.6. **No Waiver.** No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right.

15.7. Time Limitation. You agree that regardless of any statute or law to the contrary, any claim or cause of action arising out of or related to use of the Services or this Agreement must be filed within one (1) year after such claim or cause of action arose or be forever barred.

BY ACCESSING OR USING THE SERVICES, YOU ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTOOD, AND AGREE TO BE BOUND BY THIS AGREEMENT