

Last Updated: September 2024

Welcome to Mend! Thank you for using our products and services. These Terms of Service (the “Terms”) constitute a binding agreement between us and shall govern your use of the products and services made available to you on our websites and any other sub-domain operated by us as more specifically agreed in an order form or statement of work (the “Service(s)”), as well as all information and data made available to you in connection with the Services (“Data”, and together with the Services, the “Platform”).

1. Acceptance of Terms

By using or accessing any part of the Platform, you expressly acknowledge and agree to these Terms, our privacy policy (available at: <https://www.mend.io/privacy-policy/> (the “Privacy Policy”)) and any and all other applicable policies and notices, as are made available to you from time to time. In addition, if you are entering into these Terms on behalf of a company or other legal entity, you hereby warrant that you have authority to bind such entity to these Terms, in which case the terms “you” or “your” shall refer to such entity. You hereby waive any applicable rights to require an original (non-electronic) signature or delivery or retention of non-electronic records, to the extent not prohibited under applicable law. If you do not agree to these Terms or you do not have authority to enter into these Terms, you must not accept these Terms and may not use any part of the Platform.

We may amend these Terms at any time by posting an amended version of these Terms on our website. When you renew a service under these Terms or purchase a new subscription, the then-current terms will apply and will not change during your subscription for that service. When we introduce new features or services that were not previously included in your subscription, we may present new or revised terms of service that will apply to your use of such new features or services

2. Acceptable Use Policy

By accepting these Terms, you hereby agree to use the Services only by Mend's Acceptable Use Policy available at <https://www.mend.io/acceptable-use-policy/>.

3. Accounts; Security

You may need to set up an account in order to use the Platform (an “Account”). When you are setting up your Account, you must give us accurate and complete information. Opening an Account will require us to obtain information such as your name, e-mail address, and, in certain instances, your country location and/or company. Our use of any personal data you provide to us as part of the Account registration process is governed by the terms of our Privacy Policy. You must not allow anyone other than your Permitted Users (as defined below) to access and use the Account. You may not use someone else’s Account without permission. This means that you cannot set up an Account using someone else’s name or contact information, or a phony name or phony contact information. You are solely responsible for the activity that occurs in your Account, and you must keep your Account password secured. You must let us know immediately in case of suspected unauthorized access to, or activity within your

Account. You may not transfer your Account to someone else. We are not liable for any damages or losses caused by someone using your Account without your permission. "Permitted Users" means any of your employees or contractors authorized by you during the Term under the applicable order form to access or use Services.

4. License to Use our Platform; Restrictions on Use

You may use the Platform in accordance with these Terms, provided that:

- you are over 18 years old; and
- you do not copy or modify the Platform or any part thereof, including without limitation, any features, functions, graphics, data or information; and
- you follow all the rules and restrictions set forth in these Terms and our Privacy Policy.

We grant you a non-exclusive, non-sublicensable, non-assignable, non-transferable, revocable right to use the Platform solely for your internal business operations, during the Term as set forth under the applicable order form and in accordance with the documentation and these Terms. the "documentation" may include implementation manuals, acceptable use policy, retention and backup policy, and other policies and instructions relating to the use and operation of the Services and the Platform as may be made available by us from time to time (including via the Platform and Mend's legal center available on its website).

You agree not to, and shall not permit any third party, except to the extent permitted under these Terms, to: (i) access any part of the Platform without our consent, (ii) modify, translate, broadcast, transfer (by sale, resale, license, sublicense, download or otherwise), reverse engineer, decompile, disassemble, create derivative works of or copy any part of the Platform or otherwise seek to obtain or use the source code or non-public APIs of any part of the Platform, except to the extent expressly permitted by applicable law (and then only upon advance written notice to Mend), (iii) remove, alter or obscure any proprietary notices, labels or marks on any component or portion of the Platform, (iv) market, sell, resell, rent, reproduce, display, distribute or lease any part of the Platform, (v) interfere with or disrupt the integrity or performance of any part of the Platform, (vi) use any part of the Platform for the benefit of any unauthorized third party including use of the Platform to operate as a service bureau, or hosting service, (vii) take any action that imposes or may impose, at our sole discretion, a disproportionately large load on our infrastructure (such as DDoS) or any other interference or attempt to interfere with the integrity or proper working of the Services or Platform, (viii) use the Platform in such a manner that causes violation of these Terms or exceeds the license limitations set forth under the applicable order form or statement of work, (ix) attempt to gain unauthorized access to any part of the Platform, or their related systems or networks; (x) breach any applicable local, national or international law, rule or regulation; (xi) perform or disclose any performance tests or benchmark on the Platform or any security testing, including without limitation, penetration testing, vulnerability scanning and any and all actions not specifically permitted under the documentation, of the Platform, including on our software/servers and associated databases, software media and downloaded files, or (xii) transmit to

the Platform any data, or send or upload any materials to the Platform that contain viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware.

Further, without our prior written consent, you may not access or use any part of the Platform if you are a competitor of ours, or for the purpose of developing a competitive product or service to those provided by Mend or for any benchmarking or other competitive purposes.

This license shall remain in effect until and unless these Terms are terminated by you or us (see section 11 for information about termination).

5. Proprietary Rights

The Platform is licensed and not sold to you under these Terms and you acknowledge that Mend and its licensors retain all right, title, and interest (including all copyright, trade secret, trademark, patent, and other intellectual property rights) in and to the Services, Platform, documentation, Analysis Data, the underlying technology, template forms and designs of the Reports and all technology utilized by us to provide the Services ("Mend IP"), and including all modifications, upgrades, customizations and derivative works made to the Mend IP, in and to the Platform anywhere in the world (even after installation onto a computer owned by you or integration into your system), and that you have no rights in or to any part of the Platform other than the right to use in accordance with these Terms.

If you give us feedback, suggestions, comments, ideas or any other information relating to the Platform, for example recommendations for improvements or features ("Feedback"), that Feedback is solely owned by us and may become part of the Platform without any obligation or payment to you or restriction of any kind; provided that any such Feedback may not include a reference to you or to any other individual. We reserve all rights in and to the Platform unless we expressly state otherwise. The Platform contains proprietary and confidential information that is protected by applicable intellectual property and other laws.

In the event that you breach the terms of the license granted to you herein and such breach results in the creation of derivative works of any part of the Platform ("Derivative Works"), you hereby assign with full right and title guarantee all such Derivative Works to us. Such assignment does not preclude us from taking any legal or other action against you for contravention of these Terms, including for infringement of our intellectual property rights.

The content on the Platform is provided to you "as is" for your internal business use only and may not be exploited for any other purposes whatsoever without our prior written consent. If you download or print a copy of the content from our Platform, you must retain all copyright and other proprietary notices contained therein.

All brand, product, and service names used in the Platform which identify Mend or our licensors and our or their proprietary products and services are the trademarks or service marks of Mend or our licensors. Nothing in the Platform shall be deemed to confer on any person any license or right on the part of Mend or such Platform with respect to any such image, logo, or name. We reserve all rights not expressly granted herein to the Platform.

6. Project Data and Rights you give us

We claim no intellectual property rights in and to your applications, project, code, software, products, or any material you provide or otherwise transmit to us via the Platform and the Reports displaying Your Data as generated through the Platform (except the underlying technology, template forms and designs of the Reports) (“Customer IP”). We grant you an exclusive, perpetual, sublicensable, assignable, transferable, non-revocable, worldwide right to use and copy the Reports, including any Mend IP incorporated therein, for your internal business use only. For the avoidance of doubt, as between the parties, Customer retains full ownership of the Customer IP. You will be solely responsible for the accuracy, quality, and legality of the information transmitted to us via the Platform.

To enable your use of the Platform for Software as a Service subscription, we need to inspect portions of your project and send parts of it to our servers. This information includes, but is not limited to, information relating to the project (such as the project name and metadata), information on dependencies, how the dependencies are being used and how they are referenced by the project and Mend -related files and environmental information (“Project Information”). We may also collect Project Information for each of the project’s dependencies (“Dependency Information”). If you are using our Static Code Analysis Services, the information may include portions of your application files (source or byte code) (the “Application Information” and together with the Project Information and Dependency Information and any other materials uploaded by you via the Platform: “Your Data”). For these purposes, we require, and you hereby grant us, a worldwide, non-exclusive, royalty-free license to store, use, reproduce, display and transmit Your Data to the extent necessary to enable your use of the Platform, including monitoring your usage of the services. This license shall remain in effect for as long as you have access to the Platform.

In addition, we may (i) compile statistical and other information related to the performance, operation, and use of the Platform based, inter alia, on Your Data for our internal business use (e.g., monitor usage), and (ii) use data from the Platform cloud environment in an aggregated and anonymized form to create statistical analyses, for research and development purposes and to improve and market the Services (collectively, the “Analysis Data”). We may make Analysis Data available in a form that does not identify you or any other individual. You understand and acknowledge that certain portions of the Platform may contain a feature that sends Analysis Data along with other technical information regarding the operation of the Platform to Mend. For the avoidance of doubt, this license granted to us will not expire upon termination of these Terms, or where you delete the relevant project from the Platform.

7. Confidentiality

Either party hereunder (a “Disclosing Party”) may disclose to the other party (a “Receiving Party”) certain confidential information regarding its technology and business, including these Terms and its pricing (“Confidential Information”). Confidential Information shall not include any information that was: (a) already in the possession of the Receiving Party without an obligation of confidentiality; (b) developed independently by the Receiving Party, as demonstrated by the Receiving Party, without the use of, or reference to, the Disclosing Party’s Confidential Information; (c) obtained from a source other than the Disclosing Party without an obligation of confidentiality; or (d) publicly available when received, or thereafter became publicly available (other than through any unauthorized disclosure by the Receiving Party).

The Receiving Party agrees to hold all Confidential Information in strict confidence and not to disclose such Confidential Information to third parties other than its affiliates, employees, agents, consultants, or subcontractors who have a need to know in connection with these Terms and will not use such Confidential Information for any purposes whatsoever other than the performance of these Terms. The Receiving Party agrees to advise and require its respective employees, agents, and subcontractors of their obligations to keep all Confidential Information confidential and shall remain responsible at all times for any breach of this Section 7 by any of its employees, agents, and subcontractors as if such breach was made by Receiving Party directly. The Receiving Party agrees to treat the Confidential Information it receives with the same degree of care as it treats its own Confidential Information and in any event no less than a reasonable degree of care.

In addition, the Receiving Party may disclose Confidential Information if legally compelled by a court or other competent authority to disclose Confidential Information, provided that the Receiving Party gives the Disclosing Party reasonable prior written notice of such requirement prior to such disclosure unless such notification is prohibited by law or regulation, and reasonable assistance in obtaining an order protecting the information from disclosure and discloses only such minimal portion of the Confidential Information required to be disclosed.

The provisions of this Section 7 shall survive the termination or expiration of these Terms for a period of 5 (five) years, except that trade secrets shall be protected according to the applicable law.

8. Warranty; Disclaimer of Warranties

8.1. Each party represents and warrants that: (i) it is duly organized under applicable law and has sufficient authority to enter into these Terms; (ii) it shall comply with applicable federal, state, local, or other laws and regulations applicable to the performance by it of its obligations under these Terms and shall obtain all applicable permits, consents, and licenses required of it in connection with its obligations under these Terms. Mend further represents and warrants that its Platform does not, to its actual knowledge, infringe the intellectual property rights of any third party.

8.2. EXCEPT AS EXPRESSLY SET FORTH HEREIN, YOUR USE OF AND RELIANCE ON THE PLATFORM IS AT YOUR OWN RISK. THE PLATFORM IS PROVIDED ON AN “AS IS” AND “AS AVAILABLE” BASIS. MEND AND ITS

AFFILIATES, SUPPLIERS, AND PARTNERS EXPRESSLY DISCLAIM TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT AND THOSE ARISING BY STATUTE OR FROM A COURSE OF DEALING OR USAGE OF TRADE.

MEND AND ITS AFFILIATES, LICENSORS AND PARTNERS MAKE NO WARRANTY THAT (I) THE SERVICES OR ANY PRODUCTS PURCHASED THROUGH THE PLATFORM WILL MEET YOUR REQUIREMENTS; (II) THE PLATFORM WILL BE UNINTERRUPTED OR ERROR-FREE; (III) THAT THERE WILL BE NO ERRORS IN THE PLATFORM OR THAT MEND WILL FIX ANY ERRORS; (IV) THE PLATFORM WILL BE ABLE TO FIND AND MONITOR ALL VULNERABILITIES IN YOUR CODE OR IN ALL DEPENDENCIES (INCLUDING ALL OPEN SOURCE DEPENDENCIES) INCLUDED OR USED IN YOUR APPLICATION OR THAT ANY VULNERABILITIES IDENTIFIED BY THE PLATFORM ARE TRUE AND ACCURATE; OR (V) WE HAVE THE ABILITY TO FIX ALL VULNERABILITIES DISCOVERED USING THE PLATFORM. MEND WILL NOT BE LIABLE OR RESPONSIBLE FOR: (A) ANY TECHNICAL PROBLEMS OF THE INTERNET (INCLUDING WITHOUT LIMITATION SLOW INTERNET CONNECTIONS OR OUTAGES); AND/OR (B) ANY ISSUE THAT IS ATTRIBUTABLE TO YOUR HARDWARE OR SOFTWARE OR YOUR INTERNET OR DATA SERVICE PROVIDER.

ANY MATERIALS OBTAINED THROUGH THE USE OF THE PLATFORM ARE OBTAINED AT YOUR OWN DISCRETION AND RISK AND MEND SHALL NOT BE RESPONSIBLE FOR ANY DAMAGE CAUSED TO YOUR COMPUTER OR DATA RESULTING FROM THE USE OF THE PLATFORM OR ANY CONTENT OBTAINED FROM THE PLATFORM OR IN CONNECTION WITH YOUR IMPLEMENTATION OF ANY REMEDIATION STEPS SUGGESTED BY US, INCLUDING THROUGH THE PLATFORM.

YOU FURTHER ACKNOWLEDGE THAT MEND DOES NOT OFFER A WARRANTY OR MAKE ANY REPRESENTATION REGARDING ANY CONTENT, REPORTS, INFORMATION, OR RESULTS THAT YOU OBTAIN THROUGH THE USE OF OUR PLATFORM ("COLLECTIVELY, "REPORTS"), OR THAT THE REPORTS ARE COMPLETE OR ERROR-FREE. THE REPORTS DO NOT CONSTITUTE LEGAL OR ANY OTHER PROFESSIONAL ADVICE AND WE DO NOT GUARANTEE IT IS A COMPLETE SOURCE OF ALL VULNERABILITIES AND LICENSE ISSUES FOR ALL DEPENDENCIES OR THAT IT IS RELEVANT OR SUITED TO ALL THE DEPENDENCIES INCLUDED OR USED BY YOUR APPLICATION, AND YOU UNDERSTAND THAT ANY DETERMINATION REGARDING THE SUBJECT MATTER OF ANY REPORT AND/OR ANY SOFTWARE COMPONENT THAT YOU USE OR ARE CONSIDERING TO USE SHALL BE MADE IN YOUR SOLE DISCRETION. YOU FURTHER ACKNOWLEDGE THAT THE SUGGESTIONS MADE BY US IN RELATION TO FIXES (WHETHER FOR UPDATES, PATCHES, OR MONITORING SERVICES) ARE NOT INTENDED TO AMOUNT TO ADVICE ON WHICH YOU SHOULD SOLELY RELY. WE WILL NOT BE LIABLE TO YOU FOR OUR FAILURE TO FIND, FIX AND MONITOR LICENSING ISSUES OR VULNERABILITIES IN YOUR CODE OR IN THE DEPENDENCIES OR FOR

INCORRECTLY IDENTIFYING THE SAME, OR FOR ANY DAMAGE OR LOSS SUFFERED AS A RESULT OF A FIX OR VERSION UPDATE RECOMMENDED BY US OR AUTOMATICALLY MADE AVAILABLE FOR DEPLOYMENT FOR YOU BY US.

IN ADDITION, IN CONNECTION WITH YOUR USAGE OF THIRD-PARTY SOLUTIONS, YOU UNDERSTAND THAT WE ARE NOT LIABLE FOR, AND WE EXPRESSLY DISCLAIM AND EXCLUDE ANY AND ALL LIABILITIES AND WARRANTIES WITH RESPECT TO, OR IN CONNECTION WITH, ANY BUGS, VULNERABILITIES, OR HARMFUL CODE CONTAINED IN UPDATES TO THIRD-PARTY SOLUTIONS, EVEN IF PROPOSED, RECOMMENDED OR MADE AVAILABLE BY US (INCLUDING IN CONNECTION WITH THE AUTOMATED UPDATE PROCESS OF RENOVATE AND/OR THE REPO INTEGRATION WITH YOUR REPOSITORY) FROM TIME TO TIME.

THIS SECTION APPLIES WHETHER OR NOT THE SERVICES PROVIDED TO YOU UNDER THE PLATFORM ARE FREE OF CHARGE.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER LEGAL RIGHTS, WHICH VARY AMONG JURISDICTIONS.

9. Limitation of Liability

TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, MEND AND ITS AFFILIATES, SUPPLIERS, AND PARTNERS HAVE NO OBLIGATION OR LIABILITY (WHETHER ARISING IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR OTHERWISE) FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR LIABILITIES (INCLUDING, BUT NOT LIMITED TO, LIABILITY CONCERNING ANY LOSS OF DATA, REVENUE OR PROFIT), ARISING FROM OR RELATED TO THESE TERMS OR YOUR USE OF THE PLATFORM, DOCUMENTATION OR DATA, OR ANY REPORT OR CONTENT PROVIDED BY OR THROUGH THE PLATFORM, EVEN IF WE HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THE FOREGOING LIMITATION APPLIES TO DAMAGES ARISING FROM (I) YOUR USE OR INABILITY TO USE OUR PLATFORM; (II) COST OF PROCUREMENT OF SUBSTITUTE SERVICES RESULTING FROM ANY SERVICES PURCHASED THROUGH OR FROM OUR PLATFORM; (III) THIRD PARTY CONTENT MADE AVAILABLE TO YOU THROUGH THE PLATFORM; OR (IV) ANY OTHER MATTER RELATING TO THE PLATFORM. SOME JURISDICTIONS MAY NOT ALLOW THE LIMITATION OR EXCLUSION OF INCIDENTAL, CONSEQUENTIAL OR OTHER TYPES OF DAMAGES, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, TO THE FULLEST EXTENT PERMITTED UNDER APPLICABLE LAW, NEITHER PARTY'S LIABILITY AND THE LIABILITY OF EACH OF ITS OFFICERS, DIRECTORS, INVESTORS, EMPLOYEES, AGENTS, ADVERTISERS, LICENSORS, SUPPLIERS, SERVICE PROVIDERS AND OTHER CONTRACTORS TO THE OTHER PARTY OR ANY THIRD PARTIES UNDER ANY CIRCUMSTANCE SHALL

EXCEED THE HIGHER OF (i) THE AMOUNT OF FEES ACTUALLY PAID BY YOU TO US IN CONNECTION WITH THE TWELVE (12) MONTHS PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM, OR (ii) \$100.

10. Indemnity

10.1. By Mend. Mend will indemnify, defend and hold you and your officers, directors, agents, and employees harmless from and against any damages losses, expenses, and fines (including reasonable attorneys' fees, costs, and expenses) ("Damages") awarded against you by a court of competent jurisdiction, or paid in settlement (subject to Section 10.3 below), in connection with a claim suit or proceeding by a third party ("Claim") that the Platform, as used by you in accordance with these Terms, infringes any copyright, patent, trade secret or any other intellectual property right of a third party; provided, however, that Mend's indemnification obligations shall not extend to claims based on: (i) an unauthorized modification or use of the Platform made by any third party other than Mend, where the Platform, without such modification or unauthorized use, would not be infringing; (ii) the combination of the Platform with any other software, data or program(s) not supplied by Mend, where the Platform, without such combination, would not be infringing; or (iii) the use by you of any version of the Platform which is not the latest available version of the Platform that was made available by Mend. If any Claims of infringement arise, or Mend believes a Claim of infringement is possible, Mend shall have the right at its sole option and expense to: (a) obtain for you the right to continue the use of the Platform; (b) replace or modify the allegedly infringing part of the Platform so that it becomes non-infringing while giving a substantially equivalent performance; or (c) if Mend determines that the foregoing remedies are not commercially reasonable, terminate these Terms and you will be refunded of any prepaid fees on a pro-rata basis. The Indemnification as stated in this Section, shall be considered as our entire liability and your exclusive remedy for infringement.

10.2. By You. You will indemnify, defend and hold harmless Mend and its officers, directors, agents, and employees from and against any Damages in connection with a third party Claim (i) alleging that use of Your Data or your application, software or code, as used by us in accordance with these Terms or by you through our Platform and Services infringes or misappropriates any intellectual property or privacy rights of a third party, or (ii) arising from your unauthorized use of the Platform, unless such use is otherwise agreed to in writing by the parties.

10.3. If a party hereunder is entitled to indemnification pursuant to this Section 10 (the "Indemnified Party"), the Indemnified Party shall give the other party (the "Indemnifying Party") prompt written notice and provide the Indemnifying Party, at Indemnifying Party's option, control of the defense against the Claim at its own expense, and by counsel reasonably satisfactory to the Indemnified Party. The Indemnified Party shall cooperate, at the expense of the Indemnifying Party, with the Indemnifying Party and its counsel in the defense and the Indemnified Party shall have the right to participate fully, at its own expense, in the defense of such Claim. Any compromise or settlement of a Claim shall require the prior written consent of both parties hereto, such consent not to be unreasonably withheld or delayed.

11. Term and Termination

11.1. These Terms shall commence upon the earlier of the first effective start date under the applicable order form or your use and access to the Platform and shall continue, unless terminated pursuant to and in accordance with this Section 11, as long as an order form referencing or incorporating these Terms remains valid and in effect (the “Term”). During the Term, each order form shall commence on the effective start date set forth thereunder and shall continue for the subscription term set forth thereunder (the “Initial Term”). After the Initial Term, unless otherwise provided in an order form, each order form shall automatically renew for successive periods of the same duration as the paid Initial Term and with payment terms as provided under these Terms (each a “Renewal Term”) unless either you or us give written notice to the other to terminate the order form not less than sixty (60) days before the end of the Initial Term or any Renewal Term thereof (as the case may be), in which case such order form shall terminate at the end of the Initial Term or Renewal Term thereof (as applicable). Termination of any order form shall leave other order forms unaffected; termination of these Terms shall terminate any existing order forms.

11.2. We may suspend your permission to use the Platform or block any IP Address, without notice upon any material or persistent violation of these Terms, if required to avoid harm to Mend or any third party, upon your failure to pay any fees when due (subject to prior written notice in such case), upon the request of law enforcement or government agencies, or for engagement by you in fraudulent or illegal activities.

We may further terminate your use of and access to the Platform and your Account for material breach of these Terms, in which case we will not refund any fees you may have paid for access to the Platform (if applicable).

We shall endeavor to notify you in case of such suspension as early as commercially reasonably possible. For the avoidance of doubt, we will not suspend or terminate the Services or including access to the Platform for convenience during the subscription term under the applicable order.

11.3. Upon any termination, (i) all rights granted to you under these Terms, including the license in Section 4, shall terminate, (ii) you must immediately uninstall, permanently delete or remove from all computer equipment, servers, software and premises in your possession or control, and destroy or return to us all copies of, any of the documentation, data, our software/servers and associated databases, software media and downloaded files copies and refrain from invoking/using the Mend Cloud APIs/endpoints belonging to us as and to the extent used in the provision of the Platform and upon our request, you shall certify in writing that this has been completed, and (iii) (for SaaS-based subscription) we will delete your Account, disable your passwords and will bar you from further use of the Platform. You agree that we will have no liability to you or any third party for termination of your Account or access to the Platform. Upon your written request, we may provide you with limited access to your Account for 30 additional days following termination to allow you to download your data from the Platform. Any data contained in your Account thereafter shall be deleted. Any outstanding balance through the date of termination and other unpaid fees will become immediately due and payable in full (subject to Section 11.4 below).

11.4. You may terminate these Terms in case of our material breach of these Terms by providing us with a 30-day prior written notice to allow us to cure any such material

breach. In case of termination by you pursuant to this Section 11.4, we shall refund to you all prepaid amounts on a pro-rata basis. Except as specified in this Section 11.4. all fees are non-refundable.

12. Billing

You will timely pay all fees set forth in an order form. We will issue invoices upon execution of the relevant order form and the fees due thereunder shall be payable within 30 (thirty) days of receipt by you of the applicable invoice. All payments hereunder are quoted and shall be paid in United States Dollars.

All fees payable to us are exclusive of applicable taxes (including without limitation VAT), withholdings or duties, and the fees set forth under any order form are the net amounts which we will be paid by you hereunder. You agree that all taxes, withholdings and duties of any kind payable in connection with your receipt of the Services under these Terms, other than taxes based on our net income, property and employees, shall be exclusively borne and paid by you.

13. Third Party Terms

Certain portions of the Service may utilize the services, software and/or products of third-parties ("Third-Party Solutions"), such as Open-Source software's new version as made automatically available by us or recommended for upgrade by us, or third-party repository used by you in the event of a repository integration with our Platform. It is hereby clarified that such use of Third-Party Solutions is subject to such third-party terms and conditions. We are not a party to the relationship between you and such third-party in connection with your use of Third-Party Solutions. You must use your own discretion when using Third-Party Solutions.

14. Additional Third-Party Terms for Deliverables

The following paragraph shall apply in case of downloadable Services or products from our website or in connection with on-premise installation of the Platform only (Deliverables).

The Platform may contain or may be provided in conjunction with Open Source Software, including some or all of those detailed in the notices file provided with the Platform. To the extent so indicated by an Open Source License referenced in such notices file, the Open Source Software corresponding to such Open Source License, is licensed directly to you by its respective licensors and is subject to its respective Open Source License, and not to these Terms. Any terms included in such Open Source License shall be deemed to be imposed by reference herein and shall supersede any conflicting provisions herein, solely with respect to the corresponding Open Source Software which is governed by such Open Source License.

If, and to the extent, an Open Source License detailed in the notices file requires that the source code of its corresponding Open Source Software be made available to you, and such source code was not delivered to you with the Platform, then only during the period prescribed in such Open Source License you can request to obtain from Mend such source code by contacting us at the email address: Product@mend.io. You are

solely responsible to flow-down the foregoing provisions on Open Source Software to any additional end-user to which Mend provides the Platform.

15. Mend AI-Powered Code Features

The use of Mend AI-Powered Code Features is governed by these Terms, as well as the supplemental terms specific to the Mend AI-Powered Code Features which are incorporated by reference and can be found here: [\[ADD LINK\]](#) ("Mend AI-Powered Code Features Supplemental Terms of Service"). These Mend AI-Powered Code Features Supplemental Terms of Service are to be read in conjunction with these Terms and are binding upon your use of any of the Mend AI-Powered Code Features.

15. Independent Contractors

You and Mend are independent contractors. Nothing in these Terms creates a partnership, joint venture, agency, or employment relationship between you and Mend. You must not under any circumstances make, or undertake, any warranties, representations, commitments or obligations on behalf of Mend.

16. Additional Features and Products; Updates and Upgrades

These Terms will apply to any new services, features or functionality (including Revisions as defined below) as may be offered by us from time to time, unless they come with separate or additional terms, in which case you will be required to agree to such separate or additional terms before being permitted to use the new services, features or functionality.

We may from time to time offer features and services for free, including as part of a preview program or beta tester program ("Free Services"), but we may add paid subscription plans to the Free Services in the future either in addition to the free option or instead of it.

NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, IT SHALL BE CLARIFIED THAT YOUR USE OF THE FREE SERVICES IS AT YOUR OWN RISK AND THAT ANY WARRANTY, INDEMNITY, SUPPORT WILL NOT APPLY IN CONNECTION WITH THE FREE SERVICES. THE FREE SERVICES ARE PROVIDED "AS-IS" AND WE EXPRESSLY DISCLAIM ANY AND ALL LIABILITY WITH RESPECT TO, OR IN CONNECTION WITH YOUR USE OF THE FREE SERVICES.

You are responsible for monitoring your use of the Free Services in accordance with your subscription plan. Any paid subscription plan may be accompanied by additional licenses, terms of sale and warranty provisions. If at any time you exceed the limit of your subscription plan, we reserve the right to charge you for the relevant fees owed as a result of your use outside the scope of your plan.

We may from time to time provide updates or upgrades to the Platform (each a "Revision"), but are not under any obligation to do so. Such Revisions will be supplied according to our then-current policies, which may include automatic updating or upgrading without any additional notice to you. You consent to any such automatic updating or upgrading of the Platform.

17. Assignment

Neither party will assign or transfer any rights, licenses or obligations under these Terms without the prior written consent of the other party, provided, however, that Mend may assign these Terms (i) pursuant to a merger or sale of all or substantially all of its assets or capital stock; or (ii) to any successor or assignee of all or substantially all of Mend's business. Subject to the foregoing conditions, these Terms shall be binding upon and inure to the benefit of each party and its respective successors and assigns. Except as permitted by the foregoing, any attempted assignment or transfer shall be null and void.

18. Governing Law & Jurisdiction

These Terms shall be (i) construed and governed in accordance with the laws of the State of New York (except for conflict of law provisions) and competent courts of New York, New York, USA shall have jurisdiction in any conflict or dispute arising out of these Terms if you are an entity incorporated under the laws of the United States or Canada; or (ii) construed and governed in accordance with the laws of England and Wales (except for conflict of law provisions) and competent courts of London, United Kingdom shall have jurisdiction in any conflict or dispute arising out of these Terms if you are incorporated outside of the US and Canada; provided that Mend may, in any event, seek injunctive relief in any court of competent jurisdiction. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches.

19. Force Majeure

Neither party shall be liable for delays or any failure to perform the Services or these Terms due to causes beyond its reasonable control even if such causes could have been reasonably expected ("Force Majeure Event"). A Force Majeure Event includes but is not limited to, fire, explosion, flood or other natural catastrophe, governmental legislation, acts, orders, or regulation, including quarantine orders, epidemic or pandemic, strikes or labor difficulties, to the extent not occasioned by the fault or negligence of the delayed party. Any such reason for delay shall last only as long as the Force Majeure Event remains beyond the reasonable control of the delayed party. However, the delayed party shall use its best efforts to minimize the delays caused by any such Force Majeure Event. The delayed party must notify the other party promptly upon the occurrence of any such Force Majeure Event, or performance by the delayed party will not be considered excused pursuant to this Section, and it must inform the other party of its plans to resume performance. The non-delayed Party may terminate these Terms without liability to the delayed party in case the Force Majeure Event exceeds 30 days.

20. General

Any reference to “Mend”, “us”, “our” or “we” under these Terms shall mean WhiteSource Software, Inc., doing business as Mend, if you are an entity incorporated under the laws of the United States or Canada, or between you and White Source Ltd., doing business as Mend in any other case. Unless otherwise agreed to by the parties, any notice under these Terms shall be in writing and addressed and delivered to the other party’s address set forth under the applicable order form or to such party’s contact person’s email. Notice shall be deemed to have been received by a party: (i) on the day of delivery when delivered personally by hand; (ii) if sent by email upon transmission or, if transmitted on a non-business day, on the first business day following transmission, in each case, subject to receipt confirmation; or (iii) on the second business day after which such notice is sent by a recognized international overnight courier. Either party may change its address for notice purposes by providing notice in accordance with this Section or by updating its address in the then-current order form provided such notice shall only be valid upon receipt. These Terms shall constitute the entire agreement between you and Mend concerning your use of the Platform. If any provision of these Terms is deemed invalid by a court of competent jurisdiction, the invalidity of such provision shall not affect the validity of the remaining provisions of these Terms, which shall remain in full force and effect. Any terms and conditions that may be included in your purchase order, including any electronic invoicing portals and vendor registration processes, shall be deemed to be solely for administrative purposes and shall have no legal effect. No waiver of any term of these Terms shall be deemed a further or continuing waiver of such term or any other term, and a party’s failure to assert any right or provision under these Terms shall not constitute a waiver of such right or provision. YOU AGREE THAT ANY CAUSE OF ACTION THAT YOU MAY HAVE ARISING OUT OF OR RELATED TO THE PLATFORM MUST COMMENCE WITHIN ONE (1) YEAR AFTER BECOMING AWARE OF THE CAUSE OF ACTION. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.