



Master Ordering Agreement

For previous versions of this agreement, go [here](#).

LAST UPDATED: July 14, 2025

PLEASE READ THIS MASTER ORDERING AGREEMENT (THE "AGREEMENT") CAREFULLY. THIS AGREEMENT SETS FORTH THE TERMS AND CONDITIONS UNDER WHICH MECHANICAL ORCHARD, INC. ("MECHANICAL ORCHARD") WILL PROVIDE THE CUSTOMER IDENTIFIED IN THE ORDER (THE "CUSTOMER"), WITH ACCESS TO CERTAIN SOFTWARE AND SERVICES AS DESCRIBED THEREIN. BY CLICKING ON THE "I ACCEPT" BUTTON,

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AUTHORITY TO ENTER INTO THE AGREEMENT PERSONALLY OR ON BEHALF OF COMPANY YOU HAVE NAMED AS THE CUSTOMER, AND TO BIND THAT COMPANY TO THE AGREEMENT. IF CUSTOMER DOES NOT AGREE TO BE BOUND BY THE AGREEMENT, CUSTOMER MAY NOT ACCESS OR USE THE SOFTWARE OR THE SERVICES.

PLEASE NOTE THAT THE AGREEMENT IS SUBJECT TO CHANGE BY MECHANICAL ORCHARD IN ITS SOLE DISCRETION AT ANY TIME. When changes are made, Mechanical Orchard will make a new copy of the Agreement available at this website. Mechanical Orchard will also update the "Last Updated" date at the top of the Agreement. Mechanical Orchard may require Customer to provide consent to the updated Agreement in a specified manner before further use of the Software and/ or the Services is permitted. If Customer does not agree to any change(s) after receiving a notice of such change(s), Customer shall stop using the Software and the Services. Otherwise, Customer's continued use of the Software and/or Services constitutes your acceptance of such change(s). PLEASE REGULARLY CHECK THE WEBSITE TO VIEW THE THEN-CURRENT TERMS.

1. **DEFINITIONS**

- 1. **"Affiliate"** means an entity that, directly or indirectly, controls, is controlled by, or is under common control with a party. "Control" means the power to direct the management or affairs of an entity or the beneficial ownership of fifty percent (50%) or more of the voting equity securities or other equivalent voting interests of an entity.
- 2. **"Content Connection Software"** means any software provided by Mechanical Orchard for local installation by or for Customer to access or connect with the Software or Service.
- 3. **"Customer Content"** means all content, data, software code, and other materials provided by Customer for use with or in the Software and/or Service.
- 4. **"Customer Workload"** means any application, COBOL file

Mechanical Orchard from, based on, or derived from the Customer Content.



5. **“Developer Tools”** means any layouts, formats, template, recommendations, configurations, APIs, scripts, improvements, insights, know-how, methodologies, techniques and developments and other similar materials provided by Mechanical Orchard that do not contain Customer Content or Confidential Information, and are generally applicable to Mechanical Orchard’s business and/or other clients.
6. **“Documentation”** means user guides Mechanical Orchard provides to instruct users on operating the Software.
7. **“End User”** means Customer’s employees, agents, independent contractors and consultants.
8. **“Fees”** means the amounts specified in an Order.
9. **“Order”** means any written document describing the Software and Services to be provided and the Fees to be paid by Customer.
10. **“Performance Data”** means any log files, metadata, telemetry data and other technical performance data, and usage statistics automatically generated by the Software or Services relating to the use, performance, efficacy, reliability and/or accuracy of the Software or Services, which do not contain any personally identifiable information or Customer Content.
11. **“Services”** means any service purchased by Customer under an Order.
12. **“Software”** means any software, in any form, licensed to Customer by Mechanical Orchard.
13. **“Subscription Term”** means the period for which Customer is licensed to use the Software, as identified in the Order.
14. **“Work Product”** means any software code developed



1. **Grant of License.** Subject to Customer’s compliance with the terms and conditions of this Agreement and any limitations described in the applicable Order, Mechanical Orchard grants Customer and its authorized End User(s) a limited, non-exclusive, non-sublicensable and non-transferable license to install, access and use the executable form of Software on Customer's or its hosting provider’s systems in accordance with the Documentation and solely for the use case(s) designated in the applicable Order, for the Subscription Term indicated therein (a “**License**”). Customer remains responsible for the acts and omissions of each of its End Users. From time to time in accordance with Mechanical Orchard’s generally applicable procedures, Mechanical Orchard may make available upgrades, enhancements, and error corrections at no additional charge when such upgrades, enhancements and error corrections are generally made available to its other similarly situated clients at no additional charge. Customer shall have the right to make one (1) copy of the Software in machine readable form solely for back-up purposes provided Customer reproduces all proprietary notices on such copy.

2. **Customer Responsibilities.** Customer and/or its End Users shall (a) be solely responsible for connecting to and using the Software in accordance with this Agreement, (b) be solely responsible for the acts or omissions of their End Users or under the log-in credentials of their End Users, (c) use commercially reasonable efforts to prevent unauthorized access to or use of the Software, and notify Mechanical Orchard promptly of any such unauthorized access or use, (d) use the Software only in accordance with this Agreement, the Documentation, and applicable laws and regulations, and (e) reasonably cooperate with Mechanical Orchard as necessary for Mechanical Orchard to perform its obligations under this Agreement.

3. **Content Connection Software.** If applicable, Mechanical Orchard hereby grants to Customer a non-exclusive, non-transferable, non-sublicensable license to use the Content

Orchard access to the Content Connection Software remotely as necessary.



3. **OWNERSHIP;RESTRICTIONS**

- 1. **Ownership.** The Software is licensed, not sold. Mechanical Orchard reserves all right, title and interest (including all intellectual property rights) in the Software, Services, Documentation, and Developer Tools, and all related and underlying technology, documentation, and other data and information, as well as all intellectual property Mechanical Orchard develops related thereto and any derivatives thereof. Except as expressly set out in this Agreement, this Agreement does not confer to Customer any right, title or interest in the Software, Services, Documentation or Developer Tools. The Software is protected by United States copyright law and international intellectual property laws. Customer will not delete or any manner alter the copyright, trademark, and other proprietary rights notices or markings appearing on the Software as delivered to Customer.
- 2. **Customer Ownership.** Customer reserves all right, title and interest (including all intellectual property rights) in the Customer Content and Customer Workload(s). In the event Mechanical Orchard acquires any ownership rights or title to any Customer Content or Customer Workload(s), Mechanical Orchard shall, and hereby does, assign to Customer all of its right, title and interest in and to such Customer Content and Customer Workload(s), including all intellectual property rights therein. Mechanical Orchard agrees to execute and deliver any documents reasonably necessary to perfect Customer’s rights in the foregoing.
- 3. **Restrictions.** Except as expressly permitted under any Order, Customer will not: (a) license, sell, resell, assign, transfer, sublicense, lease, lend, rent or otherwise distribute the Software, Service, Documentation or Developer Tools to any third party; (b) copy, modify, translate or create derivative works of any Software, Service, Documentation or Developer Tools.

in the Software, Service, Documentation or Developer Tools, (d) provide any third party with access to any Software, Service or Developer Tool, or otherwise use the Software, Service or Developer Tool for the benefit of any third party including in connection with a software-as-a-service, a cloud service, applicable service provider or similar offering; (e) use any Software, Service or Developer Tool to build a similar or competitive product or Service; (f) use any device or software that damages, interferes with or disrupts the Software or Service; (g) use the Service in a manner inconsistent with the Documentation or this Agreement; (h) publish or disclose to any third party any performance or benchmark tests or analyses or other nonpublic information relating to the Software or use thereof; (i) disclose, upload, transmit, export, or otherwise make available the Software, or any data, code, samples or other content contain in the Software, to any training, self-improving, machine-learning software, algorithms, hardware or other artificial intelligence tools or aids of any kind; or (j) use the Software, Service, Documentation or Developer Tools in a manner that violates any applicable law, regulation, legal requirement or obligation (including but not limited to third party rights of privacy or intellectual property rights), or exceeds the scope of use permitted by this Agreement.



4. **Use of Customer Content and Customer Workloads.**

Customer hereby grants to Mechanical Orchard a worldwide, non-exclusive, non-transferable, royalty-free, fully paid-up right and license, during the term of the applicable Order, to use, reproduce, and modify the Customer Content and Customer Workloads in order to perform the Services. Customer acknowledges that Mechanical Orchard may use AI and ML models and tools in the performance of the Services, which may be trained and refined based on Customer Content and Customer Workloads; *provided, that*, Mechanical Orchard will ensure that, unless otherwise permitted in an Order, any such training and refinement will be limited to models solely used for the benefit of Customer.

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conditions. Customer acknowledges that the Licensed Software may contain software licensed to Mechanical Orchard from third parties (the **“Third Party Software”**), that the Third Party Software is not owned by Mechanical Orchard, and may be subject to additional restrictions imposed by the Third Party Software licensor. Customer agrees to abide by such additional restrictions. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MECHANICAL ORCHARD OFFERS NO WARRANTIES (WHETHER EXPRESS, IMPLIED, OR STATUTORY OR BY COURSE OF COMMUNICATION OR DEALING WITH CUSTOMER, OR OTHERWISE) OR SUPPORT OF ANY KIND WITH RESPECT TO THE THIRD PARTY SOFTWARE.

- 6. **Open Source Software.** The terms and conditions of this Agreement shall not apply to any “open source” or “free software” licenses (**“Open Source Software”**) included in, embedded in, utilized by, or provided or distributed with the Software. Any such Open Source Software is subject to the terms of the applicable open source license agreement and copyright notice(s).
- 7. **Feedback.** Customer hereby grants Mechanical Orchard a worldwide, non-exclusive, transferable, sublicensable (through multiple tiers), irrevocable, perpetual, royalty-free and fully paid-up right and license to use any feedback, suggestions, enhancement or feature requests or recommendations related to the Software, Services and/or Documentation (collectively, **“Feedback”**) for any lawful purpose. Customer acknowledges that such Feedback is provided voluntarily by Customer on a non-confidential basis; *provided, that*, Mechanical Orchard agrees not to publicly identify Customer as the source of any Feedback.

4. **FEES.**

- 1. **Subscription Terms and Renewals.** Unless otherwise terminated as set forth below, each Order will have a term as set

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together with the Initial Term, the “**Subscription Term**”) at the same annual rate stated in the Order, plus 5% (with such increase to cumulatively compound in each Renewal Term), unless either party provides the other party with written notice of non-renewal at least thirty (30) days prior to the expiration of the then-current Subscription Term. If no term is stated on an Order, the Subscription Term for such Order is one (1) year.

2. **Fees and Payment.** Customer agrees to pay to Mechanical Orchard the fees set forth in any Order (the “**Fees**”) in accordance with the terms therein. Unless otherwise agreed in writing, Mechanical Orchard will issue invoices in arrears that will be due and payable thirty (30) days after receipt. All Fees indicated in an Order are non-cancelable and non-refundable, and do not include any sales, value added and other taxes which may appear separately on the applicable invoice. If Customer is required to pay withholding taxes, then Customer shall gross-up the payment such that the payment to Mechanical Orchard - after the tax so charged - will be a sum equal to the amount of the stated invoice value. Interest will accrue on late payments at a rate of one and one-half percent (1.5%) per month or the maximum rate permitted by applicable law, whichever is less, from the due date until paid.

3. **Suspension.** If Customer’s account is 10 days or more overdue following notice thereof or if Customer is not in compliance with the license requirements or restrictions set forth in this Agreement, in addition to any of its other rights remedies, Mechanical Orchard reserves the right to suspend Customer’s access to the Software or stop performing Services, without liability to Customer, until such amounts are paid in full or the breach is cured.

5. **SERVICES.** Mechanical Orchard will use commercially reasonable efforts to provide the Services set forth in an Order from time to time.

1. **Work Product.** Excluding any Developer Tools, all Work

all intellectual property rights therein. Mechanical Orchard will execute any documents necessary for Customer to perfect its rights in the Work Product, at Customer’s reasonable request.



- 2. **Use of Subcontractors.** Mechanical Orchard may use the services of subcontractors for the performance of Services under this Agreement, provided that Mechanical Orchard remains responsible for such subcontractors’ compliance with the terms of this Agreement.
- 3. **Open Source Software.** Any Open Source Software license currently recognized by the Free Software Foundation (“FSF”) as being compatible with the FSF definition of an open license and allowing linkage is available and may be used by Mechanical Orchard in building and deploying the Work Product.
- 4. **License to Mechanical Orchard.** Customer represents and warrants to Mechanical Orchard that Customer owns or controls or validly licenses all rights in and to Customer Content, including without limitation all rights to exploit all such Customer Content and related materials worldwide in all media and languages in perpetuity without encumbrance or restriction. Customer grants to Mechanical Orchard a non-exclusive, non-transferable, worldwide paid-up license to make, use, modify, reproduce, and prepare derivative works of Customer Content and materials for the purpose of performing Services.
- 5. **Mechanical Orchard Technology.** In the event Mechanical Orchard embeds any Developer Tools or other software, scripts, templates, forms, or other technology created or acquired by Mechanical Orchard prior to, or independent of this Agreement (collectively, “**Mechanical Orchard Technology**”) into any Work Product, Mechanical Orchard shall, and hereby does, grant to Customer a non-exclusive, worldwide, royalty-free, fully paid-up, perpetual and irrevocable right and license, under such Mechanical Orchard Technology, to reproduce, display, perform, distribute, transmit, create derivative works of, and otherwise use the Work Product.



ownership of a providing party’s intellectual property rights in Software, Services, or materials furnished by such providing party; or (b) preclude such providing party from (i) independently developing, marketing, acquiring, using, licensing, modifying or otherwise freely exploiting products or services that are similar to or related to the Services, Software, or materials provided under this Agreement; (ii) restricting the assignment of persons performing Services; or (iii) using or employing their general skills, know how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any assignment, so long as that party complies with the confidentiality obligations in this Agreement.

7. Limited Warranty. Mechanical Orchard shall perform the Services in a good and workmanlike manner. Customer’s sole remedy and Mechanical Orchard’ sole liability for a breach of the foregoing shall be for Mechanical Orchard to at its option either re-perform the Services or refund sums paid for such Services. MECHANICAL ORCHARD HEREBY EXPRESSLY DISCLAIMS ANY AND ALL OTHER WARRANTIES OF ANY KIND OR NATURE, WHETHER EXPRESS, IMPLIED OR STATUTORY, RELATING TO THE PROFESSIONAL SERVICES PROVIDED HEREUNDER AND WORK PRODUCT, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. MECHANICAL ORCHARD DOES NOT WARRANT OR REPRESENT THAT THE WORK PRODUCT WILL BE FREE FROM BUGS OR THAT THE USE OF SUCH WILL BE UNINTERRUPTED OR ERROR-FREE OR MAKE ANY OTHER REPRESENTATIONS REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE WORK PRODUCT IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, OR OTHERWISE. Customer understands that Mechanical Orchard is not responsible for and will have no liability for hardware, software, or other items or any services provided by any persons other than Mechanical Orchard, including without limitation,

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1. **Mutual Warranties.** Each party represents and warrants that:
 - (a) it has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on such party’s behalf has been duly authorized and empowered to enter into this Agreement;
 - (b) the execution, delivery and performance of this Agreement does not and will not materially conflict with, violate or result in a breach of any provision of any government or court order, judgement or decree, or with any other contract or agreement to which it may be bound; and
 - (c) it will comply with all laws, rules and regulations applicable to its performance of its obligations hereunder.

2. **By Customer.** Customer represents and warrants that:
 - (a) Customer has all necessary rights, title and interest in and to the Customer Content to grant the licenses and rights granted herein; and
 - (b) Mechanical Orchard’s exercise of the rights granted by Customer to Mechanical Orchard hereunder, will not infringe upon, misappropriate or violate any third party’s rights, including intellectual property rights or rights of privacy, or any applicable laws, rules or regulations.

3. **By Mechanical Orchard.** Mechanical Orchard represents and warrants that the Software and any Developer Tools (in the form provided by Mechanical Orchard to Customer) will perform in substantial accordance with the Documentation for a period of ninety (90) days following installation by Mechanical Orchard. In the event of any breach of the foregoing representation and warranty, Mechanical Orchard will, as its sole obligation and Customer’s sole and exclusive remedy, use commercially reasonable efforts to correct and fix any non-conformity hereunder. Or, if Mechanical Orchard determines such remedies to be impracticable, to allow Customer to terminate the Subscription Term and receive as its sole and exclusive remedy and Mechanical Orchard’s entire liability, a refund of any fees Customer has prepaid for use of the Software or related Services it has not received as of the date of the warranty claim. The limited warranty set forth in this section shall not apply



4. **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SOFTWARE, SERVICES, DEVELOPER TOOLS, AND DOCUMENTATION ARE PROVIDED "AS IS," AND MECHANICAL ORCHARD MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, COURSE OF DEALING, TRADE USAGE OR PRACTICE, MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SOFTWARE, SERVICES, DEVELOPER TOOLS, OR DOCUMENTATION (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY MECHANICAL ORCHARD. MECHANICAL ORCHARD DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE WILL BE UNINTERRUPTED, SECURE, OR ERROR-FREE. SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR CONDITIONS OR LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY LASTS, SO SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO CUSTOMER.

7. **LIMITATION OF LIABILITY.**

1. **Types of Damages.** EXCLUDING MISAPPROPRIATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY, NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, REVENUE, GOODWILL, PRODUCTION OR USE, BUSINESS INTERRUPTION, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR PERSONAL OR PROPERTY DAMAGE OR ANY SPECIAL, INDIRECT, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY

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SUCH PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES.



2. **Amount of Damages.** EXCLUDING MECHANICAL ORCHARD’S INDEMNIFICATION OBLIGATIONS, LIABILITY FOR WHICH SHALL NOT EXCEED FIVE TIMES THE AMOUNT OF FEES PAID BY CUSTOMER TO MECHANICAL ORCHARD UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO LIABILITY THEREUNDER, EACH PARTY’S MAXIMUM LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF FEES PAID BY CUSTOMER TO MECHANICAL ORCHARD UNDER THE APPLICABLE ORDER DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT(S) GIVING RISE TO LIABILITY THEREUNDER. IN NO EVENT WILL MECHANICAL ORCHARD’S SUPPLIERS HAVE ANY LIABILITY ARISING OUT OF OR IN ANY WAY CONNECTED TO THIS AGREEMENT. SOME STATES AND JURISDICTIONS DO NOT ALLOW FOR THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY TO CUSTOMER.

3. **Basis of the Bargain.** Mechanical Orchard and Customer each agree that the limitations of liability set forth in this section will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. Mechanical Orchard and Customer acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties.

8. **CONFIDENTIALITY.**

1. **Confidential Information.** During the term of this Agreement, each party (the “**Disclosing Party**”) may provide the other Party (the “**Receiving Party**”) with certain information

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nature, ought reasonably to be understood as confidential or proprietary (collectively, "Confidential Information"). Regardless of whether so marked or identified, the pricing set forth in any Order, the Service or Documentation, and all enhancements and improvements thereto will be considered Confidential Information of Mechanical Orchard.



2. **Protection of Confidential Information.** The Receiving Party agrees that it will not use or disclose to any third party any Confidential Information of the Disclosing Party, except as expressly permitted under this Agreement. The Receiving Party will limit access to the Confidential Information to those employees who have a need to know, who have confidentiality obligations no less restrictive than those set forth herein, and who have been informed of the confidential nature of such information. In addition, the Receiving Party will protect the Disclosing Party's Confidential Information from unauthorized use, access, or disclosure in the same manner that it protects its own proprietary information of a similar nature, but in no event with less than reasonable care. At the Disclosing Party's request or upon termination of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will provide to the Disclosing Party a written affidavit certifying compliance with this sentence.

3. **Exceptions.** The confidentiality obligations set forth in this Section will not apply to any information that (a) becomes generally available to the public through no fault of the Receiving Party; (b) is lawfully provided to the Receiving Party by a third party free of any confidentiality duties or obligations; (c) was already known to the Receiving Party at the time of disclosure; or (d) the Receiving Party can prove, by clear and convincing evidence, was independently developed by employees and contractors of the Receiving Party who had no



or by the order of a court of similar judicial or administrative body, provided that the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

- 4. **Confidentiality of Agreement.** Neither party will disclose any terms of this Agreement to anyone other than its attorneys, accountants, and other professional advisors under a duty of confidentiality except (a) as required by law or (b) pursuant to a mutually agreeable press release or (c) in connection with a proposed merger, financing, or sale of such party’s business (provided that any third party to whom the terms of this Agreement are to be disclosed signs a confidentiality agreement reasonably satisfactory to the other party to this Agreement).
- 5. **Inadequacy of Damages.** The parties acknowledge and agree that the unauthorized disclosure of Confidential Information may cause harm not compensable by damages, and the disclosing party may seek injunctive or equitable relief in a court of competent jurisdiction, without posting a bond, to protect its Confidential Information.
- 6. **Performance Data.** Mechanical Orchard may collect Performance Data remotely during the term of this Agreement. Mechanical Orchard retains all right, title and interest in and to the Performance Data and may use Performance Data for any lawful purpose, including for billing purposes.

9. **INDEMNIFICATION.**

- 1. **By Mechanical Orchard.** Mechanical Orchard will defend at its expense any suit brought against Customer, and will pay any settlement Mechanical Orchard makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Software, Service, or Developer Tools infringes, misappropriates or violates any U.S. Intellectual Property Rights. If any portion of

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Software, Service, or Developer Tool; (b) replace the Software, Service, or Developer Tool with non-infringing software or services which do not materially impair the functionality of the Service, or Developer Tool; (c) modify the Software, Service, or Developer Tool so that it becomes non-infringing; or (d) terminate this Agreement and refund any fees actually paid by Customer to Mechanical Orchard for the remainder of the term then in effect, and upon such termination, Customer will immediately cease all use of the Software, Service, Developer Tools, and Documentation. Notwithstanding the foregoing, Mechanical Orchard will have no obligation under this section or otherwise with respect to any infringement claim based upon (1) any use of the Software, Service, or Developer Tool not in accordance with this Agreement or as specified in the Documentation; (2) any use of the Software, Service, or Developer Tool in combination with other products, equipment, software or data not supplied by Mechanical Orchard, where such combination is the but-for cause of such infringement; (3) any modification of the Software, Service, or Developer Tool by any person other than Mechanical Orchard or its authorized agents; (4) any Customer Workload; (5) use for a purpose or in a manner for which the Software was not designed, or use after Mechanical Orchard notifies Customer to cease such use due to a possible or pending claim; (6) any modifications to Software or Services performed pursuant to instructions, designs, specifications, or any other information or materials provided to Mechanical Orchard by or on behalf of Customer; or (7) Open Source Software. In the event Customer has not paid Mechanical Orchard any fees under the applicable Order to which the foregoing obligations arise or relates, this Section 9.1 will not apply to Customer. This subsection states Customer's sole and exclusive remedy of and its entire liability for infringement claims and actions.

2. **By Customer.** Customer will defend at Customer's expense any suit brought against Mechanical Orchard, and will pay any settlement Customer make or approve, or any damages finally

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out of or relating to the unmodified Software, Service, or Developer Tool).



3. **Procedure.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the foregoing: (a) the indemnified party will promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party will have sole control of the defense or settlement of any claim or suit; and (c) the indemnified party will cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit.

10. TERM AND TERMINATION.

1. **Term.** This Agreement commences on the date Customer enters into this Agreement (as described in the preamble) and remains in effect as long as any Order is in effect (the "**Term**"), unless earlier terminated as set forth below. Unless otherwise stated in the applicable Order, each Order will be automatically renewed for consecutive one (1) year terms unless either party provides written notice to the other of its intention not to renew such Order at least thirty (30) days prior to the expiration of the then-current term.
2. **Termination.** Either party may terminate this Agreement, or any Order immediately upon notice to the other party if the other party materially breaches this Agreement or such Order, and such breach remains uncured more than thirty (30) days after receipt of written notice of such breach, if such other party ceases operation without a successor, or such other party seeks protection under any bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding in any jurisdiction, or if any such proceeding is instituted against that party (and not dismissed within 60 days thereafter). For clarity, termination of this Agreement will automatically terminate all Orders.
3. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all amounts owed to Mechanical

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termination, each party will comply with the obligations to return all Confidential Information of the other party, as set forth in the section titled *Confidentiality*. The sections and subsections 1, 3.1, 4, 7, 8, 9, 10.3 and 11 will survive expiration or termination of this Agreement for any reason.



11. **GENERAL.**

- 1. **Publicity.** Mechanical Orchard may identify Customer as a customer in customer lists and marketing materials. With Customer’s advance written consent and subject to any usage guidelines provided by Customer, Customer agrees to participate in case studies and press releases.
- 2. **Use by Affiliates.** Each of Customer’s Affiliates will be entitled to access and use the Software and Services in accordance with this Agreement and applicable Order Form, provided that Customer shall remain responsible to Mechanical Orchard for the actions and omissions of each such Affiliate (and each of such Affiliate’s End Users). The terms of this Agreement will govern, and will be incorporated by reference into, each such Order Form. Customer shall (a) procure that any such Affiliates are aware of the terms of this Agreement, and that they and their End Users act in compliance with them; (b) not make or give any representations, warranties or other promises concerning the applicable Software or Services to its Affiliates unless agreed in writing by Mechanical Orchard; and (c) ensure that Mechanical Orchard is not liable to Customer Affiliates or their End Users in any way.
- 3. **No Assignment.** The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns. Neither party will assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void; provided, however, that either party may assign this Agreement

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4. **Notices.** Any notice or other communication given to a party under or in connection with this Agreement shall be in writing and shall be: (a) Delivered by hand or by prepaid first class post or other next business day delivery service at the address set forth above; (b) sent by email to the email address notified to the sender in writing. Neither party may use email as a valid means of serving any notice to terminate this Agreement or to serve on the other party any legal and or court document including the service, delivery or notification of without prejudice communications, claim forms, notices, orders, judgments, or other documents relating to or in connection with any proceedings, suit or action arising out of or in connection with this Agreement.

5. **Governing Law; Venue.** This Agreement and any action related thereto will be governed and interpreted by and under the laws of the State of California, without regard to conflicts of laws principles thereof or the United Nations Convention on Contracts for the International Sale of Goods. Except for claims for injunctive or equitable relief or claims regarding intellectual property rights (which may be brought in any competent court in San Francisco, California, any dispute arising under this Agreement shall be finally settled in binding arbitration. The Judicial Arbitration and Mediation Service, Inc. ("**JAMS**") will administer the arbitration in accordance with its Comprehensive Arbitration Rules and Procedures (though to the extent JAMS' Expedited Arbitration Procedures are available, they will apply), and the arbitration will be held in San Francisco, California. Subject to the foregoing provisions of this Section, the jurisdiction and venue for actions related to the subject matter hereof shall be the state and United States federal courts located in San Francisco, California, and both parties hereby submit to the personal jurisdiction of such courts.

6. **Waiver.** Any waiver of any provision of this Agreement must be given in writing and a waiver so given will not be deemed a waiver of any other provision or of such provision on any other



or import regulations in other countries. Customer agrees to strictly comply with, and will obligate its distributors, resellers, value-added resellers, original equipment manufacturers, manufactures or agents to comply with, all such laws and regulations and acknowledges that it has the sole responsibility to obtain authorization to export, re-export, or import the Software, Services, and related technology, as may be required. Neither party, nor any of its subsidiaries or any person acting on its behalf or who own 50% or more of its equity securities or other equivalent voting interest, is (a) a person on the List of Specially Designated Nationals and Blocked Persons or any other list of sanctioned persons administered by OFAC or any other governmental entity, or (b) a national or resident of, or segment of the government of, any country or territory for which the United States has embargoed goods or imposed trade sanctions. Customer shall indemnify and hold harmless Mechanical Orchard from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including reasonable attorneys' fees) arising from or relating to any violation by Customer or Customer distributors, resellers, value-added resellers, original equipment manufacturers, manufacturers or agents of any of such laws.

- 8. **Audit.** For the period set forth in the Order, any renewals, and for 3 years after, Customer shall maintain accurate records regarding its compliance with this Agreement. Upon reasonable notice and not more than once per year, Mechanical Orchard may audit Customer Software used to determine such compliance and payment of fees. Customer shall promptly pay additional fees identified by the audit and reimburse Mechanical Orchard for audit costs if the audit discloses underpayment by more than 5% in the audited period, or the Customer breached any Agreement term. If required by Mechanical Orchard and by the method Mechanical Orchard prescribes, Customer shall provide information to Mechanical Orchard in connection with its use of the Software. Customer agrees that Mechanical Orchard may use such information in connection with providing



9. **Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
10. **No Third Party Beneficiaries.** This Agreement does not confer any right or benefit on any person who is not a party to it.
11. **Force Majeure.** A delay by either party in performing its obligations (except payment of Fees) will not be a breach of this Agreement if caused by fire, earthquake, flood, or any other event beyond the reasonable control of such party. The affected party will use reasonable efforts, under the circumstances, to notify the other party of such circumstances and to resume performance as soon as possible.
12. **Independent Contractors.** Customer's relationship to Mechanical Orchard is that of an independent contractor, and neither party is an agent or partner of the other. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.
13. **Electronic Signature.** Each party confirms that if it uses an electronic signature to sign this Agreement, it intends to be bound by the terms of this Agreement on the same basis as it would be by using a written signature to sign this Agreement.
14. **Entire Agreement; Order of Precedence.** This Agreement constitutes the entire agreement between the Parties regarding its subject matter and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. In the event of any conflict or inconsistency between the terms of this Agreement and any Order, the terms of the Order will control to the extent of such conflict or inconsistency.



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