

MASTER SERVICES AGREEMENT

LAST UPDATED: NOVEMBER 22, 2022

This Master Services Agreement (this “**Agreement**”) is entered into as of the earlier of (a) Effective Date or Start Date set forth in the applicable Trial Project Plan or SOW (each defined below) and (b) the first date Customer registers for the MM Services (as defined below) via MM’s website (the “**Effective Date**”) between the client identified in the applicable Trial Project Plan or SOW or such online registration process (“**Customer**”), and MachineMetrics, Inc. (“**MM**”).

If Customer is accessing the MM Services via MM’s online registration process, by clicking “I agree”, Customer agrees to be bound by and become a party to this Agreement. If Customer does not agree to all of the terms of this Agreement, Customer must not use or access the MM Services. If you are entering into this Agreement on behalf of a legal entity, you represent and warrant that you have full authority to bind Customer to this Agreement.

1. DEFINITIONS

1.1 “Access Credentials” means login information, passwords, security protocols, and procedures through which Users access the MM Services.

1.2 “Customer Data” means the data and content: (a) uploaded or submitted into the MM Services by or on behalf of Customer, and (b) collected by the MM Devices and MM Services related to the Machines.

1.3 “Customer Devices” means the Customer devices, if any, provided by the Customer to connect to the MM Services to monitor Machines and other conditions and gather data, as may be further specified in a Trial Project Plan or SOW (as defined below).

1.4 “Confidential Information” means all written or oral information, disclosed by one party (the “**Disclosing Party**”) to the other (the “**Recipient**”), related to the business, products, services or operations of the Disclosing Party or a third party that has been identified as confidential or that by the nature of the information or the circumstances surrounding disclosure ought reasonably to be treated as confidential, including: (a) trade secrets, inventions, ideas, processes, computer source and object code, formulae, data, programs, other works of authorship, know-how, improvements, discoveries, developments, designs and techniques; (b) information regarding products, plans for research and development, marketing and business plans, budgets, financial statements, contracts, prices, employees, suppliers and agents; and (c) information regarding the skills and compensation of the Disclosing Party’s employees, contractors, and other agents.

1.5 “Connectivity Date” means the mutually agreed upon connectivity date by the parties.

1.6 “Documentation” means the documentation, user manuals, help files and videos, and other written materials provided by MM to Customer that describe the features, functions, and operation of the MM Services.

1.7 “Machine” means any asset or machine of Customer that Customer connects to the MM Services.

1.8 “MM Devices” means the devices, if any, ordered by Customer, and provided by MM to monitor Machines and other conditions and gather data, as may be further specified in the Trial Project Plan or SOW.

1.9 “MM Services” means any MM software-as-a-service manufacturing analytics platform as may be further specified in the Trial Project Plan or SOW that allows Users to access certain features and functions through a web interface. References to any MM Services include the Documentation.

1.10 “Professional Services” means any professional services provided by MM to Customer described in a Trial Project Plan or SOW, which may include implementation, connectivity, support and maintenance, and training services.

1.11 “Services” means the MM Services and the Professional Services.

1.12 “Trial Project Plan or SOW” means (a) any written proposal prepared by MM and provided to the Customer to which this Agreement is attached or incorporated by reference, or (b) the online registration process for which Customer registers for the MM Services via MM’s website.

1.13 “User” means each of Customer’s employees and contractors who are provided Access Credentials by Customer or MM.

2. MM DEVICES

2.1 MM Device Ordering. Subject to the terms and conditions of this Agreement, MM hereby agrees to sell to Customer, and Customer hereby agrees to purchase, the MM Devices identified in the applicable Trial Project Plan or SOW or purchased via MM’s website. No Trial Project Plan or SOW will be valid unless signed by representatives of both parties (other than the (a) initial Trial Project Plan or SOW, to which this MSA is attached, if any, and which is subject to and governed by this MSA and (b) the online registration process for which Customer registers for the MM Services via MM’s website). Additional MM Devices may be purchased by Customer by executing an additional Trial Project Plan or SOW or by placing an order on MM’s website. All purchases of MM Devices, even if purchased via MM’s website, will be subject to the terms and conditions of the Agreement. The parties agree that in the event of a conflict between the terms of a Trial Project Plan or SOW and terms of the Agreement, the terms of the Agreement will control unless express reference to the superseded term in the Agreement is set forth in the applicable Trial Project Plan or SOW.

2.2 Title and Risk of Loss; Delivery. Shipping terms are FOB Origin, MM’s place of business. Title and risk of loss of the MM Devices will pass from MM to Customer (and delivery will be deemed made) when MM makes the MM Devices available to a shipping carrier selected mutually agreed upon by MM and Customer. MM will have no obligation to deliver the MM Devices until the applicable Subscription Fees (as defined below) have been paid.

3. PROPRIETARY RIGHTS, RESTRICTIONS, AND SECURITY

3.1 Access Grant to MM Services. Subject to the terms and conditions contained in this Agreement (including Customer’s payment of the Fees (as defined below), MM grants to Customer a non-exclusive, non-transferable, non-sublicensable, revocable right to access and use the MM Services and to analyze the Machines via the MM Services during the Term (as defined below) solely for Customer’s internal business purposes.

3.2 Access Credentials. Customer will safeguard, and ensure that all Users safeguard, the Access Credentials. Customer will be responsible for all acts and omissions of Users. Customer will notify MM immediately if it learns of any unauthorized use of any Access Credentials or any other known or suspected breach of security.

3.3 Hosting and Updates. MM will, at its own expense, provide for the hosting of the MM Services on servers operated and maintained by or at the direction of MM, provided that nothing herein will be construed to require MM to provide for, or bear any responsibility with respect to any: (a) telecommunications, computer hardware, software, and Internet connectivity required by Customer or any Authorized User to provide access from the Internet to the MM Services; or (b) Customer Devices or Machines. Subject to Customer’s payment of the Fees, MM will provide new releases and updates to the MM Services that it generally provides to its other customers, provided that MM will not be obligated to provide to Customer any new release or update to the MM Services, or any module thereof, for which MM generally charges a separate fee, unless otherwise agreed to by the parties in the applicable Trial Project Plan or SOW.

3.4 Security. MM will maintain an information security program consistent with industry standards that contains appropriate administrative, technical, and physical safeguards reasonably designed to protect Customer Data from unauthorized disclosure. Such information security program will include business continuity and disaster recovery plans that are consistent with industry standards. In the event that MM becomes aware of any unauthorized access to, or loss of, Customer Data from MM’s systems or premises, MM will promptly notify Customer according to MM’s policies and protocols aligned with the data type and nature of the event. If and to the extent Customer uploads or submits Customer Data to the Services, the parties agree that MM’s Data Processing Addendum located at <https://www.machinmetrics.com/data-processing-addendum> will form part of this Agreement.

3.5 Customer Restrictions. During the Term and thereafter, Customer will not, and will not permit any User or any other party to, directly or indirectly: (a) act as a reseller or distributor of, or a service bureau for, the Services or otherwise use, exploit, make available or encumber any of the Services to or for the benefit of any third party other than Customer’s customers; (b) use or demonstrate the

Services in any other way that is in competition with MM; (c) reverse engineer, disassemble or decompile the MM Services or MM Devices or attempt to derive the source code or underlying ideas or algorithms of any part of the MM Services or MM Devices (except to the limited extent applicable laws specifically prohibit such restriction); (d) remove any notice of proprietary rights from the Services or MM Devices; (e) copy, modify, translate or otherwise create derivative works of any part of the Services; (f) use the Services in a manner that interferes or attempt to interfere with the proper working of the Services or any activities conducted on the Services, including bypassing or attempting to bypass any privacy settings or measures used to prevent or restrict access to the Services; (g) use manual or automated software, devices, robot, spider, or other processes to “crawl” or “spider” or to retrieve, index, “scrape”, “data mine” or in any way gather information, content or other materials from the Services in an unauthorized manner or reproduce or circumvent the navigational structure or presentation of the Services; (h) use the Services in a manner which interferes with or disrupt its integrity or performance; (i) use or allow the transmission, transfer, export, re-export or other transfer of any software, technology or information forming a part of the Services in violation of any export control or other laws and regulations of the United States or any other relevant jurisdiction; or (j) use the Services to share or store inappropriate materials, including (i) materials containing viruses or other harmful or malicious code; (ii) unsolicited mail (spam); (iii) copyrighted materials to which Customer does not have sufficient rights; (iv) harassing, tortious, or defamatory materials; or (v) other materials prohibited by applicable international, federal, state, or local laws or regulations.

3.6 Customer Obligations. Customer will be responsible for obtaining and maintaining, at Customer’s expense, all the necessary telecommunications, computer hardware, software, and Internet connectivity required by Customer or any User to access the Services from the Internet. Customer will use and install the Services and MM Devices in accordance with the Documentation all applicable laws, rules, and regulations.

3.7 Proprietary Rights and Confidential Information

(a) Confidential Information

(i) **Use and Disclosure.** During this Agreement, each party will have access to the other party’s Confidential Information. Except as otherwise expressly permitted, and without limiting each party’s obligations, under this Agreement, each Recipient agrees as follows: (A) it will not disclose the Confidential Information of the Disclosing Party to anyone except its employees and independent contractors who have a need to know and who have been advised of and have agreed to treat such information in accordance with the terms of this Agreement (each a “**Representative**”) and (B) it will not use or reproduce the Confidential Information disclosed by the Disclosing Party for any purpose other than exercising its rights and performing its obligations as described herein. Each Recipient will be liable for the acts and omissions of its Representatives with respect to the Disclosing Party’s Confidential Information.

(ii) **Exceptions.** The provisions of Section 3.6(a)(i) will not apply to Confidential Information that: (A) becomes generally available to the public through no fault of the Recipient; (B) is lawfully provided to the Recipient by a third party free of any confidentiality duties or obligations; (C) Recipient can prove, by clear and convincing evidence, was already known to the Recipient without restriction at the time of disclosure; or (D) Recipient can prove, by clear and convincing evidence, was independently developed by employees and contractors of Recipient who had no access to the Confidential Information. Notwithstanding Section 3.6(a)(i), each party may disclose Confidential Information to the limited extent required by a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the party making the disclosure pursuant to the order will first have given written notice to the other party and made a reasonable effort to obtain a protective order.

(b) **MM Services.** Except for the limited access grant provided to Customer in this Agreement, MM reserves all right, title and interest in and to the Services, Documentation, and MM trademarks, including all intellectual property rights therein. Unless otherwise expressly set forth in an Trial Project Plan or SOW, and except for any Customer Data, all work product or services provided or developed pursuant to this Agreement or any Trial Project Plan or SOW (including any modifications and improvements to any Services pursuant subsection (c) or any intellectual property developed pursuant to subsection (d) below), and all intellectual property and other proprietary rights derived therefrom, will be the sole and exclusive property of MM.

(c) **Continuous Development.** Customer acknowledges that MM may continually develop, deliver, and provide to Customer on-going innovation to the MM Services in the form of new features, functionality, and efficiencies. Accordingly, MM reserves the right to modify the MM Services, from time to time. Some modifications will be provided to Customer at no additional charge. In the event MM adds additional functionality to a particular MM Service, MM may condition the implementation of such

modifications on Customer's payment of additional fees provided Customer may continue to use the version of the MM Services that MM makes generally available (without such features) without paying additional fees.

(d) Feedback. MM in its sole discretion, may utilize all comments and suggestions, whether written or oral, furnished by Customer to MM, including such comments and suggestions of Users, in connection with its access to and use of the Services (all comments and suggestions provided by Customer hereunder constitute, collectively, the "**Feedback**"). Customer hereby grants MM, on behalf of itself and its Users, a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into MM's products and services.

3.8 Open Source Software. Certain items of software may be provided to Customer with the MM Services or MM Devices and are subject to "open source" or "free software" licenses ("**Open Source Software**"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of Sections 2.2, 3.1, or 8. Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for Open Source Software, MM makes such Open Source Software, and MM's modifications to that Open Source Software, available by written request at the notice address specified below.

4. PROFESSIONAL SERVICES; IMPLEMENTATION; TRAINING AND SUPPORT

4.1 Professional Services Generally. MM will use commercially reasonable efforts to provide the Professional Services. Excluding those agreed between the parties in the Trial Project Plan or SOW, MM will have no obligation to provide or perform such services for or on behalf of Customer.

4.2 Connectivity Services. This Section will apply solely if and to the extent the applicable Trial Project Plan or SOW specifies that MM will provide the on-site connectivity services (the "**Connectivity Services**"). Subject to the terms and conditions of this Agreement, MM will provide the Connectivity Services described in the applicable Trial Project Plan or SOW. Customer agrees to complete all pre-connectivity tasks identified in the applicable Trial Project Plan or SOW prior to the date that MM commences any Connectivity Services ("**Pre-Connectivity Tasks**"). In the event Customer: (a) does not complete the Pre-Connectivity Tasks prior to the scheduled commencement of the Connectivity Services, Customer will pay a service charge in the amount of MM's then-current man-day rate per day that the Connectivity Services are delayed; or (b) cancels Connectivity Services or other Professional Services less than ten (10) business days prior to MM's deployment of personnel to Customer's facility, Customer will pay a one-time service charge in the amount of \$5000.00 .

4.3 Support Services. Subject to the terms and conditions of this Agreement, MM will provide Customer with the support services set forth in a Trial Project Plan or SOW, if any. Excluding those agreed between the parties in the Trial Project Plan or SOW, MM will have no obligation to perform any support services for or on behalf of Customer. MM will not provide support services when a problem is caused by (a) Customer's unauthorized relocation, movement, improper operation, neglect or misuse of the MM Devices; (b) Customer's failure to maintain proper site or environmental conditions; (c) any attempts at configuration, repairs, support, or modifications to the MM Devices not performed by a MM authorized representative or authorized by MM; (d) discontinued systems or software; (e) casualty, act of God, the unauthorized acts of third parties, or other events beyond the reasonable control of MM; and (f) failure or interruption of electrical power, telephone or communication line or like cause (collectively, the "**Support Exclusions**"). In the event support services are requested due to one of the Support Exclusions, Customer will pay to MM MM's then-current man-day rate for such support services.

4.4 Change Orders. If either party wishes to change the scope or performance of the Professional Services, it shall submit details of the requested change to the other party in writing. The parties shall negotiate and agree in writing on the terms of such change using the MM Change Order Form (a "Change Order"). Neither party shall be bound by any Change Order unless mutually agreed upon in writing.

5. CUSTOMER DATA

5.1 Ownership. As between the parties, Customer is and will remain the sole and exclusive owner of all right, title, and interest in and to all Customer Data, including all intellectual property rights therein, subject to the license granted herein to MM. Customer hereby grants to MM a nonexclusive, worldwide, transferable, sublicensable (to its subcontractors and service providers), irrevocable, royalty-

free, fully paid-up license to: (a) use and otherwise process the Customer Data in order to provide the Services to Customer; (b) use the Customer Data to enhance the Services and for other development, diagnostic, and corrective purposes in connection with the Services; (c) disclose the Customer Data to Customer's third party service providers as expressly authorized by Customer via the MM Services; and (d) collect and use the Customer Data in accordance with Section 5.2.

5.2 Collection and Use of Service Analysis. Except as otherwise set forth in any Trial Project Plan or SOW, MM may (a) compile statistical and other information related to the performance, operation, and use of the Services, (b) use certain data from the Service, which may include Customer Data, to form and create statistical analyses and algorithms, improve the Services, and for other research and development purposes, and (c) provide Customer Data to Customer or other users for benchmarking purposes (except where Customer has excluded Customer's Machines from benchmarking via Customer's settings in the MM Services) ((a), (b) and (c) collectively, "**Service Analyses**"). MM may make Service Analyses publicly available and use Service Analyses for any of its lawful business purposes; provided, however, that any public disclosure of Service Analyses will not incorporate Customer Data in a form that could serve to identify Customer or any individual. Service Analyses do not constitute Customer Data, and MM will retain all right, title, and interest in and to Service Analyses, including all intellectual property rights therein.

6. CONSIDERATION

6.1 Invoicing. Except as otherwise set forth in any Trial Project Plan or SOW, all fees (if any) related to Customer's subscription access to the MM Services set forth in the Trial Project Plan or SOW ("**Subscription Fees**") will be invoiced by MM in accordance with the Trial Project Plan or SOW. Except as otherwise set forth in an Trial Project Plan or SOW, all fees for Professional Services set forth in an SOW ("**Professional Services Fees**") and all fees for MM Devices (the "**MM Device Fees**") will be invoiced on the Effective Date. The Subscription Fees, Professional Services Fees, MM Device Fees, and all other fees set forth in the Trial Project Plan or SOW or this Agreement will be referred to herein as "**Fees**".

6.2 Fees. Customer will pay the Fees to MM in accordance with the payment schedule set forth in this Agreement or the applicable Trial Project Plan or SOW. Unless otherwise specified in the Trial Project Plan or SOW, all undisputed invoices issued by MM will be due and payable thirty (30) days after receipt by Customer. All Fees will be paid in U.S. dollars and are non-refundable except as expressly provided herein. Any undisputed portion of the Fees that is not paid when due will accrue interest at 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. Customer must provide MM with written notice of any disputed invoice or Fees by the due date therefor. The Fees exclude, and Customer will be solely responsible for, all sales, use, excise, withholding and any other similar taxes, duties and charges of any kind imposed by any federal, state, or local governmental entity in connection with the Services (excluding taxes based solely on MM's income). MM may increase the Fees if MM provides Customer with written notice at least 30 days prior to the end of the then-current Initial Term or Renewal Term, as applicable.

6.3 Expenses. If pre-approved by Customer in a Trial Project Plan or SOW or otherwise in writing, Customer will reimburse MM for reasonable out-of-pocket expenses (including travel and living) incurred in performing its obligations for specific Professional Services under such Trial Project Plan or SOW in accordance with the MM Travel Policy. All costs and expenses incurred by Customer in connection with the Agreement or its use of the Services are the sole responsibility of Customer.

7. WARRANTIES; DISCLAIMERS; LIMITATIONS ON LIABILITY

7.1 General Representations. Each party represents and warrants that: (a) as of the Effective Date and throughout the Term, it is duly organized, validly existing, and in good standing under the laws of its jurisdiction of incorporation or organization; (b) that the execution and performance of the Agreement, or provision or use of the Services, will not conflict with or violate any provision of any law having applicability to such party; and (c) that the Agreement, when executed and delivered, will constitute a valid and binding obligation of such party and will be enforceable against such party in accordance with its terms.

7.2 Customer Data. Customer represents and warrants that it has obtained and will maintain throughout the Term, all rights, consents, and permissions necessary for Customer to make available the Customer Data to MM and for MM to use the Customer Data as contemplated herein.

7.3 Warranty Disclaimer. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 7, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING ANY

IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE IN TRADE. MM DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES WILL BE ACCURATE, WITHOUT INTERRUPTION, OR ERROR-FREE.

7.4 Disclaimer of Indirect Damages. IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES, INCLUDING LOSS OF PROFITS OR DATA, INTERRUPTION OF SERVICE, OR LOSS OF BUSINESS OR BUSINESS OPPORTUNITY, EVEN IF SUCH DAMAGES ARE FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. IN NO EVENT WILL MM BE LIABLE FOR THE PROCUREMENT OF SUBSTITUTE SERVICES.

7.5 Limitations on Liability. EACH PARTY'S MAXIMUM AGGREGATE LIABILITY UNDER THIS AGREEMENT WILL NOT EXCEED THE GREATER OF (A) THE TOTAL AMOUNT OF FEES RECEIVED BY MM UNDER THE APPLICABLE TRIAL PROJECT PLAN OR SOW DURING THE TWELVE (12) MONTH PERIOD PRIOR TO THE FIRST DATE ON WHICH THE LIABILITY AROSE OR (B) ONE THOUSAND DOLLARS (\$1,000). THE FOREGOING LIMITATION ON LIABILITY WILL NOT APPLY TO A PARTY'S APPLICABLE INDEMNIFICATION OBLIGATIONS.

7.6 Exceptions. BECAUSE SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN LIABILITY, IN SUCH JURISDICTIONS THE LIABILITY OF EACH PARTY WILL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW. THE PROVISIONS OF THIS SECTION 7 WILL APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED, ANY LIMITED REMEDY HEREIN IS HELD TO FAIL OF ITS ESSENTIAL PURPOSE OR THE FORM OF THE CLAIM OR CAUSE OF ACTION, WHETHER IN CONTRACT, WARRANTY, STATUTE, OR TORT (INCLUDING NEGLIGENCE).

8. INDEMNIFICATION

8.1 MM Indemnity. MM will indemnify, defend and hold Customer, its directors, officers, and employees harmless from and against any and all losses, damages, liability, costs and expenses awarded by a court or agreed upon in settlement, as well as all reasonable and related attorneys' fees and court costs (collectively "**Losses**") arising out of any third party claim (a) alleging a MM breach of any MM representation or warranty in Section 7; and (b) to the extent alleging that the MM Services infringe any U.S. patent, copyright, trademark or trade secret.

8.2 Exclusions. Section 8.1 will not apply if the alleged claim arises, in whole or in part, from: (a) a use or modification of the Services by Customer or any User in breach of this Agreement, (b) a combination, operation, or use of the Services with other software, hardware or technology not provided by MM, including Customer Devices or Machines, if the claim would not have arisen but for the combination, operation, or use, or (c) the Customer Data (any of the foregoing circumstances under clauses (a), (b), or (c) will be collectively referred to as a "**Customer Indemnity Responsibility**").

8.3 Customer Indemnity. Customer will indemnify, defend and hold harmless MM, its directors, officers, and employees from and against any and all Losses arising out of any third-party claim (a) alleging a Customer breach of any Customer representation or warranty in Section 7, (b) any failure to install the MM Devices in accordance with the Documentation; and (c) to the extent alleging the infringement of any U.S. patent, copyright, trademark or trade secret arising out of any Customer Indemnity Responsibility.

8.4 Indemnification Process. The foregoing indemnification obligations are conditioned on the indemnified party: (a) notifying the indemnifying party promptly in writing of such action, (b) reasonably cooperating and assisting in such defense; and (c) giving sole control of the defense and any related settlement negotiations to the indemnifying party; provided, however, that the indemnifying party may not settle any claim in a manner that admits guilt or otherwise prejudices the indemnified party without the indemnified party's consent.

8.5 Infringement. If the MM Services are, or in MM's reasonable opinion, are likely to become, the subject of any infringement-related claim, then MM will, at its expense and in its discretion: (a) procure for Customer the right to continue using the MM Services; (b) replace or modify the infringing technology or material so that the MM Services become non-infringing and remain materially functionally equivalent; or (c) terminate Customer's use of and access to the MM Services (including this Agreement and/or any Trial Project Plans or SOWs hereunder) and give Customer a refund for any pre-paid but unused Subscription Fees.

8.6 THE PROVISIONS OF THIS SECTION 8 STATE MM'S ENTIRE LIABILITY AND CUSTOMER'S EXCLUSIVE REMEDIES FOR ANY CLAIM THAT THE SERVICES INFRINGE A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHT.

9. TERM AND TERMINATION

9.1 Term. The term of this Agreement will commence on the Effective Date and will remain in effect for the initial term set forth in the Trial Project Plan or SOW (the "**Initial Term**"). Thereafter, this Agreement will automatically renew for successive one (1) year terms (each a "**Renewal Term**"), unless either party provides notice to the other of its intention not to renew at least ten (10) days prior to expiration of the Initial Term or the then-current Renewal Term. MM will provide Customer with notice of any upcoming Renewal Term (which such notice may be effectuated by sending Customer the applicable invoice for such Renewal Period) at least fifteen (15) days prior to the expiration of the Initial Term or the then-current Renewal Term. The Initial Term and all Renewal Terms will collectively be referred to as the "**Term**."

9.2 Termination. Either party may terminate this Agreement or any Trial Project Plan or SOW, at its discretion, effective immediately upon written notice to the other if the other party materially breaches any provision of this Agreement and does not substantially cure the breach within thirty (30) days after receiving written notice.

9.3 Suspension of Service(s). At any time during the Term, MM may, upon notice to Customer, suspend access to any Service for the following reasons: (a) a threat to the technical security or technical integrity of the Services; (b) any amount due under this Agreement is not received by MM within fifteen (15) days after Customer's receipt of written notice that it was overdue, or (c) breach or violation by Customer of any applicable laws, rules, or regulations relating to Customer's use of the Services.

9.4 Return and Deletion of Customer Data. Upon termination or expiration of the Agreement for any reason, (a) if requested in writing by Customer, MM will permanently delete the Customer Data within ninety (90) days of such termination or expiration, (b) if requested in writing by Customer, MM will permit Customer to access the MM Services for a period of up to ninety (90) days following such termination or expiration solely for the purposes of and as necessary for Customer to export the Customer Data, and (c) subject to MM's obligations under (a) or (b) above, MM reserves the right to permanently delete the Customer Data.

9.5 Effects of Termination. Upon termination or expiration of this Agreement for any reason, (a) any amounts owed to MM prior to such termination or expiration and all completed but unpaid Professional Services Fees will be immediately due and payable and (b) all licensed access rights granted to Customer will immediately cease to exist. Sections 1, 3.5, 3.7, 5, 6, 7, 8, 9.4, 9.5 and 11 will survive any expiration or termination of this Agreement.

10. TRIALS AND CHANNEL PARTNERS

10.1 Trials. If Customer receives access to the MM Services through a trial offered by MM or via MM's website (a "**Trial**"), Customer's right to use and access the MM Services (including this Agreement and all Trial Project Plans hereunder) will terminate at the end of the Trial period set forth in the applicable Trial Project Plan and Customer will have pay to MM its then-current fees in order to continue using and accessing the MM Services. Customer acknowledges and agrees that if Customer receives access to the MM Services through a Trial, (a) MM will have no obligations under Section 8.1 with respect to Customer; and (b) not all features and/or functionality of the MM Services will be available to Customer.

10.2 Channel Partners. If Customer has entered into an arrangement with an authorized MM channel partner with respect to the MM Services (such as a reseller or OEM partner) ("**Channel Partner**"), MM may delegate or novate any of its obligations under this Agreement to such Channel Partner (e.g., support services and payment collection), and MM will not have any obligation to provide novated services to Customer (because the Channel Partner will have such obligation directly to Customer). Any nonpayment of applicable Fees by such Channel Partner to MM will be a material breach of this Agreement by Customer. Customer acknowledges and agrees that if Customer receives access to the MM Services through an arrangement with a Channel Partner, (a) MM will have no obligations under Section 8.1 with respect to Customer; (b) not all features and/or functionality of the MM Services will be available to Customer; and (c) unless Customer has specifically revoked Channel Partner access to Customer Data via Customer's settings in the MM Services, MM may disclose Customer Data to Channel Partner (both prior to and after the Effective Date). Unless otherwise agreed between MM and Channel Partner, upon the earlier of (i) the expiration or termination of Channel Partner's rights to resell the Services to Customer (including the expiration or termination of the agreement between Channel Partner and MM granting such rights) and (ii) the subscription term set between MM and Channel Partner, Customer's right to use and access the MM Services (including this

Agreement and all Trial Project Plans and SOWs hereunder) will terminate and Customer will have to enter into a direct relationship with MM in order to continue using and accessing the MM Services.

11. GENERAL

11.1 Assignment. This Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, that either party may assign this Agreement in connection with a sale of all or substantially all of its assets. Any attempted assignment or delegation in violation of this Section 11.1 will be null, void and of no effect.

11.2 Publicity. During the Term, MM may refer to Customer as a MM customer in its customer lists in MM's promotion or marketing materials and on MM's website.

11.3 Notices. All notices, consents, and approvals under this Agreement must be delivered via email or in writing by courier, or by certified or registered mail (postage prepaid and return receipt requested) to the other party at the address set forth in the Trial Project Plan or SOW and will be effective upon receipt. Either party may change its address by giving notice of the new address to the other party.

11.4 Governing Law; Disputes. This Agreement will be governed by the laws of the Commonwealth of Massachusetts, without reference to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. Any dispute, controversy or claim arising out of or relating to this Agreement, will be made exclusively in the state or federal courts located in Boston, Massachusetts and both parties submit to the jurisdiction and venue of such courts.

11.5 Remedies. Each party acknowledges that any actual or threatened breach of Section 3 will constitute immediate, irreparable harm to the other party for which monetary damages would be an inadequate remedy, and that the other party will be entitled to seek injunctive relief as an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its reasonable attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

11.6 Waivers. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

11.7 Severability. If any provision of this Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

11.8 No Third-Party Beneficiaries. The parties acknowledge that the covenants set forth in this Agreement are intended solely for the benefit of the parties, their successors and permitted assigns. Nothing herein, whether express or implied, will confer upon any person or entity (including any User) other than the parties and their successors and permitted assigns any legal or equitable right whatsoever to enforce any provision of this Agreement.

11.9 Construction. The parties negotiated this Agreement with the opportunity to receive the aid of counsel and, accordingly, intend this Agreement to be construed fairly, according to its terms, in plain English, without constructive presumptions against the drafting party. The headings of Sections of this Agreement are for convenience and are not to be used in interpreting this Agreement. As used in this Agreement, the word "including" means "including, but not limited to."

11.10 Force Majeure. Neither party will be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to events which are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency. The affected party will use reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

11.11 Entire Agreement. This Agreement, including all Trial Project Plans, SOWs, and addenda referenced herein, constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous

agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.

12. REVISION HISTORY

[December 12, 2020](#)

[January 18, 2021](#)

[February 18, 2022](#)

[March 22, 2022](#)