

MASTER SERVICES AGREEMENT v1.0

TERMS AND CONDITIONS

1. This Master Services Agreement relates to purchases of Training and/or Professional Services.

2. **Training.** If Customer purchases Training Courses, the following terms shall apply:

a. General. Mender shall, subject to the terms and conditions of this Agreement, provide to Customer the Training Courses subject to the then-current version of the Mender Training Policy as provided to Customer and any applicable Mender training materials (“**Training Materials**”).

b. Use of Materials. Subject to the terms and conditions of this Agreement, Mender grants Customer a limited, non-exclusive, non-transferable, non-sublicensable license to use a single copy of the Training Materials for internal educational and training purposes only for each paid Training Course attendee, unless otherwise specified. Customer shall not: (i) copy the Training Materials or any portion thereof; (ii) rent, sublicense or transfer any copies of the Training Materials, or portions thereof, to a third party or allow a third party to use the Training Materials; (iii) modify, decompile, disassemble or reverse engineer any sample object code provided with the Training Materials; (iv) use the Training Materials to develop services or products for sale or include any components of the Training Materials in any product; (v) use any portion of the Training Materials to create a competitive service, product or technology; or (vi) export the Training Materials from the United States.

3. **Professional Services.** If Customer purchases Professional Services, the following terms shall apply:

a. Professional Services. Mender shall provide the number of person-days of the Professional Services described in the applicable order form or quote or SOW. Any deliverables provided to Customer as part of the Professional Services shall be deemed “**Deliverables**”. Customer agrees to provide Mender with reasonable access to Customer materials, resources, personnel, equipment or facilities to the extent such access is necessary for the performance of Professional Services. To the extent that Customer does not timely provide the foregoing access required for Mender to perform the Professional Services, Mender shall be excused from performance until such items are provided. Any references to project timeframes or delivery dates for Deliverables in any order form or quote or SOW are good faith estimates only; Customer’s obligation to fees is based solely on number of days of Professional Services delivered.

b. Changes to Scope of Professional Services. If Customer desires to change an order form or quote or SOW for Professional Services, Customer will submit a written request to Mender detailing the proposed changes. If Mender has the resources available to accommodate such changes, Mender shall prepare an amendment to the order form or quote or SOW detailing the changes, any fee adjustments required as a result of such changes, any adjustments to the delivery schedule required as a result of such changes, and any other necessary adjustments. If the order form or quote amendment or SOW amendment is agreeable to Customer, both parties will execute such amendment. If Customer and Mender are not able to agree to an adjustment to the order form or quote or SOW, it will remain unchanged.

c. Customer Content. Customer hereby grants Mender a limited right to use any Customer data or other materials provided to Mender in connection with the Professional Services (the “**Customer Content**”) solely for the purpose of performing the Professional Services for Customer. Customer owns and will retain ownership (including all intellectual property rights) in the Customer Content.

d. Deliverables. Subject to the terms and conditions of this Agreement, Customer shall have a perpetual right to use and distribute any Deliverables for any internal business purpose, but may not distribute the Deliverables to third parties as part of a product or service. Customer’s use of the Deliverables is subject to any additional restrictions or limitations set forth in the applicable order form or quote or SOW.

e. Other Agreements. For the avoidance of doubt, Mender and Customer may have entered into a separate agreement under which Mender licenses certain Mender Software, including updates and enhancements to that software, to Customer. The delivery and use of any such software is governed by the terms of such other agreement and not the terms of this Agreement, and even if listed in an order form or quote or SOW such software shall not be considered Deliverables hereunder.

4. **Special Terms Regarding Third Party Open Source.** As may be specified in the applicable policy or order form or quote, certain Services may cover third party open source products (“**Third Party Open Source**”). All obligations of Mender with respect to Third Party Open Source shall be on a “reasonable commercial efforts” basis. As a general policy, Mender shall make available any bug fixes, error corrections or modifications which Mender creates to any Third Party Open Source under the version of the open source license under which such corrected code was initially licensed. For the avoidance of doubt, Customer is solely responsible for determining its right to use Third Party Open Source and for compliance with the related applicable license terms. ANY AND ALL BUG FIXES, ERROR CORRECTIONS OR MODIFICATIONS TO THIRD PARTY OPEN SOURCE CREATED BY Mender ARE PROVIDED “AS IS”. Mender MAKES NO WARRANTIES, CONDITIONS OR UNDERTAKINGS, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT. Mender SHALL HAVE NO

LIABILITY WHATSOEVER WITH RESPECT TO THIRD PARTY OPEN SOURCE OR ANY BUG FIXES, ERROR CORRECTIONS OR MODIFICATIONS THERETO PROVIDED BY Mender.

5. Ownership of Materials. Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Mender and its suppliers have and will retain all right, title and interest (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) in and to the Training Materials, Deliverables (excluding any Customer Content as incorporated therein) and any other materials provided by Mender to Customer in connection with the Services (collectively, the “**Materials**”). Customer acknowledges that it is obtaining only a limited license right to the Materials in connection with the Service being provided and that irrespective of any use of the words “purchase,” “sale” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement or otherwise. All copies, improvements, updates, modifications or enhancements of the Materials (including any modifications to sample files) shall remain the property of Mender (including any changes which incorporate any ideas, feedback or suggestions of Customer). All rights not granted by Mender are reserved.

6. Payment. Customer will pay Mender the amounts and at the times set forth on the applicable order form or quote or SOW. Customer agrees to reimburse Mender for all reasonable travel, lodging and meal expenses incurred in the course of performing the Services at any location other than Mender’s site. Mender will invoice Customer for expenses incurred and, at Customer’s request and expense, Mender will provide copies of receipts for which charges are incurred. All payments are non-refundable and shall be made in U.S. dollars within thirty (30) days from the date of Mender’s invoice in U.S. Dollars. Customer will be responsible for all taxes, withholdings, duties and levies in connection with the Services (excluding taxes based on the net income of Mender). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

7. Confidential Information. In the course of their relationship, the parties may disclose to each other information identified at the time of disclosure as confidential (“**Confidential Information**”), which may include information concerning their respective businesses and technology. The Materials (including Customer feedback regarding the Materials) are Confidential Information of Mender. All Confidential Information shall remain the property of the disclosing party, and the receiving party shall have no interest in or rights in such except as expressly set forth in this Agreement. Each party agrees to maintain all Confidential Information of the other party in confidence and to take all reasonable precautions to prevent any unauthorized disclosure of such information. These restrictions on disclosure will not apply to any information which (a) becomes generally known or publicly available through no act or failure to act on the part of the receiving party; (b) is furnished to others by the disclosing party without restriction on disclosure; (c) is known by the receiving party at the time of receiving such information as evidenced by its records; or (d) is furnished to the receiving party by a third party, as a matter of right and without restriction on disclosure.

8. No Warranty. THE SERVICES AND MATERIALS ARE PROVIDED “AS IS,” WITHOUT WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS; HOWEVER, TO THE FULL EXTENT PERMITTED BY LAW, THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE MAXIMUM EXTENT PERMITTED BY LAW.

9. Limitation of Liability. IN NO EVENT SHALL MENDER BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, MENDER’S ENTIRE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO MENDER UNDER THIS AGREEMENT. THIS SECTION 9 SHALL NOT APPLY TO CUSTOMER WITH RESPECT TO ANY CLAIM ARISING UNDER SECTION 2(b) (USE OF MATERIALS), SECTION 3(d) (DELIVERABLES) OR SECTION 7 (CONFIDENTIAL INFORMATION). THE PARTIES AGREE THAT THE LIMITATIONS SPECIFIED IN THIS SECTION 9 SHALL SURVIVE AND APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED ITS ESSENTIAL PURPOSE.

10. Term and Termination. This Agreement is effective as of the Effective Date and shall remain in effect until the later to occur of one (1) year from the Effective Date or the completion of all Services under all order form or quotes and SOWs. Either party may terminate this Agreement (including all related order form or quotes and SOWs) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Termination is not an exclusive remedy and the exercise by either party of any remedy under this Agreement will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise. Sections 5 (Ownership of Materials), 6 (Payment), 7 (Confidential Information), 8 (No Warranty), 9 (Limitation of Liability), 11 (Export Compliance) and 12 (General) will survive any expiration or termination of this Agreement.

11. Export Compliance. Customer acknowledges that the Materials are subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer shall not and shall not allow any third-party to remove or export from the United States or allow the export or re-export of any part of the Materials or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department’s Table of Denial Orders or U.S. Treasury Department’s list of Specially Designated Nationals; (c) to any country to which such export or re-export

is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Materials are further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

12. General. This Agreement shall be governed by and construed under the laws of the State of California. Any suit or proceeding arising out of or relating to this Agreement shall be commenced exclusively in the state or federal courts in Santa Clara County, California, and each party irrevocably submits to the exclusive jurisdiction and venue of such courts. The United Nations Convention on Contracts for the International Sale of Goods is specifically disclaimed. Customer acknowledges that Mender would not make available the Materials except on all the terms included herein, and accordingly Mender may terminate this Agreement and seek injunctive relief upon any breach. The parties are independent contractors and no employment, agency, or joint venture is created hereunder. All notices, requests and other communications under this Agreement must be in writing, and must be mailed by registered or certified mail, postage prepaid and return receipt requested, or delivered by hand to the party to whom such notice is required or permitted to be given. This Agreement will bind and inure to the benefit of each party's permitted successors and assigns. Mender may assign this Agreement to any affiliate or in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of Mender's assets or voting securities. Customer may not assign or transfer this Agreement, in whole or in part, without Mender's prior written consent. Any attempt by Customer to transfer or assign this Agreement without such written consent will be null and void. If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable for any reason, the remaining provisions hereof shall be unaffected and remain in full force and effect. This Agreement is the final, complete and exclusive agreement between the parties relating to the subject matter hereof, and supersedes all prior or contemporaneous understandings and agreements relating to such subject matter, whether oral or written.