

**Bonsai Robotics Inc.**  
**Customer Terms**

These Customer Terms ("**Terms**") are between Bonsai Robotics Inc. ("**Bonsai**") and the customer ordering Services (as defined below) from Bonsai ("**Customer**"). By executing a sales order that references these Terms or otherwise accessing or using the Services (as defined below) (a "**Sales Order**"), Customer agrees to these Terms. If the individual accepting these Terms is accepting on behalf of a company or other legal entity, such individual represents that they have the authority to bind such entity and its affiliates to these terms and conditions, in which case the term "Customer" shall refer to such entity and its affiliates. If the individual accepting these Terms does not have such authority, or does not agree with these terms and conditions, such individual must not accept these Terms and may not access the Services. These Terms are effective between Bonsai and Customer as of the date of Customer's accepting these Terms (the "**Effective Date**"). As set forth in Section 19.6, Bonsai may modify these Terms at any time, upon notice to Customer. Once these modifications to the Terms come into effect, such modified Terms will apply, and will govern any Sales Orders then in effect.

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1. **Overview.** Bonsai provides vision-based automation and autonomous solutions for use with Equipment (as defined below) (the “**Automation Services**”) and related services for data insights, analysis, notifications, job planning, and vehicle control (the “**Analytics Services**”). The Analytics Services and the Automation Services, together with any related hardware provided by Bonsai (the “**Hardware**”) collectively are the “**Services**”. “**Equipment**” means equipment used with the Automation Services, including farming vehicles, off-road vehicles, and other machinery.

## 2. **Services.**

2.1. **Ordering Process.** Services are purchased as stated in a Sales Order in the manner established for each of the Services. Each Sales Order will include the specific Services ordered by Customer, including, as applicable, the purchased Services, number of units, and the time period for which such Sales Order applies.

2.2. **Permitted Use.** During the period during which Customer’s subscription to access and use the Services is in effect, as identified in the applicable Sales Order (each, a “**Subscription Term**”), subject to Customer’s compliance with these Terms, Customer may access and use the Services only for its internal business purposes in accordance with the Documentation, these Terms, and any limitations set forth in a Sales Order. The Automation Services may only be used with Equipment at the Customer’s Facilities. The Hardware is provided in connection with Customer’s use of the Automation Services, but Bonsai retains title to the Hardware at all times.

2.3. **Access to Customer Facilities.** Customer will permit Bonsai, upon reasonable notice, to access each of its orchards, farms, and facilities named in a Sales Order (“**Facilities**”) in order to provide the Services, including for data collection pursuant to Section 5. Customer is responsible and liable for any harm Bonsai suffers while at Customer’s Facilities.

2.4. **Remote App.** In connection with the Services, Bonsai may provide Customer with certain proprietary software through which Users can access and use a Service (each, a “**Remote App**”). To the extent Bonsai provides such a Remote App, during the Subscription Term, subject to Customer’s compliance with these Terms, the then-current version of Bonsai’s usage guidelines and standard technical documentation for the Services, the current version of which are at <https://www.bonsairobotics.ai/> (the “**Documentation**”), and any limitations set forth in a Sales Order, Bonsai grants Customer a limited, non-transferable, revocable, non-exclusive, non-sublicensable right and license for each User to:

(a) download the Remote App on supported remote devices as described in the Documentation; and (b) use the Remote App for the sole purpose of accessing and using the applicable Service. Users are responsible for installing all any updates, modifications, or bug fixes to the Services or Documentation that Bonsai provides free of additional charge to its customers using a Service (“**Updates**”) Bonsai makes available to the Remote App. Failure to install all Updates to the Remote App will void the Performance Warranty (as defined in Section 11.1 below).

2.5. **Users.** Only employees or contractors of Customer that Customer allows to use the Services on Customer’s behalf (“**Users**”), using the mechanisms designated by Bonsai (“**Log-in Credentials**”), may access and use the Services. Each User must keep its Log-in Credentials confidential and not share them with anyone else. Customer is responsible for its Users’ compliance with these Terms and all actions taken through their Log-in Credentials (excluding misuse of the Log-in Credentials caused by Bonsai’s breach of these Terms). Customer will promptly notify Bonsai if it becomes aware of any compromise of any Log-in Credentials. Bonsai may collect, access, use, disclose, transfer, transmit, store, host, or otherwise process (“**Process**”) Log-in Credentials in connection with Bonsai’s provision of the Services or for Bonsai’s internal business purposes.

2.6. **Restrictions.** Customer will not (and will not permit anyone else to) do any of the following: (a) provide access to, distribute, sell, or sublicense a Service to a third party (other than Users); (b) use a Service on behalf of, or to provide any product or service to, third parties; (c) use a Service to develop a similar or competing product or service; (d) reverse engineer, decompile, disassemble, or seek to access the source code or non-public APIs to a Service, except to the extent expressly permitted by Law (and then only with prior notice to Bonsai); (e) modify or create derivative works of a Service or copy any element of a Service (other than authorized copies of the Remote App); (f) remove or obscure any proprietary notices in a Service; (g) publish benchmarks or performance information about a Service; (h) interfere with the operation of a Service, circumvent any access restrictions, or conduct any security or vulnerability test of a Service; (i) transmit any viruses or other harmful materials to a Service; (j) take any action that risks harm to others or to the security, availability, or integrity of a Service; or (k) access or use a Service in a manner that violates any Law. Additionally, Customer must not use a Service with any information that permits the identity of an individual to whom the information applies to be inferred by

either direct or indirect means (“**PII**”), or for activities where use or failure of a Service could lead to death, personal injury, or environmental damage, including life support systems, emergency services, nuclear facilities, or air traffic control (“**High Risk Activities**”). Customer acknowledges that the Services are not intended to meet any legal obligations for these uses. Notwithstanding anything else in these Terms, Bonsai has no liability for PII, or use of a Service for High Risk Activities.

3. **Support.** During a Subscription Term, Bonsai will use commercially reasonable efforts to provide reasonable support for the Services. Such support does not apply to the Equipment.
4. **Upgrades.** Unless stated otherwise in a Sales Order, Bonsai will make Updates to Services as Bonsai makes them available to its customers of the applicable Services generally. Customer’s purchase of access to Services is not contingent on the delivery of any future functionality or features or dependent on any oral or written public or private comments made by Bonsai regarding future functionality or features of the Services. From time to time, Bonsai, in its sole discretion, may make available additions, enhancements, upgrades, new services, or modules that include new features and substantial increases in functionality to the Services that Bonsai makes available to its customers for an additional fee (“**Upgrades**”) under additional or different terms. Nothing in these Terms obligates Bonsai to make Upgrades available to Customer as part of the Services or otherwise unless specifically included in a Sales Order.

## 5. Data.

- 5.1. **Use of Customer Data.** Customer grants Bonsai the non-exclusive, worldwide, sublicensable right to use, copy, store, disclose, transmit, transfer, publicly display, modify, and create derivative works from any data or information that: (a) Customer (including its Users) submits to the Services, including from Third-Party Platforms (as defined below); and (b) is Processed by Bonsai to provide the Services to Customer, but excluding the Visualization Data (as defined below) (“**Customer Data**”) only as necessary to: (i) provide any Services, and support; (ii) derive or generate information generated from the use of the Services, which data does not identify Users, any other natural human persons, or Customer, such as technical logs, data, and learnings about Customer’s use of the Services, but excluding any identifiable Customer Data (“**Usage Data**”); (iii) create and compile Customer Data that has been deidentified or aggregated with other data such that the resulting data no longer reasonably identifies Customer or a

specific individual. (“**Aggregated Data**”); and (iv) as otherwise required by all applicable relevant local, state, federal and international laws, regulations, and conventions, including those related to data privacy and data transfer, international communications, and export of data (“**Laws**”) or as agreed to in writing between the parties. Customer will not provide and is prohibited from providing any PII (other than Log-In Credentials or other account access information) to Bonsai for any purpose whatsoever under these Terms or related to the Services.

- 5.2. **Usage Data; Aggregated Data.** Bonsai may Process Usage Data and Aggregated Data for internal business purposes, such as to: (a) track use of Services for billing purposes; (b) provide support for Services; (c) monitor the performance and stability of the Services; (d) prevent or address technical issues with the Services; (e) to improve Services, its other products and services, and to develop new products and services; and (f) for all other lawful business practices, such as analytics, benchmarking, and reports. Customer will not interfere with the collection of Usage Data.
- 5.3. **Visualization Data.** Visual data, mapping, and metrics captured by the Equipment and the Services (“**Visualization Data**”) is solely owned by Bonsai. To the extent Customer obtains any right, title, and interest in and to the Visualization Data, Customer hereby irrevocably assigns and agrees to assign, all such right, title, and interest in and to the Visualization Data. Bonsai hereby grants Customer a perpetual, non-exclusive, non-transferable, non-sublicensable license to access, use, display, reproduce, modify, and otherwise exploit the Visualization Data solely for Customer’s internal business purposes.
6. **Customer Obligations.** Customer is responsible for its Customer Data, including its content and accuracy, and will comply with Laws and the restrictions set forth in Section 2.6 when using the Services. Customer represents and warrants that it has made all disclosures, provided all notices, and has obtained all rights, consents, and permissions necessary for Bonsai to Process Customer Data set forth in these Terms without violating or infringing Laws, third-party rights, or terms or policies that apply to the Customer Data. Customer is solely responsible for monitoring the performance of the Automation Services as set forth in the Documentation, as well as the performance and maintenance of the Equipment.
7. **Suspension of Service.** Bonsai may immediately suspend Customer’s access to any or all of the Services if: (a) Customer breaches Section 2.6 (Restrictions) or Section 6 (Customer Obligations); (b)

Customer's account is 30 days or more overdue; (c) changes to Laws or new Laws require that Bonsai suspend a Service or otherwise may impose additional liability on the part of Bonsai; or (d) Customer's actions risk harm to any of Bonsai's other customers or the security, availability, or integrity of a Service. Where practicable, Bonsai will use reasonable efforts to provide Customer with prior notice of the suspension (email sufficing). If the issue that led to the suspension is resolved, Bonsai will restore Customer's access to the Service(s).

**8. Customer Systems.** Customer will provide and maintain any Customer hardware, software, other technology, and infrastructure that Customer is required to provide and maintain in order for Customer to access and use the Services.

**9. Third-Party Platforms.** Use of any third-party platform, add-on, service, or product not provided by Bonsai that Customer elects to integrate or enable for use with any Service (each, a **"Third-Party Platform"**) or the Equipment is subject to Customer's Terms with the relevant provider and not these Terms. Bonsai does not control and has no liability for Third-Party Platforms or the Equipment, including their security, functionality, operation, availability, or interoperability with the Services or how the Third-Party Platforms, the Equipment, or their providers use Customer Data. By enabling a Third-Party Platform or the Equipment to interact with the Services, Customer authorizes Bonsai to access and exchange Customer Data with such Third-Party Platform or the Equipment on Customer's behalf. The Customer is solely responsible for the purchase, maintenance, security, and operation of the Equipment.

## **10. Commercial Terms.**

**10.1. Subscription Term.** The length of each Subscription Term will be as set forth in the applicable Sales Order. Except as set forth in a Sales Order, the Subscription Term will automatically renew for successive 12-month periods unless either party gives the other party notice of non-renewal at least 30 days before the current Subscription Term ends (each a **"Renewal Term"**).

**10.2. Return of Hardware.** Upon the expiration or termination of these Terms or of a Sales Order, Customer must, at Bonsai's request, return all Hardware provided under these Terms.

**10.3. Fees and Taxes.** Fees for the Services are described in each Sales Order (**"Fees"**). All Fees will be paid in US dollars and are non-refundable unless otherwise provided in a Sales Order or these Terms.

Fees are invoiced as described on the schedule in the Sales Order. Unless the Sales Order provides otherwise, all Fees are due within 30 days of the invoice date. Fees for renewal Subscription Terms are at Bonsai's then-current rates, regardless of any discounted pricing in a prior Sales Order. Late payments are subject to a service charge of 1.5% per month or the maximum amount allowed by Law, whichever is less. All Fees are non-refundable except as may be set out in Section 11.2 (Warranty Remedy) and Section 15.4 (Mitigation). Customer is responsible for any sales, use, GST, value-added, withholding, or similar taxes or levies that apply to Sales Orders, whether domestic or foreign, other than Bonsai's income tax (**"Taxes"**). Fees are exclusive of all Taxes.

## **11. Warranties and Disclaimers.**

**11.1. Limited Warranty.** Bonsai warrants to Customer that each of the Services will perform materially as described in its Documentation and Bonsai will not materially decrease the overall functionality of the Service (**"Performance Warranty"**) during a Subscription Term (**"Performance Warranty Period"**).

**11.2. Warranty Remedy.** If Bonsai breaches the Performance Warranty during the applicable Performance Warranty Period and Customer makes a reasonably detailed warranty claim in the manner required by Bonsai within 30 days of discovering a breach of the Performance Warranty for the applicable Service(s), then Bonsai will use reasonable efforts to correct the non-conformity. If Bonsai cannot do so within 30 days of receipt of Customer's warranty claim, either party may terminate the affected Sales Order as it relates to the non-conforming Service. Bonsai will then refund to Customer any pre-paid, unused fees for the terminated portion of the applicable Subscription Term. This Section sets forth Customer's exclusive remedy and Bonsai's entire liability for breach of the Performance Warranty. This warranty does not apply to: (a) issues caused by Customer's or Users' misuse of or unauthorized modifications to the applicable Service; (b) issues in or caused by Third-Party Platforms, the Equipment, or other third-party systems; (c) use of the applicable Service other than according to the Documentation; or (d) free or evaluation use.

**11.3. General Disclaimer.** **EXCEPT AS EXPRESSLY PROVIDED IN SECTION 11.1 (LIMITED WARRANTY), THE SERVICES, SUPPORT, AND ALL OTHER BONSAI SERVICES ARE PROVIDED "AS IS". BONSAI, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUPPLIERS AND LICENSORS, MAKES NO OTHER WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES OF**

MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, OR NONINFRINGEMENT. BONSAI DOES NOT WARRANT THAT CUSTOMER'S USE OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE, THAT BONSAI WILL REVIEW CUSTOMER DATA FOR ACCURACY, OR THAT IT WILL MAINTAIN CUSTOMER DATA WITHOUT LOSS. BONSAI IS NOT LIABLE FOR DELAYS, FAILURES, OR PROBLEMS INHERENT IN USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS OR OTHER SYSTEMS OUTSIDE BONSAI'S CONTROL. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT ANY STATUTORILY REQUIRED WARRANTIES WILL BE LIMITED TO THE SHORTEST LEGALLY PERMITTED PERIOD.

**11.4. Disclaimers Related to Artificial Intelligence.** To the maximum extent permitted by applicable Law, and notwithstanding anything otherwise expressly provided herein, Bonsai disclaims any and all liability related to the following:

(a) **Use of AI; Assumption of Risk.** The Analytics Services may return inaccurate information that does not accurately reflect real people, places, or facts. The Services do not provide any medical, health, safety, legal, financial, tax, accounting, or other professional advice. Prior to any use of the Automation Services, Customer and its Users will make their own determinations as to the safety, efficacy, accuracy, lawfulness, and appropriateness of the Automation Services for any given use. Customer is solely responsible for monitoring the performance of the Automation Services and Customer is ultimately responsible for all activities of the Automation Services to the fullest extent permitted by applicable laws. Customer acknowledges and agrees that artificial intelligence tools are novel and experimental, and that therefore there is significant uncertainty regarding the operation of such tools. **CUSTOMER'S AND ITS USERS' USE OF THE SERVICES IS AT CUSTOMER'S SOLE RISK.**

(b) **Regulatory Uncertainty.** Artificial intelligence is subject to many legal and regulatory uncertainties, and the Services could be adversely impacted by one or more regulatory or legal inquiries, actions, suits, investigations, claims, fines or judgments, which could impede or limit Customer's ability to continue the use and enjoyment of the Services.

**11.5. Equipment Disclaimer. BONSAI MAKES NO WARRANTIES AND, EXCEPT AS EXPLICITLY SET FORTH HEREIN, DISCLAIMS ANY AND ALL LIABILITY FOR CUSTOMER'S USE OF, OR OTHERWISE RELATED TO, THE EQUIPMENT.**

## **12. Term and Termination.**

**12.1. Term.** The term of these Terms (the "**Term**") starts on the Effective Date and continues until expiration or termination of all Subscription Terms.

**12.2. Termination.** Either party may terminate these Terms (including any or all Sales Orders) if the other party: (a) fails to cure a material breach of these Terms (including a failure to pay fees) within 30 days after notice; (b) ceases operation without a successor; or (c) seeks protection under a bankruptcy, receivership, trust deed, creditors' arrangement, composition, or comparable proceeding, or if such a proceeding is instituted against that party and not dismissed within 60 days.

**12.3. Effect of Termination.** Upon expiration or termination of a Sales Order, Customer's access to and Bonsai's obligations to provide the Services described in the Sales Order and any Software will cease. During a Subscription Term and for the 30 day period immediately following the date of expiration or earlier termination of the applicable Subscription Term, Customer may export data or information that Customer (including its Users) submits to the Services, including from Third-Party Platforms from the applicable Service using the export features described in the applicable Documentation. After that 30 day period, Bonsai will be under no obligation to store or retain the applicable Customer Data and may delete the applicable Customer Data at any time in its sole discretion. Customer Data and other Confidential Information, as defined in Section 16, may be retained in Recipient's standard backups notwithstanding any obligation to delete the applicable Confidential Information but will remain subject to the confidentiality restrictions in these Terms.

**12.4. Survival.** These Sections survive expiration or termination of these Terms: 2.6 (Restrictions), 5.2 (Usage Data; Aggregated Data), 6 (Customer Obligations), 10.3 (Fees and Taxes), 11.3 (General Disclaimers), 11.4 (Disclaimers Related to Artificial Intelligence), 11.5 (Equipment Disclaimers), 12.3 (Effect of Termination), 12.4 (Survival), 13 (Ownership), 14 (Limitations of Liability), 15 (Indemnification), 16 (Confidentiality), 17 (Required Disclosures), and 20 (General Terms). Except where an exclusive remedy is provided in these Terms, exercising a remedy under these Terms, including termination, does not limit other remedies a party may have.

**13. Ownership.** Neither party grants the other any rights or licenses not expressly set out in these Terms. Except as expressly provided in these Terms, as between the parties, Customer retains all intellectual

property rights and other rights in Customer Data provided to Bonsai. Except for Customer's use rights in these Terms, Bonsai and its licensors retain all intellectual property rights and other rights in the Services, any software, scripts, or other code required by Bonsai to operate a Service, including a Remote App (collectively, the "**Software**"), Documentation, Usage Data, and Bonsai technology, templates, formats, and dashboards, including any modifications or improvements to these items made by Bonsai. If Customer provides Bonsai with feedback or suggestions regarding the Services or other Bonsai offerings, Bonsai may use the feedback or suggestions without restriction or obligation.

#### **14. Limitations of Liability.**

**14.1. Consequential Damages Waiver. EXCEPT FOR EXCLUDED CLAIMS (AS DEFINED BELOW) NEITHER PARTY (NOR ITS SUPPLIERS OR LICENSORS) WILL HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS FOR ANY LOSS OF USE, LOST DATA, LOST PROFITS, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND, EVEN IF INFORMED OF THEIR POSSIBILITY IN ADVANCE.**

**14.2. Liability Cap. EXCEPT FOR EXCLUDED CLAIMS, EACH PARTY'S (AND ITS SUPPLIERS' AND LICENSOR'S) ENTIRE LIABILITY ARISING OUT OF OR RELATED TO THESE TERMS WILL NOT EXCEED IN AGGREGATE THE AMOUNTS PAID OR PAYABLE BY CUSTOMER TO BONSAI PURSUANT TO THESE TERMS DURING THE 12 MONTHS PRIOR TO THE DATE ON WHICH THE APPLICABLE CLAIM GIVING RISE TO THE LIABILITY AROSE UNDER THESE TERMS.**

**14.3. Excluded Claims. "Excluded Claims" means:** (a) Customer's breach of Sections 2.6 (Restrictions) or 6 (Customer Obligations); (b) either party's breach of Section 16 (Confidentiality) (but excluding claims relating to Customer Data); (c) amounts payable to third parties under the indemnifying party's obligations in Section 15 (Indemnification); (d) any damages caused by the Equipment; or (e) any damages caused by Customer's failure to monitor the Automation Services in accordance with these Terms.

**14.4. Nature of Claims and Failure of Essential Purpose.** The waivers and limitations in this Section 14.4 apply regardless of the form of action, whether in contract, tort (including negligence), strict liability or otherwise and will survive and apply even if any limited remedy in these Terms fails of its essential purpose.

#### **15. Indemnification.**

**15.1. Indemnification by Bonsai.** Bonsai will defend Customer from and against any third-party claim to

the extent alleging that a Service as operated by Bonsai, when used by Customer as permitted under the applicable Sales Order infringes or misappropriates a third-party's U.S. patent, copyright, trademark, or trade secret, and will indemnify and hold harmless Customer against any damages and costs awarded against Customer (including reasonable attorneys' fees) or agreed in a settlement by Bonsai resulting from the claim.

**15.2. Indemnification by Customer.** Customer will defend both Bonsai and the original equipment manufacturer of the applicable Equipment that Customer is using with the Automation Services ("**OEM**") from and against any third-party claim to the extent resulting from Customer Data, or Customer's breach or alleged breach of Section 6 (Customer Obligations), and will indemnify and hold harmless Bonsai and the OEM against any damages and costs awarded against Bonsai (including reasonable attorneys' fees) or agreed in a settlement by Customer resulting from the claim.

**15.3. Procedures.** The indemnifying party's obligations in this Section 15 are subject to it receiving: (a) prompt written notice of the claim; (b) the exclusive right to control and direct the investigation, defense, and settlement of the claim; and (c) all reasonably necessary cooperation of the indemnified party, at the indemnifying party's expense for reasonable out-of-pocket costs. The indemnifying party may not settle any claim without the indemnified party's prior consent if settlement would require the indemnified party to admit fault or take or refrain from taking any action (other than relating to use of the Services, when Bonsai is the indemnifying party). The indemnified party may participate in a claim with its own counsel at its own expense.

**15.4. Mitigation.** In response to an actual or potential infringement or misappropriation claim or otherwise relating to violation of intellectual property rights, if required by settlement or injunction or as Bonsai determines necessary to avoid material liability, Bonsai may at its option: (a) procure rights for Customer's continued use of the applicable Service; (b) replace or modify the allegedly infringing portion of the applicable Service to avoid infringement or misappropriation without reducing the Service's overall functionality; or (c) terminate the affected Sales Order and refund to Customer any pre-paid, unused fees for the terminated portion of the Subscription Term.

**15.5. Exceptions.** Bonsai's obligations in this Section 15 do not apply: (a) to infringement or misappropriation resulting from Customer's modification of Services or use of Services in combination with items not

provided by Bonsai (including Third-Party Platforms); (b) to infringement resulting from Software other than the most recent release; (c) to unauthorized use of Services; (d) if Customer settles or makes any admissions about a claim without Bonsai's prior consent; or (e) to free or evaluation use.

**15.6. Exclusive Remedy. THIS SECTION 15 SETS OUT CUSTOMER'S EXCLUSIVE REMEDY AND BONSAI'S ENTIRE LIABILITY REGARDING INFRINGEMENT OR MISAPPROPRIATION OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS.**

**16. Confidentiality.**

**16.1. Definition.** "Confidential Information" means information disclosed to the receiving party ("Recipient") under these Terms that is designated by the disclosing party ("Discloser") as proprietary or confidential or that should be reasonably understood to be proprietary or confidential due to its nature and the circumstances of its disclosure. Bonsai's Confidential Information includes the terms and conditions of these Terms and any technical or performance information about the Services. Customer's Confidential Information includes Customer Data.

**16.2. Obligations.** As Recipient, each party will: (a) hold Confidential Information in confidence and not disclose it to third parties except as permitted in these Terms, including Section 5.1 (Use of Customer Data); and (b) only use Confidential Information to fulfill its obligations and exercise its rights in these Terms. At Discloser's request, Recipient will delete all Confidential Information, except, in the case where Bonsai is the Recipient, Bonsai may retain the Customer's Confidential Information to the extent required to continue to provide the Services. Recipient may disclose Confidential Information to its employees, agents, contractors, and other representatives having a legitimate need to know (including, for Bonsai, the subcontractors referenced in Section 19.9), provided it remains responsible for their compliance with this Section 16 and they are bound to confidentiality obligations no less protective than this Section 16.

**16.3. Exclusions.** These confidentiality obligations do not apply to information that Recipient can document: (a) is or becomes public knowledge through no fault of the receiving party; (b) it rightfully knew or possessed prior to receipt under these Terms; (c) it rightfully received from a third party without breach of confidentiality obligations; or (d) it independently developed without using Confidential Information.

**16.4. Remedies.** Unauthorized use or disclosure of Confidential Information may cause substantial harm for which damages alone are an insufficient remedy. Each party may seek appropriate equitable relief, in addition to other available remedies, for breach or threatened breach of this Section 16.

**17. Required Disclosures.** Nothing in these Terms prohibits either party from making disclosures, including of Customer Data and other Confidential Information, if required by Law, subpoena, or court order, provided (if permitted by Law) it notifies the other party in advance and cooperates in any effort to obtain confidential treatment.

**18. Publicity.** Neither party may publicly announce that the parties have entered into these Terms, except with the other party's prior consent or as required by Laws. However, Bonsai may include Customer and its trademarks in Bonsai's customer lists and promotional materials but will cease further use at Customer's written request.

**19. General Terms.**

**19.1. Assignment.** Neither party may assign these Terms without the prior consent of the other party, except that either party may assign these Terms in connection with a merger, reorganization, acquisition, or other transfer of all or substantially all its assets or voting securities to the other party involved in such transaction. Any non-permitted assignment is void. These Terms will bind and inure to the benefit of each party's permitted successors and assigns.

**19.2. Governing Law, Jurisdiction and Venue.** These Terms are governed by the laws of the State of California and the United States without regard to conflicts of laws provisions that would result in the application of the laws of another jurisdiction and without regard to the United Nations Convention on the International Sale of Goods. The jurisdiction and venue for actions related to these Terms will be the state and United States federal courts located in Santa Clara County, California and both parties submit to the personal jurisdiction of those courts.

**19.3. Attorneys' Fees and Costs.** The prevailing party in any action to enforce these Terms will be entitled to recover its reasonable attorneys' fees and costs in connection with such action.

**19.4. Notices.** Except as set out in these Terms, any notice or consent under these Terms must be in writing to the addresses on the first page and will be deemed given: (a) upon receipt if by personal delivery; (b) upon receipt if by certified or registered U.S. mail (return receipt requested); or (c) one day after dispatch if by a commercial overnight delivery service. Notices may not be sent via email unless

otherwise expressly permitted elsewhere in these Terms. Either party may update its address with notice to the other party. Bonsai may also send operational notices to Customer by email or through the Services.

**19.5. Entire Terms.** These Terms (which includes all Sales Orders, Schedules (as defined below), and the policies as Bonsai may make available to Customer from time-to-time. ("**Policies**")) is the parties' entire Terms regarding its subject matter and supersedes any prior or contemporaneous Terms regarding its subject matter. In these Terms, headings are for convenience only and "including" and similar terms are to be construed without limitation. These Terms may be executed in counterparts (including electronic copies and PDFs), each of which is deemed an original and which together form one and the same Terms. "**Schedules**" refers to a document that adds and/or adjusts certain terms of the Terms as they apply to the purchase of one or more Services. Each Schedule is governed by and a part of the terms of these Terms.

**19.6. Amendments.** Bonsai may update these Terms at any time, to be effective upon notice to Customer. If Bonsai makes material detrimental modifications to these Terms ("**Material Modifications**") and Customer objects to such Material Modifications within 30 days after notice, then Customer will be subject to the version of these Terms in effect immediately prior to such Material Modifications for the remainder of any then-current Subscription Terms. If it is not possible for Customer to remain subject to the version of these Terms in effect immediately prior to the Material Modifications, then Bonsai may terminate these Terms (including any or all Sales Orders) upon notice to Customer, in which case Bonsai will provide Customer a refund of any pre-paid Fees for the terminated portion of the current Subscription Term. Customer must notify Bonsai of its objections to any Material Modifications within 30 days after Bonsai's notice of the Material Modifications. Once the modifications to these Terms are in effect, Customer's continued use of the Services constitutes its acceptance of the modifications. Bonsai may require Customer to click to accept the modified Terms. The terms in any Customer purchase order or business form will not amend or modify these Terms and are expressly rejected by Bonsai; any of these Customer documents are for administrative purposes only and have no legal effect.

**19.7. Waivers and Severability.** Waivers must be signed by the waiving party's authorized representative and cannot be implied from conduct. If any provision of these Terms is held invalid, illegal, or unenforceable, it will be limited to the minimum extent necessary so the rest of these Terms remain in effect.

**19.8. Force Majeure.** Neither party is liable for any delay or failure to perform any obligation under these Terms (except for a failure to pay fees) due to events beyond its reasonable control, such as a strike, blockade, war, pandemic, act of terrorism, riot, Internet or utility failures, refusal of government license, or natural disaster ("**Force Majeure Events**").

**19.9. Subcontractors.** Bonsai may use subcontractors and permit them to exercise Bonsai's rights, but Bonsai remains responsible for their compliance with these Terms and for its overall performance under these Terms.

**19.10. Independent Contractors.** The parties are independent contractors, not agents, partners, or joint venturers.

**19.11. Export.** Customer will comply with all relevant U.S. and foreign export and import Laws in using any Service. Customer: (a) represents and warrants that it is not listed on any U.S. government list of prohibited or restricted parties or located in (or a national of) a country that is subject to a U.S. government embargo or that has been designated by the U.S. government as a "terrorist supporting" country; (b) agrees not to access or use Services in violation of any U.S. export embargo, prohibition, or restriction; and (c) will not submit to the Services any information controlled under the U.S. International Traffic in Arms Regulations.

**19.12. Government End-Users.** Elements of the Services are commercial computer software. If the user or licensee of the Services is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Services or any related documentation of any kind, including technical data and manuals, is restricted by the terms of these Terms in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Services were developed fully at private expense. All other use is prohibited.

**19.13. Conflicts in Interpretation.** If there are inconsistencies or conflicts between the terms of the body of these Terms and the terms of any Schedules, exhibits, attachments, addenda, Policies, and other documents attached to or incorporated by reference in these Terms, the order of precedence is as follows: (a) the terms contained in the body of these Terms; (b) the terms of the Schedules, exhibits, attachments, addenda, and Policies to these Terms; and (c) the Documentation.



