

CURII CORPORATION MASTER SERVICES AGREEMENT

Last updated February 8, 2022

PLEASE READ THIS CURII CORPORATION MASTER SERVICES AGREEMENT BEFORE PURCHASING OR USING CURII CORPORATION SUPPORTED SOFTWARE AND/OR SERVICES. BY EXECUTING AN ORDER FORM THAT REFERENCES THIS AGREEMENT, CUSTOMER AGREES TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, WHICH WILL GOVERN CUSTOMER'S PURCHASE AND USE OF CURII CORPORATION SERVICES, AND THIS MASTER SERVICES AGREEMENT SHALL BE DEEMED INCORPORATED BY REFERENCE INTO SUCH ORDER FORM. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE CURII CORPORATION SERVICES.

Unless otherwise defined in this document, capitalized terms are defined in Section 11.

This Curii Master Services Agreement (the "Agreement") is made by and between Curii Corporation ("Curii") and purchaser or user of Curii software and services who accepts this Agreement ("Customer"). This Agreement is effective as of first Effective Date in an Order Form subject to the terms of the Agreement ("Effective Date").

1 SCOPE OF AGREEMENT

- 1.1 **Framework.** This Agreement establishes a framework that will enable Curii to provide Supported Software and Services to Customer.
- 1.2 **Customer Use.** Services are only for Customer's internal use. Customer may not use Services to supply any consulting, training or support services to any third party, without written consent from Curii. All Services delivered under this Agreement are deemed accepted by Customer upon delivery.

2 OBLIGATIONS OF THE PARTIES

- 2.1 **On-Site Obligations.** If Curii personnel are working on Customer's premises (a) Customer will provide a safe and secure working environment for Curii personnel, and (b) Curii will comply with all reasonable workplace safety and security standards and policies, applicable to Customer's employees, of which Curii is made aware in writing by Customer with reasonable advance notice.
- 2.2 **Changes to Work and Delays.** Changes to the Services will be made only through a written change order signed by both parties. In the event that (a) Customer fails to timely fulfill its obligations under an Order Form, and this failure adversely impacts the provision of Services, or (b) events outside of either party's reasonable control cause a delay in or otherwise affect Curii's ability to perform its obligations under an Order Form, Curii will be entitled to appropriate relief, including adjusting the timing of its delivery of applicable Services.
- 2.3 **Assistance.** Customer may provide Curii access to "Customer Resources" such as information, systems, accounts in cloud services, software, workspaces, data centers, and networks as reasonably required by Curii in order to provide the Services. Customer understands and agrees that (a) the completeness, accuracy of, and extent of access to, any Customer Resources provided to Curii may affect Curii's ability to provide Services, and (b) if reasonable access to Customer Resources is not provided, Curii will be relieved from providing any Services dependent upon such access. Customer will obtain any third party consents necessary to grant Curii access to the Customer Resources that are subject to the proprietary rights of, or controlled by, any third party, or which is subject to any other form of restriction upon disclosure.

3 PAYMENT

- 3.1 **Fees and Expenses.** In consideration for the Services, Customer will pay Curii the fees set forth in the applicable Order Form or associated Services Agreement as referenced in the Order Form. Fees are stated in United States Dollars and must be paid in United States Dollars. Customer will also reimburse Curii for

reasonable out-of-pocket travel, living, and other reimbursable expenses incurred by Curii in the provision of the Services unless otherwise specified in the Order Form.

- 3.2 **Invoicing and Payment Terms.** Curii will invoice Customer per the terms of the Order Form. Different Services provided by Curii may have different standard payment terms as specified in the Order Form or the specific Services Agreement as referenced in the Order Form. Customer will pay all invoices issued by Curii under Order Forms in full within thirty (30) days of the date of each invoice, without setoff, counterclaim, or deduction of any kind. All invoiced amounts not paid by Customer when due will accrue interest at the rate of one percent (1%) per month or the maximum amount permitted by law, whichever is lower. Curii may, in its sole discretion and upon ten (10) days prior written notice to Customer, suspend the provision of Services, as applicable, if any invoice is more than thirty (30) days past due. This right of suspension will not limit any other of Curii's rights or remedies related to Customer's failure to pay.
- 3.3 **Credit Card.** If Customer is paying by credit card, Customer (a) authorizes Curii to charge Customer's credit card for the Services and for the amount due at the time of renewal of Subscription Services, and (b) agrees to provide updated credit card information to Curii for renewal purposes.
- 3.4 **Taxes.** All fees and expenses charged by Curii under this Agreement are exclusive of any taxes, duties, or similar charges imposed by any government, and Customer agrees to pay for any and all federal, state, or local sales, use, excise, privilege, or other taxes, duties or assessments, however designated or levied, relating to this Agreement, exclusive of taxes based on Curii's net income. If Customer is required to pay any withholding tax, charge, or levy in respect of any payments due to Curii hereunder, Customer agrees to gross up payments actually made to Curii such that Curii receives sums due hereunder in full and free of any deduction for any such withholding tax, charge, or levy.

4 LICENSE, OWNERSHIP AND PROPERTY RIGHTS

- 4.1 **Software Licenses.** Each type of Supported Software is governed by a license grant or an end user license agreement, which are referenced in the applicable Order Form or the source code of the Supported Software.
- 4.2 **Customer Content.** As between Curii and Customer, Customer or Customer licensors own all right, title, and interest in and to Customer Content. Except as provided in this Section 8, Curii obtains no rights under this Agreement from Customer or Customer licensors to Customer Content, including any related intellectual property rights.
- 4.3 **Responsibility for Customer Content.** Customer is solely responsible for the collection, creation, manipulation, and other uses of Customer Content. Customer is solely responsible for the compliance of Customer Content with any and all regulations, laws, and policies that may govern the collection, storage, processing, use, or distribution of Customer Content. Customer agrees to handle and process notices sent to Customer (or any Customer affiliates) by any person or organization claiming that Customer Content violates such person's rights or any applicable laws or regulations.
- 4.4 **Protected Health Information (PHI).** Curii is not a Covered Entity ("CE") as that term is defined in the Health Insurance Portability and Accountability Act of 1996 and its related regulations set forth in Parts 160, 162, and 164 of Title 45 of the Code of Federal Regulations (collectively, "HIPAA"). CUSTOMER AGREES TO INDEMNIFY AND HOLD HARMLESS CURII OF AND FROM ANY AND ALL CLAIMS, DEMANDS, LOSSES, CAUSES OF ACTION, DAMAGE, LAWSUITS, JUDGEMENTS, INCLUDING ATTORNEY'S FEES AND COSTS ARISING OUT OF OR RELATING TO CUSTOMER UPLOADING, STORING, ANALYZING, OR TRANSFERRING OF CUSTOMER CONTENT.
- 4.5 **Marks.** Unless expressly stated in an Order Form or another written agreement, no right or license, express or implied, is granted in this Agreement for the use of any Curii or third party trade names, service marks or trademarks.
- 4.6 **Freedom to Use Ideas.** Subject to Section 5 and notwithstanding anything to the contrary contained in this Agreement or an Order Form, the ideas, methods, concepts, know-how, structures, techniques, inventions, developments, processes, discoveries, improvements and other information and materials developed in and during the course of any Order Form may be used by Curii, without an obligation to account, in any way

Curii deems appropriate, including by or for itself or its Customers or customers. Customer may, in its sole discretion, provide Curii with suggestions, enhancement requests, recommendations, or other Feedback related to Supported Software and Services provided hereunder. Customer hereby assigns to Curii all right, title, and interest in and to any Feedback, including all Intellectual Property rights therein or relating thereto.

- 4.7 **Curii Retained Property.** Curii owns and retains all worldwide right, title and interest in and to all: (a) Curii's Pre-Existing Intellectual Property, (b) General Enhancements, (c) Services Materials, (d) Training Materials, and (e) Documentation, and (f) Implementation Architectures (together, the "Curii Retained Property"), including any and all Intellectual Property therein and thereto. To the extent that any Curii Retained Property is included in a deliverable provided to Customer as part of any Services, Curii hereby grants to Customer a nonexclusive, non-transferable, worldwide right and license to internally use, execute, reproduce, display, and perform such Curii Retained Property solely as included in such deliverable. The above license to Curii Retained Property expressly excludes Supported Software which is subject to the terms of the specific applicable licenses for the software and other materials that are clearly licensed on different terms. Except as expressly set forth herein, nothing in this Agreement conveys any right, title, or interest in or to the Curii Retained Property to Customer or any other third party and Curii reserves all such rights, title and interest.
- 4.8 **Residual Rights.** The parties acknowledge and agree that Curii is in the business of providing training, consulting, and support services to third parties that are or may be substantially similar to the Services being provided to Customer. Customer agrees that Curii, its employees, and agents will be free to use and employ their general skills, know-how, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques, or skills gained or learned during the course of any Services performed under this Agreement and retained in the unaided memory of Curii's employees or agents, subject to its obligations respecting Customer's Confidential Information pursuant to Section 5.
- 4.9 **Continuing Business.** Nothing in this Agreement will preclude or limit Curii from providing software, materials, or Services for itself or other Customers, irrespective of the possible similarity of such software, materials or services to those that might be delivered to Customer. The terms of confidentiality in Section 5 will not prohibit or restrict either party's right to develop, use or market products or services similar to or competitive with the other party; provided, however, that neither party is relieved of its obligations under this Agreement.

5 CONFIDENTIALITY

- 5.1 **Obligations.** During the term of this Agreement, both parties agree that (i) Confidential Information will be used only in accordance with the terms and conditions of this Agreement; (ii) each will use the same degree of care it utilizes to protect its own confidential information, but in no event less than reasonable care; and (iii) the Confidential Information may be disclosed only to employees, agents and contractors with a need to know, and to its auditors and legal counsel, in each case, who are under a written obligation to keep such information confidential using standards of confidentiality not less restrictive than those required by this Agreement. Both parties agree that obligations of confidentiality will exist for a period of two (2) years following initial disclosure of the particular Confidential Information. "Confidential Information" means all information disclosed by either Curii or Customer ("Disclosing Party") to the other party ("Recipient") during the term of this Agreement that is either (i) marked confidential, (ii) disclosed orally and described as confidential at the time of disclosure and subsequently set forth in writing, marked confidential, and sent to the Recipient within thirty (30) days following the oral disclosure, or (iii) which, given the totality of the circumstances, a reasonable recipient should have reason to believe is proprietary, confidential, or competitively sensitive.
- 5.2 **Exclusions.** Confidential Information will not include information which: (i) is or later becomes publicly available without breach of this Agreement, or is disclosed by the Disclosing Party without obligation of confidentiality; (ii) is known to the Recipient at the time of disclosure by the Disclosing Party; (iii) is independently developed by the Recipient without use of the Confidential Information; (iv) becomes lawfully known or available to the Recipient without restriction from a source having the lawful right to disclose the information; (v) is generally known or easily ascertainable by parties of ordinary skill in the

business of the Recipient; or (vi) is software code in either object code or source code form that is licensed under an open source license. The Recipient will not be prohibited from complying with disclosure mandated by applicable law if, where reasonably practicable and without breaching any legal or regulatory requirement, it gives the Disclosing Party advance notice of the disclosure requirement.

6 TERM AND TERMINATION

- 6.1 **Term.** The term of this Agreement will commence on the Effective Date and will continue until terminated as set forth herein.
- 6.2 **Termination.** If there are no active Order Forms in place, either party may terminate this Agreement for convenience by providing fifteen (15) days written notice to the other party, except that neither party may terminate the Agreement while any Order Form is still in effect. Each party will have the right to terminate this Agreement or any individual Order Form or SOW for cause upon written notice to the other party: (a) if the other party materially breaches any term of this Agreement or the applicable Order Form, and the breaching party fails to cure such breach within thirty (30) days of its receipt of notice of the breach from the non-breaching party or (b) if (i) the other party becomes insolvent or makes an assignment for the benefit of creditors, (ii) a trustee or receiver is appointed for such other party or for a substantial portion of its assets or (iii) bankruptcy, reorganization or insolvency proceedings are instituted by or against such other party. Termination of a specific Order Form or SOW will not result in the termination of any other Order Forms or SOWs. Termination of this Agreement for cause will result in the immediate termination of all active Order Forms.
- 6.3 **Effects of Termination.** Upon any termination, Curii will be entitled to payment for all Services rendered, and expenses incurred, through the effective date of termination, including for work in progress. Sections 3, 4, 5, 6.3, 7.2, 8, 9, 10, and 11 will survive any termination of this Agreement.

7 WARRANTY

- 7.1 **Limited Warranties.** (a) Each party represents and warrants that it has the right, power, and authority to enter into, and perform its obligations under, this Agreement and each Order Form. (b) Curii warrants that the Services and Support will be performed by qualified personnel in a professional and workmanlike manner consistent with applicable industry standards. Customer must notify Curii in writing of any alleged failure by Curii to perform Services in accordance with the foregoing warranty within thirty (30) days of the delivery of the affected Services or Support. Curii's entire liability and Customer's sole remedy for Curii's failure to perform in accordance with the above warranty shall be for Curii to: (i) use commercially reasonable efforts to cure or correct such failure, or (ii) if Curii is unable to cure or correct such failure, terminate the affected Services and refund that portion of fees paid by Customer to Curii that corresponds to such failure to perform.
- 7.2 **Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN SECTION 7.1, CURII DOES NOT MAKE OR GIVE ANY REPRESENTATION, WARRANTY, OR COVENANT OF ANY KIND, WHETHER EXPRESS OR IMPLIED, IN CONNECTION WITH THE SUPPORT SOFTWARE OR SERVICES PROVIDED HEREUNDER. WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CURII EXPRESSLY DISCLAIMS ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, NON-INFRINGEMENT, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE AND ANY REPRESENTATION, WARRANTY, OR COVENANT BASED ON COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE.

8 INDEMNIFICATION

- 8.1 **General.** Each party (the "Indemnitor") agrees, at its own expense, to (a) defend the other party, its Affiliates, and their respective directors, officers, employees, and agents (the "Indemnitees") from and against any third party claim, suit, or action brought against any of the Indemnitees for death, bodily injury, or damage to or loss of any real or tangible personal property to the extent arising out of the Indemnitor's (including its employees and agents) gross negligence or willful misconduct in the performance of this Agreement (each a "General Claim"), and (b) indemnify the Indemnitees against any and all liabilities,

losses, damages, costs, and expenses finally awarded by a court of competent jurisdiction or agreed by the Indemnitor in settlement with regard to any such General Claim.

8.2 **Intellectual Property Infringement.** Subject to the remainder of this Section 8, Curii shall, at its own expense (a) defend Customer, Customer's Affiliates, and their respective directors, officers, employees, and agents ("Customer Indemnitees") against any third party claim, suit, or action brought against any of the Customer Indemnitees alleging that any Work Product or Curii Retained Property set forth as a deliverable in the applicable Order Form and delivered to Customer in connection with Services provided under this Agreement, or any part thereof, infringe such third party's copyright or misappropriate such third party's trade secrets under the laws of the United States (each an "Infringement Claim"), and (b) indemnify each of the Customer Indemnitees from the resulting costs and damages finally awarded against such Customer Indemnitees to the third party making such claim by a court of competent jurisdiction or agreed to in settlement with regard to any such Infringement Claim. Notwithstanding any other terms or conditions of this Agreement, Curii shall have no liability or obligations under this Section 8.2 if the alleged infringement is based on (i) combination of the Work Product or Curii Retained Property with non-Curii products, (ii) use of the Work Product or Curii Retained Property for a purpose or in a manner for which it was not designed or beyond its reasonably intended use, (iii) use of any older version of the Work Product or Curii Retained Property when use of a newer version provided by Curii would have avoided the infringement, (iv) any modification or alteration of the Work Product or Curii Retained Property by a party other than Curii or without Curii written and express direction, (v) Curii's compliance with any materials, designs, specifications or instructions provided by Customer, (vi) Customer using the Work Product or Curii Retained Property after Curii notifies Customer to discontinue use due to an infringement claim, or (vii) open source software. THIS SECTION 8.2 STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND CURII ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

8.3 **Conditions to Indemnification.** As conditions to indemnification under this Section 8, the indemnified party must (a) notify the indemnifying party promptly in writing of the General Claim or Infringement Claim, as applicable, for which the indemnified party is seeking indemnification, (ii) grant the indemnifying party sole control over the defense and settlement of each General Claim or Infringement Claim, as applicable, and (iii) provide the indemnifying party with reasonable cooperation in response to such party's requests for assistance. The indemnifying party may not settle or compromise a General Claim or Infringement Claim, as applicable, without the prior written consent of indemnified party if such settlement includes an admission of liability on the part of the indemnified party.

9 **LIMITATION OF LIABILITY.** EXCEPT (A) WITH REGARD TO EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5 ("CONFIDENTIALITY"), (B) WITH REGARD TO CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF CURII'S INTELLECTUAL PROPERTY IN AND TO CURII RETAINED PROPERTY LICENSED TO CUSTOMER UNDER THIS AGREEMENT, OR (C) TO THE EXTENT THAT AN AMOUNT IS INCLUDED IN A COURT AWARD OR SETTLEMENT RELATED TO EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 ("INDEMNIFICATION"), IN NO EVENT WILL EITHER PARTY BE LIABLE UNDER THIS AGREEMENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES (INCLUDING WITHOUT LIMITATION, LOST REVENUE, LOST PROFITS, LOSS OF INCOME, OR LOSS OF BUSINESS ADVANTAGE), WHETHER OR NOT FORESEEABLE, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT WITH REGARD TO (A) EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS UNDER SECTION 5 ("CONFIDENTIALITY"), (B) CUSTOMER'S INFRINGEMENT, MISUSE OR MISAPPROPRIATION OF CURII'S INTELLECTUAL PROPERTY IN AND TO CURII RETAINED PROPERTY LICENSED TO CUSTOMER UNDER THIS AGREEMENT, OR (C) EITHER PARTY'S INDEMNIFICATION OBLIGATIONS UNDER SECTION 8 ("INDEMNIFICATION"), IN NO EVENT WILL EITHER PARTY'S CUMULATIVE AND AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE AMOUNTS PAID BY CUSTOMER UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST DATE ON WHICH LIABILITY AROSE. THESE LIMITATIONS OF LIABILITY WILL REMAIN IN FULL FORCE AND EFFECT, REGARDLESS OF WHETHER EITHER PARTY'S REMEDIES HEREUNDER ARE

DETERMINED TO HAVE FAILED OF THEIR ESSENTIAL PURPOSE. THE ABOVE LIMITATIONS WILL NOT, HOWEVER, LIMIT CUSTOMER'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT.

10 GENERAL

- 10.1 **Subcontractors.** At its sole discretion, Curii may engage third parties to furnish services in connection with Services, provided that such third parties have executed appropriate confidentiality agreements with Curii. In addition, Services may be performed by Affiliates of Curii. No engagement by Curii of a subcontractor or an Affiliate will relieve Curii of any of its obligations under this Agreement.
- 10.2 **Assignment.** Neither party may assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other party, which shall not be unreasonably withheld, except that (i) either party may assign this Agreement or rights granted hereunder to its Affiliate without the consent of the other party, and (ii) the transfer of this Agreement or rights granted hereunder to a successor entity in the event of a merger, corporate reorganization, or acquisition of all or substantially all the assets of a party shall not constitute an assignment for purposes of this Section 10.2; provided that, in both cases (i) and (ii), the entity to which the Agreement is being assigned or transferred: (a) is not a direct competitor of the other party, and (b) agrees in writing to be bound by the terms and conditions of this Agreement. Any attempted assignment or transfer in violation of this Section 10.2 shall be null and void.
- 10.3 **Governing Law and Venue.** This Agreement is governed by and will be construed in accordance with the laws of the Commonwealth of Massachusetts; without regard to conflict of law principles. The parties acknowledge and agree that this Agreement relates solely to the performance of Services (not the sale of goods) and, accordingly, will not be governed by the Uniform Commercial Code. In addition, the provisions of the Uniform Computerized Information Transaction Act and United Nations Convention on Contracts for the International Sale of Goods will not apply to this Agreement. All Services provided hereunder are "Commercial Items" as that term is defined in the Federal Acquisition Regulation (FAR) at 48 C.F.R. 2.101. Any legal action or proceeding arising under this Agreement will be brought exclusively in the state or federal courts located in Massachusetts, and the parties expressly consent to personal jurisdiction and venue therein.
- 10.4 **Independent Contractors.** The relationship between the parties established under this Agreement is that of independent contractors, and nothing in this Agreement or Order Forms shall be construed to create an employment, partnership, joint venture, or agency relationship between the parties.
- 10.5 **Notices.** All notices required or permitted under this Agreement must be in writing. Notices will be effective (a) upon delivery, if delivered in person or through use of a reputable courier or overnight delivery service, or (b) two (2) days after mailing, if sent by a form of certified mail. Notices must be sent to the attention of the Curii Legal Department, 212 Elm St. 3rd Floor, Somerville, MA 02144.
- 10.6 **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, neither party may hire, or directly or indirectly solicit, any employee of the other party; provided, however, that nothing herein will prevent a party from hiring any such employee who responds to a general hiring program conducted in the ordinary course of business or who approaches the other party on a wholly unsolicited basis.
- 10.7 **Publicity.** Customer agrees that Curii may reference and use Customer's name and trademarks in Curii marketing and promotional materials, including, but not limited to, the Curii website, solely for purposes of identifying Customer as a customer of Curii. Otherwise, neither party may use the trade names, trademarks, service marks, or logos of the other party without the express written consent of the other party.
- 10.8 **Severability.** If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to achieve the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable.

- 10.9 **No Waiver.** The failure of a party to enforce any provision or exercise any right under this Agreement shall not constitute a waiver of such provision or right and shall not preclude such party from enforcing such provision or exercising such right at any later time.
- 10.10 **Force Majeure.** Except for the obligation to pay sums due hereunder, neither party will be liable to the other for any delay or failure to perform due to causes beyond its reasonable control, including but not limited to acts of God, labor disputes or other industrial disturbances, systemic electrical, telecommunications, or other utility failures, earthquake, storms or other elements of nature, blockages, embargoes, riots, acts or orders of government, acts of terrorism, or war
- 10.11 **No Third Party Beneficiaries.** The terms of this Agreement are intended to be, and are solely for the benefit of, Curii and Customer and do not create any right in favor of any third party.
- 10.12 **Compliance with Export and Other Laws.** Customer acknowledges that items provided hereunder are of United States origin, are provided subject to the U.S. Export Administration Regulations, and may be subject to other applicable national and international laws. Diversion or distribution contrary to applicable export control laws is prohibited. Customer represents that (1) it is not, and is not acting on behalf of, (a) any person who is a citizen, national, or resident of, or who is controlled by the government of any country to which the United States has prohibited export transactions, or (b) any person or entity listed on the U.S. Treasury Department list of Specially Designated Nationals and Blocked Persons or the U.S. Commerce Department's Denied Persons List or Denied Entity List; and (2) it will not permit items delivered under this Agreement to be used for any purposes prohibited by law, including, but not limited to, any prohibited development, design, manufacture, or production of missiles or nuclear, chemical, or biological weapons. Additionally, each of the parties agrees that it will not engage in any illegal, unfair, deceptive, or unethical business practices whatsoever, including, but not limited to, any act that would constitute a violation of the U.S. Foreign Corrupt Practices Act.
- 10.13 **Counterparts and Signatures.** Order Forms may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. Facsimile and electronic copies of signatures shall have the same effect as originals. If a party elects to sign Order Forms electronically, it expressly acknowledges and agrees that such electronic signature is the legal equivalent of, and has the same force and effect as, a manual signature.
- 10.14 **Entire Agreement.** This Agreement, together with any Order Forms, and an Service Agreements incorporated in Order Forms as specified in the Order Form, constitutes the entire agreement between the parties concerning the subject matter hereof. Any additional or conflicting terms contained in purchase orders issued by Customer with respect to Services provided hereunder are hereby expressly rejected and shall have no force or effect on the terms of this Agreement or any Order Form. This Agreement supersedes all prior or contemporaneous discussions, proposals, and agreements between the parties, whether written or oral, relating to the subject matter hereof. No amendment, modification, or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties.
- 10.15 **Precedence.** In the event of a conflict between the terms of any Order Form with the terms of this Agreement, the terms of the Order Form shall control but (a) only with respect to the specific Services purchased under such Order Form, and (b) only if the Order Form specifically references the conflicting provision(s) of this Agreement with the intention to supersede such provision(s).
- 10.16 **Amendment.** Neither this Agreement nor any Order Form may be amended or modified except in a writing signed by the parties, which writing makes specific reference to this Agreement or the applicable Order Form.

11 DEFINITIONS.

- 11.1 **“Arvados”** means Content distributed through the arvados.org and doc.arvados.org websites under the applicable licenses as specified with the content.
- 11.2 **“Arvados Cluster”** means a running instance of Arvados.
- 11.3 **“Arvados Dependencies”** means Content that is required to run Arvados.

- 11.4 **“Affiliate”** means an entity that directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, “control” means ownership of at least fifty percent (50%) of the outstanding voting shares of the subject entity.
- 11.5 **“Confidential Information”** means any and all confidential or proprietary information or materials which have been or are hereafter disclosed or made available by one party (the “Disclosing Party”) to the other (the “Receiving Party”) in connection with this Agreement, whether provided orally or in writing and in any form or media, including without limitation: (i) all trade secrets; (ii) existing or contemplated products, services, designs, technology, processes, technical data, engineering techniques, methodologies and concepts and any related information; (iii) information relating to business plans, sales or marketing methods and customer lists or requirements; (iv) Customer-specific terms or pricing set forth in business proposals, this Agreement or any Order Form; and (v) where Curii is the Disclosing Party, (a) Curii’ Pre-Existing Intellectual Property, (b) General Enhancements, (c) Services Materials, (d) Training Materials, (e) Documentation, and (f) implementation architectures..
- 11.6 **“Content”** means software (including source code, binaries, and machine images), data, text, audio, video, images or other content.
- 11.7 **“Curii Services” or “Service” or “Services”** means services provided by Curii to Customer including but not limited to software maintenance, technical support, training, system operations, and consulting as set forth in an applicable Order Form or a Service Agreement incorporated into the Order Form and that are incorporated into this Agreement. Services may be provided one time or as a recurring subscription as specified in the Order Form.
- 11.8 **“Curii Content”** means Content that is Curii Intellectual Property.
- 11.9 **“Customer Content”** means Content that is Customer’s Intellectual Property.
- 11.10 **“Documentation”** means all Curii published user manuals and guides, regardless of media, that explain or facilitate the use of the Supported Software.
- 11.11 **“General Enhancements”** means any improvements, modifications, enhancements, or extensions to or derivative works of Curii Pre-existing Intellectual Property that have or could have general applicability to Curii customers.
- 11.12 **“Intellectual Property”** means any and all patents, inventions, copyrights, software, works of authorship, trademarks, trade secrets, know-how, and all other intellectual property (whether registered or unregistered and including the right to register such intellectual property) that are, in each case, protected under the laws of any governmental authority having jurisdiction.
- 11.13 **“Order Form”** means an order document executed by the parties that sets forth specific Services and/or Support being purchased by Customer under this Agreement. Order Forms include by are not limited to Statements of Work, Pilot Program Agreements, Letters of Agreement, and other service orders.
- 11.14 **“Order Form Effective Date”** means the date upon which an Order Form as specified in the Order Form. If they Order Form does not specific an Effective Date, then the date that the Order Form is executed shall be considered the Order Form Effective Date.
- 11.15 **“Pre-Existing Intellectual Property”** means: (a) Intellectual Property in existence as of the Effective Date of this Agreement, and (b) Intellectual Property that a party creates or develops outside the scope of Services or Support provided by Curii to Customer under this Agreement.
- 11.16 **“Service Agreement”** means a written agreement that specifies the terms of the delivery of a Service such as technical support. Service Agreements may be incorporated into Order Forms.
- 11.17 **“Services Materials”** means (a) the processes, know-how, proprietary information and methodologies, document templates, and project tools including, but not limited to, best practice guides and reference architecture materials; and (b) utilities, connectors, scripts, tools, and other software (and any updates thereto) that, in each case, are used by Curii to deliver the Services or Support to Customer.

- 11.18 **“Supported Software”** means software programs that Curii specifically agrees to support including all modifications, additions or further enhancements delivered by Curii.
- 11.19 **“Third Party Content”** means Content that is the Intellectual Property of an entity that is neither Curii nor Customer.
- 11.20 **“Training Materials”** means Curii training courses, documentation, and other associated training materials, including any and all updates thereto.
- 11.21 **“Work Product”** means all inventions, improvements, modifications, enhancements, derivatives, processes, methodologies, formulas, designs, drawings, data, information, and works of authorship in which any proprietary right exists or may be acquired or asserted, and which are developed, discovered, invented, authored, or first reduced to practice by Curii, alone or jointly with Customer and/or any third party or parties, in the course of performing Services under this Agreement; provided, however, that Work Product shall not include (a) Curii’ Pre-Existing Intellectual Property, (b) General Enhancements, (c) Services Materials, (d) Training Materials, (e) Documentation.