

**MixMode, Inc.**  
**END USER LICENSE AGREEMENT**

This End User License Agreement (this “Agreement”) is a legal agreement between you (“Customer”) (either as an individual or a business entity) and MixMode, Inc. (“MixMode”). By clicking “I accept” or installing or using MixMode software or documentation (the “Product”), you agree to be bound to the terms of this Agreement. This Agreement is applicable to the end user of the product whether they purchase directly from MixMode, from an Authorized Reseller, from a Managed Security Services Provider (“MSSP”) or if this is a trial of MixMode’s products. If you do not agree to these terms, do not download, install, copy, access, or use the Product.

**1. License Grant**

a. **MixMode Product Licenses:** Subject to the terms and conditions of this Agreement, MixMode hereby grants to Customer a non-exclusive and non-transferable license to use the Product solely for internal purposes. In the case where the Customer is an Authorized Reseller partner, the Customer may transfer this license to their end client, as long as such client is a registered deal with MixMode. In the case where the Customer is an MSSP this Agreement and the aforementioned license shall apply to both the MSSP and their End User Customer. MixMode retains ownership of all right, title, and interest in and to all intellectual property rights pertaining to the Product.

b. **Restrictions:** Except as outlined below, customer may not: (i) rent, lease, sell, sublicense, assign, distribute, or otherwise transfer Product; (ii) copy, modify or merge copies of the Product except as provided in this Agreement; (iii) reverse engineer, de-compile, decode, adapt, or disassemble the Product, or otherwise attempt to derive or gain access to the source code of the Product, in whole or in part; (iv) bypass or breach any security device or protection used for or contained in the Product; (v) use the Product in any manner or for any purpose that infringes, misappropriates or otherwise violates any intellectual property right or other right of any party, or that violates any applicable laws; (vi) use the Product for purposes of benchmarking or competitive analysis of the Product or for developing, using or providing a competing software, product or service; or (vii) use the Product for any purpose or application not expressly permitted by this Agreement.

c. **Delivery:** MixMode will deliver the Product via secure, remote download from MixMode. No physical or tangible copy of the software will be provided to Customer. When applicable, delivery will occur pursuant to a rollout schedule upon mutual agreement between the parties.

d. **Consumption Limits:** The Product may be subject to a consumption limitation. Customer understands that if consumption limit is exceeded and Customer does not increase the consumption limit, there may be a loss of data retention, and MixMode will have no liability to Customer for such loss of data retention.

e. **Third Party Use of Software (covering co-managed use case):** Customers purchasing MixMode through an MSSP may permit that third party MSSP to use the product on their behalf

if such use is (1) on your behalf, (2) for internal operations, and (3) in compliance with this EULA.

f. **Trials and Evaluations:** Any trial or evaluation of MixMode Products may only be used for the designated duration set forth in accompanying documentation and shall only be used for considering whether to purchase MixMode products, not for any other purpose. At the end of the designated duration, Customer's right to use MixMode's Products will automatically terminate and Customer shall discontinue all use of the same.

## **2. Purchase through a Reseller or MSSP**

a. If you purchase MixMode through an Authorized Reseller or MSSP you will pay applicable license and/or subscription fees to that Authorized Reseller or MSSP as agreed between you and the partner.

b. Resellers and MSSPs are not authorized to modify the terms of this Agreement or make any promises or commitments on our behalf, and we are not bound by any obligations to you other than as set forth in this Agreement.

## **3. Services**

a. **Basic Maintenance and Support:** Subject to the terms and conditions of this Agreement, MixMode will provide Customer with basic maintenance and support services. Customer may reach MixMode support by email or telephone from 9:00 AM to 5:00 PM PST, Monday to Friday with the exception of the statutory holidays observed in the United States of America.

b. **Extended Support Services:** Customer may choose to purchase higher levels of support, which is not included in this Agreement and may be separately negotiated and charged at MixMode's then current applicable rate plus related expenses as mutually agreed upon in advance between MixMode and Customer. Such extended support services, these services may include:

- (i) upgrades, patches, and hotfixes;
- (ii) training, subject to availability of qualified personnel; and
- (iii) other maintenance, on-site installation assistance, training, or problem diagnosis and resolution.

c. **Excluded Services:** MixMode shall have no obligation to provide support services where a problem is caused by: (i) relocation, movement, improper operation, neglect, or misuse of the Product or associated hardware; (ii) Customer's failure to maintain proper site or environmental conditions; (iii) any fault of Customer's agents or employees; (iv) any attempts at repairs, maintenance, or modifications to the Product performed by other than authorized service personnel of MixMode; (v) casualty, act of God, strikes, riot, war, or any unauthorized acts of third parties; (vi) failure or interruption of any electrical power, telephone or communication line or like cause; or (vii) any other cause external to the Product except ordinary use.

## **4. Intellectual Property.**

a. **Ownership:** Customer acknowledges that all title and rights to the Product shall at all times remain with MixMode, and that Customer has no rights in the Product except those expressly granted by this Agreement. Customer shall promptly notify MixMode in writing of any unauthorized use, infringement, misappropriation, dilution, or other violation of the Product of

which it becomes aware.

b. Control: MixMode shall maintain sole control and discretion over the prosecution and maintenance with respect to all rights, including all intellectual property rights in and to the Product. MixMode shall have the primary right, but not the obligation, to bring and control any suits against any unauthorized use, infringement, misappropriation, dilution, or other violation of the Product. MixMode shall be entitled to retain the entirety of any award arising from such suit.

c. Mitigation and Sole Remedy: If either Customer receives notice of a potential third party claim or an injunction is obtained against Customer's use of any Product in whole or in part as a result of a third party claim, MixMode, at its sole option and expense, will make commercially reasonable efforts either to (i) procure for Customer the right to continue using the Product; or (ii) replace or modify the Product with equivalent or better product so that Customer's use is not subject to any injunction. This constitutes the sole and exclusive remedy available to Customer with respect to such third-party claim or injunction.

## **5. Limited Warranty and Disclaimers:**

a. Limited Warranty: MixMode warrants that for 30 days from the date of delivery, the Product will materially perform in accordance with its specifications, if any, and is free of any computer viruses, time bombs, or other malicious routines, which could intentionally cause damage to or corrupt data, storage media or equipment. MixMode does not warrant third party software, and MixMode represents that it has no material knowledge that such software does not function properly, contains any computer virus, or infringes any third-party intellectual property right.

b. Remedy for Breach of Warranty: Except as specifically stated herein, MixMode's sole liability and the MixMode's exclusive remedy for breach of the provisions of this section shall be, at MixMode's option, either to repair or replace the Product that does not meet the MixMode warranty and which is returned to MixMode. Any replacement Product will be warranted for the remainder of the original warranty period or 30 days, whichever is longer.

c. Disclaimer: EXCEPT FOR THE LIMITED WARRANTY SET FORTH IN THIS SECTION 4, THE PRODUCT AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE PRODUCT ARE PROVIDED "AS IS" AND ON AN "AS AVAILABLE" BASIS. MIXMODE DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, RELATING TO THE PRODUCT AND ALL MATERIALS AND CONTENT AVAILABLE THROUGH THE PRODUCT, INCLUDING: (I) ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, OR NON-INFRINGEMENT; AND (II) ANY WARRANTY ARISING OUT OF COURSE OF DEALING, USAGE, OR TRADE. MIXMODE DOES NOT WARRANT THAT THE SOFTWARE OR ANY PORTION OF THE PRODUCT, OR ANY MATERIALS OR CONTENT OFFERED THROUGH THE PRODUCT, WILL BE UNINTERRUPTED, SECURE, OR FREE OF ERRORS, VIRUSES, OR OTHER HARMFUL COMPONENTS, AND MIXMODE DOES NOT WARRANT THAT ANY OF THOSE ISSUES WILL BE CORRECTED.

NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY CUSTOMER FROM MIXMODE OR ANY MATERIALS AND CONTENT AVAILABLE THROUGH THE PRODUCT WILL CREATE ANY WARRANTY REGARDING THE

PRODUCT THAT IS NOT EXPRESSLY STATED IN THIS AGREEMENT. CUSTOMER UNDERSTANDS AND AGREES THAT CUSTOMER'S USE ANY PORTION OF THE PRODUCT IS AT CUSTOMER'S OWN DISCRETION AND RISK, AND THAT MIXMODE IS NOT RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER PROPERTY (INCLUDING CUSTOMER'S COMPUTER SYSTEM OR MOBILE DEVICE USED IN CONNECTION WITH THE PRODUCT) OR ANY LOSS OF DATA.

THE LIMITATIONS, EXCLUSIONS, AND DISCLAIMERS IN THIS SECTION 4 APPLY TO THE FULLEST EXTENT PERMITTED BY LAW. MIXMODE DOES NOT DISCLAIM ANY WARRANTY OR OTHER RIGHT THAT MIXMODE IS PROHIBITED FROM DISCLAIMING UNDER APPLICABLE LAW.

## **6. Limitation of Liability**

A. IN NO EVENT SHALL MIXMODE OR ANY OF MIXMODE'S SUBCONTRACTORS, SUPPLIERS, OR PRODUCT DEVELOPERS OR CUSTOMER BE LIABLE FOR ANY SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA, LOSS OF BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR THE INABILITY TO USE THE PRODUCT.

THE AGGREGATE LIABILITY OF MIXMODE TO CUSTOMER FOR ALL CLAIMS ARISING OUT OF OR RELATING TO THE USE OF OR ANY INABILITY TO USE ANY PORTION OF THE PRODUCT OR OTHERWISE UNDER THESE TERMS, WHETHER IN CONTRACT, TORT, OR OTHERWISE, IS LIMITED TO \$50,000.

## **7. Termination**

a. Termination by MixMode: MixMode may terminate this Agreement without notice if Customer (i) violates any provision of this Agreement; (ii) assigns or attempts to assign this Agreement or any of Customer's rights; (iii) fails to perform or correct a breach of its obligations to Licensor as described in this Agreement within 30 days after notification from Licensor of such failure to perform or observe, or breach; or (iv) files a bankruptcy petition or has such a petition filed involuntarily against it, becomes insolvent, makes an assignment for the benefit of creditors, consents to the appointment of a trustee, or if bankruptcy, reorganization or insolvency proceedings are instituted by or against Customer.

b. Termination by Customer: Customer may terminate this Agreement if MixMode does not cure a material breach of this Agreement within 30 days of receiving written notice of such material breach from Customer.

c. Effects of Termination: In the event of such termination by MixMode, Customer shall destroy or return immediately all Product and all copies thereof to MixMode.

## **8. Mutual Non-Disclosure and Confidentiality.**

a. Purpose. The parties in connection with performance under this Agreement may disclose to the other certain confidential technical and business information that the disclosing party desires the receiving party to treat as confidential. MixMode's Products are designated as confidential trade secrets of MixMode and is protected by intellectual property laws of the United States.

b. "Confidential Information" means all oral and written information, in tangible or intangible form, that either MixMode or Customer, or any of its directors, officers, employees, or representatives provides, directly or indirectly, to the other party or any of its directors, officers, employees, or representatives including, without limitation, financial data, costs, margins, software, computer programming, mailing or other marketing lists, customer lists, sources of supply, salaries and other information concerning employees, any advertising, promotion, product or program concepts, plans or proposals, or any other information that is of a confidential, proprietary, or non-public nature. Confidential Information does not include information that (a) was already known by a party or any of its directors, officers, employees, affiliates, or representatives without any obligation of confidentiality before the disclosed to the receiving party; (b) is in the public domain or later enters the public domain through no wrongful act or omission of the other party; (c) is disclosed to a party or to any of its directors, officers, employees, affiliates, or representatives by a third party having, to the best of the knowledge of that party after inquiry, the right to disclose the information without any obligation of confidentiality; (d) is or may be developed independently by a party without reference to any Confidential Information; or (e) is ascertainable from a visual inspection of a party's public premises, products, services, or advertising or promotional material.

c. Obligations: Each party shall not, without the prior written consent of the other party, discuss or disclose or permit the discussion or disclosure of the Confidential Information to anyone other than its directors, officers, employees, affiliates, investors, lenders, accountants, contractors, consultants, or representatives that have a legitimate need to know Confidential Information. Each party shall also not, without the prior written consent of the other party, copy any Confidential Information for any purpose other than in connection with the use or evaluation of the Product or as otherwise permitted under this Agreement. Each party further agrees to not, without the prior written consent of the other party, use any Confidential Information for any purpose unless otherwise permitted under this Agreement. Each party will not disclose the other party's Confidential Information to third parties or to such party's employees, except to those employees of the receiving party who are required to have the information in order to evaluate or engage in discussions concerning the contemplated business relationship. A party may disclose the other party's Confidential Information if required by law so long as the receiving party gives the disclosing party prompt written notice of the requirement prior to the disclosure and assistance in obtaining an order protecting the information from public disclosure. Neither party will reverse engineer, disassemble, or decompile any prototypes, software, or other tangible objects that embody the other party's Confidential Information and that are provided to the party in accordance with this Agreement.

d. Return of Materials. All documents and other tangible objects containing or representing Confidential Information and all copies of them will be and remain the property of the disclosing party. Upon the disclosing party's request, the receiving party will promptly deliver to the disclosing party all Confidential Information, without retaining any copies.

## 9. General

a. U.S. GOVERNMENT END-USERS: Each Product is a “commercial item,” as that term is defined at 48 C.F.R. 2.101 (JAN 1998), consisting of “commercial computer software” and “commercial computer software documentation,” as such terms are used in 48 C.F.R. 12.212 (SEPT 1995), and is provided to the U.S. Government only as a commercial end item. Government end users acquire any Product under the following terms: i) for acquisition by or on behalf of civilian agencies, consistent with the terms set forth in 48 C.F.R. 12.212 (SEPT 95); or

ii) for acquisition by or on behalf of units of the Department of Defense, consistent with the terms set forth in 48 C.F.R. 227.7202.

b. Export Restrictions: Export of Product outside of the U.S.A. and Canada may require approval of Government export and import authorities. Customer will comply with all applicable trade-related laws and regulations.

c. Force Majeure: Neither party will be liable for any loss or damage resulting from delays in performance or from failure to perform or comply with the terms of this Agreement due to any causes beyond its reasonable control, except for payment obligations.

d. Publicity: Neither party will make any news or press release regarding the specific Terms of this agreement without the other party’s prior written consent. Notwithstanding, you grant us the right to include your name and logo as a customer in our promotional materials; provided however, that you can opt to have your name and logo excluded from such use by us (except as agreed to in writing on a case-by-case basis) by providing a sufficiently detailed email request stating the same to info@mixmode.ai; the subject line in such email be entitled “Non-use of Subscriber Name.”

e. Waiver: The failure of a party to claim a breach of any term of this Agreement shall not constitute a waiver of such breach or the right of such party to enforce any subsequent breach of such term.

f. Assignment: Customer may not assign this Agreement, any interest herein or any rights hereunder without the prior written consent of MixMode. MixMode may assign this Agreement at any time without notice or consent.

g. Governing Law: This Agreement will be governed by the laws of the State of California, without regard to its conflict of law principles.

h. Entire Agreement: This Agreement and any order made hereunder constitutes the entire Agreement between MixMode and Customer and supersedes, except as indicated in this Agreement, prior agreements communications, terms and conditions, and understandings of any nature whatsoever, oral or written. This Agreement may not be modified or waived orally and may be modified only in a writing signed by a duly authorized representative of both Parties.

10. **Transferability.** You may only transfer or assign these license rights to another person or entity in compliance with the current MixMode dba MixMode Reseller Agreement. Any attempted transfer or, assignment not in compliance with the foregoing shall be void and of no effect.