



ORDR END USER LICENSE AGREEMENT

1. LICENSE

1.1 **Software License.** During the Term (as defined below) specified on an Order Form issued by Ordr or Ordr's authorized reseller, Ordr grants to the Customer identified on the Order Form a non-exclusive, non-transferable, non-sublicensable license to use the Ordr Software (as defined below) for Customer's internal business purposes, in accordance with the end user or technical documentation provided by Ordr to Customer (the "Documentation") for the number of devices set forth in the Order Form (the "Scope"). "Ordr Software" shall mean: (a) the object code version of the software products listed on the Order Form; (b) any Documentation, and (c) any updates, upgrades, and/or modifications of the forgoing which Ordr provides to Customer.

1.2 **Restrictions.** Except as expressly authorized in this Agreement, Customer shall not, and shall not authorize any third party to: (a) sublicense, transfer, loan, distribute, use or duplicate the Ordr Software, or any portion thereof; (b) use the Ordr Software by, or for the benefit of any third party; (c) modify, translate, or prepare derivative works based upon the Ordr Software; (d) reverse-compile or decompile, disassemble or otherwise reverse engineer the Ordr Software, except to the extent expressly required to be permitted by applicable law; and/or (e) alter, remove, or obscure any copyright, trademark, or other proprietary notices on or in the Ordr Software. Except for the license expressly granted by Ordr to Customer under this Agreement, Ordr reserves all right, title and interests in and to the Ordr Software and any derivative works derived therefrom, and all intellectual property rights therein.

2. **PROFESSIONAL SERVICES.** If Customer has elected to purchase professional services related to the Ordr Software ("Professional Services") as set forth on the Order Form, Ordr will provide those Professional Services in accordance with the SOW provided by Ordr. Ordr may need to rely on Customer for access to certain customer hardware, software, systems, data and personnel to provide the Professional Services. Ordr's responsibility to provide the Professional Services will be adjusted equitably to reflect Customer's actions or inactions or changes to Customer's systems.

3. **SUPPORT.** Subject to Customer's payment of the applicable Fees for the license, Ordr shall provide Support for the Ordr Software as set forth in Exhibit A during the Term.

4. **HARDWARE.** Ordr will sell to Customer the hardware specified in an Order Form (the "Hardware"). Any Hardware will be delivered FOB at Ordr's facility. Customer will bear all costs of shipment.

5. **PAYMENT.** In consideration for the license to the Ordr Software, the delivery of any Professional Services or any Hardware, Customer shall pay to Ordr the Fees in the amounts and at the times specified on the Order Form or in an SOW. All fees (collectively "Fees") are payable in U.S. dollars and are due within thirty (30) days of Ordr's invoice. Excluding taxes based on Ordr's income, Customer is liable for all taxes, duties and customs fees associated with the Fees, whether or not Ordr invoices Customer for them. Past due accounts shall be charged interest on a monthly basis, calculated at one and one-half percent (1.5%) per month of the unpaid balance or the maximum rate allowable by law. At the end of each calendar quarter during the Term, CloudPost may invoice End Customer for any additional Devices which are more than five percent (5%) above the quantity for which End Customer has paid License Fees, prorated for the remainder of the Initial Term or then-current Renewal Term. Except as otherwise expressly provided in this Agreement, Customer shall not be entitled to any refund of any Fees paid for the Ordr Software if Customer fails to use full Scope of the license during the applicable License Term.

6. TERM AND TERMINATION

6.1 **Term.** This Agreement shall commence on the Effective Date and shall continue for the Initial Term set forth on the Order Form. At the end of the Initial Term, this Agreement will automatically renew for additional twelve (12) month terms (each, a "Renewal Term") unless either party provides notice to the other at least sixty (60) days before the end of the Initial Term or then-current Renewal Term. Except as provided in an Order Form, the fees for any Renewal Term will be at Ordr's then-current rate. The Initial Term and any Renewal Terms are collectively the "Term".

6.2 **Termination.** This Agreement may be terminated by either party: (a) upon thirty (30) days written notice if the other party materially breaches any provision of this Agreement and the breach remains uncured within that thirty (30) day period; or (b) effective immediately, if the other party ceases to do business, otherwise terminates its business operations, becomes insolvent or seeks protection under any bankruptcy, receivership, trust deed, or comparable proceeding, or if any proceeding is filed against it (and not dismissed within ninety (90) days); or (c) effective immediately, upon any breach of Section 1.2 or Section 8.5 of this Agreement.

6.3 **Effect of Termination.** Upon any expiration or termination of this Agreement: (a) all licenses and rights granted by Ordr to Customer hereunder shall terminate; (b) Customer will cease all use of the Ordr Software; (c) Customer shall immediately return to Ordr or destroy the Ordr Software, all duplicates, and any Ordr Confidential Information in its possession or control; and (d) Customer shall pay to Ordr within thirty (30) days of the date of termination any fees accrued prior to the date of termination and, if this Agreement is terminated for any reason other than Ordr's uncured breach, any fees that would have been payable for the remainder of the Initial Term or then-current Renewal Term.

6.4 **Survival.** The provisions of Sections 1.2, 5, 6, 7, 8.4, 8.5, 9 and 10 shall survive and remain effective after the effective date of termination or expiration of this Agreement.

7. **INDEMNIFICATION.** Ordr, at its own expense (including payment of attorneys' fees, expert fees and court costs), shall defend Customer from any and all third party claims that the Ordr Software infringes any patent or copyright or misappropriates any third party's trade secret and shall indemnify Customer from any amounts assessed against Customer in a resulting judgment or amounts to settle a claims, provided that Customer: (a) gives Ordr prompt written notice of any claim; (b) permits Ordr to control and direct the defense or settlement of any claim; and (c) provides Ordr all reasonable assistance in connection with the defense or settlement of any claim. If Customer's use of the Ordr Software is (or in Ordr's opinion is likely to be) enjoined, Ordr, at its expense and in its sole discretion, may: (a) procure the right to allow Customer to continue to use the Ordr Software, or (b) modify or replace the Ordr Software or infringing portions thereof to become non-infringing, or (c) terminate Customer's right to use the affected portion of the Ordr Software and refund any pre-paid, unused Fees paid therefor. Ordr shall have no obligations under this Section to the extent any infringement claim is based upon or arising out of: (w) any modification or alteration to the Ordr Software not made by Ordr; (x) any combination or use of the Ordr Software with products or services not approved by Ordr in writing; (y) Customer's continuance of allegedly infringing activity after being notified thereof; and/or (z) use of the Ordr Software not in accordance with the terms of this Agreement. The remedies set forth in this Section constitute Customer's sole and exclusive remedies, and Ordr's entire liability, with respect to infringement or misappropriation of third-party intellectual property.

8. **WARRANTY; SUPPORT; DISCLAIMER; LIMITATION OF LIABILITY.**

8.1 **Software Warranty.** Ordr warrants to Customer that, during the Term the Ordr Software will perform in all material respects in accordance with its Documentation. Ordr's entire liability and Customer's sole and exclusive remedy for any breach of the preceding warranty will be for Ordr, at its option, within forty-five (45) days from the date of Ordr's receipt of written notification in reasonable detail of the defect from Customer: (a) to correct the defect, or (b) to replace the non-complying Ordr Software with complying Ordr Software, or (c) if, in Ordr's judgment, (a) and (b) above are not reasonably available, to refund the Subscription Fees paid for the period during which the Ordr Software is non-conforming and any pre-paid, unused Fees and to terminate this Agreement. The warranties in this Section 8.1 do not cover non-conformances due to: (a) any modification, reconfiguration or maintenance of the Ordr Software performed by anyone other than Ordr; (b) any use of the Ordr Software on a system that does not meet Ordr's minimum standards; (c) any software or hardware not provided by Order. Ordr shall be responsible under this Section 8.1 only if Customer provides Ordr with a written warranty claim detailing the non-conformance in the Ordr Software within thirty (30) days of the non-conformance.

8.2 **Service Warranty.** Ordr represents and warrants to Customer that all services provided hereunder shall be performed in a manner conforming to generally accepted industry standards and practices for similar services. Ordr's entire liability and Customer's sole and exclusive remedy for any breach of the preceding warranty will be for Ordr to re-perform the nonconforming services, provided that Ordr must have received written notice of the nonconformity from Customer no later than thirty (30) days after the original performance of the services by Ordr.

8.3 **Hardware Warranty.** Ordr warrants that for a period of ninety (90) days from the date of shipment of the Hardware to Customer that the Hardware will be free from defects in material and workmanship under normal use. Customer's sole and exclusive remedy and the entire liability of Ordr and its suppliers under this limited warranty will be, at Ordr's option, to repair or replace the Hardware. Parts used in Hardware repair or replacement may be new or refurbished. Ordr's obligations under this Section 8.3 are conditioned upon the return of affected Ordr Hardware in accordance with Ordr's then-current RMA Procedures. Customer may elect to extend the warranty for the Hardware by paying the Hardware Maintenance Fee set forth on an Order Form. Ordr will have no responsibility for any defects in Hardware caused by any acts or omissions of Customer, its employees or third-party contractors.

8.4 TO THE MAXIMUM EXTENT PERMITTED BY LAW, EXCEPT AS EXPRESSLY WARRANTED HEREIN, THE ORDR SOFTWARE AND ANY HARDWARE OR SERVICES PROVIDED BY ORDR HEREUNDER ARE PROVIDED WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED AND ALL OTHER WARRANTIES ARE DISCLAIMED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8.5 EXCEPT FOR A BREACH BY EITHER PARTY OF ITS OBLIGATIONS UNDER SECTIONS 1.2 OR 9 OF THIS AGREEMENT, (A) IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT OR SPECIAL DAMAGES OR COSTS, INCLUDING LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF THOSE DAMAGES OR COSTS; AND (B) IN NO EVENT WILL THE AGGREGATE LIABILITY OF EITHER PARTY, OR ANY OF ORDR'S THIRD PARTY LICENSORS UNDER THIS AGREEMENT (UNDER ANY THEORY OF LIABILITY) EXCEED THE FEES RECEIVED BY ORDR FROM CUSTOMER (AND IN THE CASE OF CUSTOMER'S LIABILITY, FEES PAID AND DUE TO ORDR) IN THE TWELVE (12) MONTH PERIOD PRIOR TO THE CLAIM, WHETHER ANY REMEDY SET FORTH HEREIN FAILS OF ITS ESSENTIAL PURPOSE OR OTHERWISE.

9. CONFIDENTIAL INFORMATION:

9.1 "Confidential Information" means any non-public data, information and other materials regarding the products, services or business of a party (and if either party is bound to protect the confidentiality of any third party's information, of that third party) provided to the other party. Without limiting the foregoing, the Ordr Software, any performance data, benchmark results, and technical information relating thereto, the Documentation, Ordr's pricing information and the terms and conditions of this Agreement (but not its existence) are the Confidential Information of Ordr. Confidential Information shall not include information which: (a) is already known to the Receiving Party without restriction prior to disclosure by the Disclosing Party; (b) becomes publicly available without fault of the Receiving Party; (c) is rightfully obtained by the Receiving Party from a third party without restriction as to disclosure, or is approved for release by written authorization of the Disclosing Party; or (d) is required to be disclosed by law or governmental regulation, provided that the Receiving Party provides reasonable notice to Disclosing Party of the required disclosure and reasonably cooperates with the Disclosing Party in limiting the disclosure.

9.2 Disclosure and Use. Each party (the "Receiving Party") agrees to keep the Confidential Information of the other party (the "Disclosing Party") in confidence and not to use the Confidential Information except in performing hereunder. Except as expressly authorized herein, the Receiving Party agrees to: (a) treat all Confidential Information of the Disclosing Party in the same manner as it treats its own similar proprietary information, but in no case with less than reasonable care; and (b) disclose the Disclosing Party's Confidential Information only to those employees and contractors of the Receiving Party who have a need to know the information for the purposes of this Agreement, provided that any employee and contractor shall be subject to a binding written agreement with respect to Confidential Information at least as restrictive as the terms of this Agreement. The Receiving Party shall indemnify and hold the Disclosing Party harmless for any non-compliance of the Receiving Party's employee or contractor with the terms of this Agreement. Subject to an appropriate obligation of confidentiality, Ordr may disclose the terms of this Agreement and any other ordering or purchasing documents between the parties related to this Agreement to its third-party licensors for the purpose of Ordr's compliance with the terms of the license agreements with those third-party licensors.

10. GENERAL:

10.1 Reporting. Customer acknowledges that the Ordr Software may contain automated reporting routines that will automatically identify and analyze certain aspects of use and performance of the Ordr Software and/or the systems on which they are installed, as well as the operator and operating environment (including problems and issues that arise in connection therewith), and provide e-mail and other reports to Ordr. Ordr will be free to use for development, diagnostic and corrective purposes any data and information it so collects relating to diagnosis, problems, systems, performance, use or functionality.

10.2 Compliance with Laws; Export Control. Customer shall use the Ordr Software in compliance with all applicable laws, statutes, rules and regulations. Customer acknowledges that the Ordr Software or technical information provided hereunder may be subject to United States or other governments' export laws, rules and regulations, and any use or transfer of that technical information or products made using technical information must be permitted or authorized under those laws, rules or regulations. Except as expressly permitted in this Agreement, Customer shall not export or import the Ordr Software or any technical information provided under this Agreement. Customer at its own expense shall indemnify, defend and hold Ordr and its licensors' free and harmless from any and all claims, damages, losses, costs, actions and expenses, including attorneys' and experts' fees, arising from any breach of its obligations in this Section 10.2.

10.3 Open Source Code. Components of the Ordr Software may be covered by so-called "open source" software licenses ("Open Source Software"). Customer's use of any Open Source Software is subject to and governed by the applicable license accompanying, linked to or embedded in that Open Source Software (each an "Open Source License"). Ordr grants Customer a license to use the Open Source Software to the full extent permitted by the applicable Open Source License.

10.4 Notice. Any and all notices or other information to be given by one of the parties to the other shall be deemed sufficiently given when forwarded by certified mail (receipt requested), overnight delivery or hand delivery to the other party to the address set forth on the Order Form. Notices shall be deemed to have been received on the first business day following the day of overnight transmission or hand delivery or on the fifth business day following the day of forwarding by certified mail. The address of either party may be changed at any time by giving ten (10) business days prior written notice to the other party in accordance with the foregoing.

10.5 Relationship of the Parties. Neither the making of this Agreement nor the performance of its provisions shall be construed to constitute either of the parties hereto an agent, employee, partner, joint venturer, or legal representative of the other.

10.6 U.S. Government End-Purchaser. As defined in FAR section 2.101, DFAR section 252.227-7014(a)(1) and DFAR section 252.227-7014(a)(5) or otherwise, all Ordr Software and accompanying documentation provided by Ordr are “commercial items,” “commercial computer software” and/or “commercial computer software documentation.” Consistent with DFAR section 227.7202 and FAR section 12.212, any use, modification, reproduction, release, performance, display, disclosure or distribution thereof by or for the U.S. Government shall be governed solely by these terms and shall be prohibited except to the extent expressly permitted by these terms.

10.7 Severability; Waiver. Should any term of this Agreement be declared void or unenforceable that provision shall be modified or eliminated to the minimum extent necessary and the declaration shall have no effect on the remaining terms hereof, which shall continue in full force and effect. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to future breaches.

10.8 Assignment. Neither this Agreement, nor any rights, licenses or obligations hereunder, may be assigned by Customer without the prior written consent of Ordr. Any attempted assignment in violation of this Agreement shall be void and without effect.

10.9 Governing Law; Venue. This Agreement shall be governed by and construed in accordance with the laws of the United States and the State of California, excluding rules governing conflict of law and choice of law. The federal and state courts within Santa Clara County, California shall have exclusive jurisdiction to adjudicate any dispute arising out of this Agreement. Each party hereto expressly consents to the personal jurisdiction of, and venue in, those courts and service of process being affected upon it by registered mail and sent to the address set forth at the beginning of this Agreement. The parties agree that the UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) and the Uniform Computer Information Transaction Act or similar federal or state laws or regulations shall not apply to this Agreement nor to any dispute or transaction arising out of this Agreement. The party prevailing in any dispute under this Agreement shall be entitled to its costs and legal fees.

10.10 Entire Agreement. This Agreement and the Exhibits attached hereto sets forth the entire agreement of the parties with respect to the subject matter contained herein, and no oral or written statement or representations not contained in this Agreement shall have any force or effect. This Agreement may be amended only upon the written consent of both parties.

The Parties acknowledge that they are bound by this Ordr End User License Agreement as of the Effective Date.

_____ (“Customer”)

Ordr, Inc.:

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

EXHIBIT A
SUPPORT AND MAINTENANCE SERVICES TERMS AND CONDITIONS

To the extent Ordr has become obligated for support and maintenance, the following will apply with respect to Ordr Software so long as they remain Ordr's standard terms and the Customer is in full compliance with the Agreement. Capitalized terms not defined in Section 5 below have the same meaning as in Ordr's End User License Agreement.

1. **SUPPORT AND MAINTENANCE SERVICES.** Support and Maintenance services consist of (a) Error Correction and Support provided to a single consistent technical support contact concerning the installation and use of the current release of the Ordr Software and any supported versions of the Ordr Software, (b) E-mail Support, (c) Web Support, and (d) Ordr Software updates that Ordr in its discretion makes generally available to its support and maintenance customers without additional charge.
2. **ERROR PRIORITY LEVELS.** Ordr shall exercise commercially reasonable efforts to correct any Error reported by Customer in the current unmodified release of Ordr Software or any supported versions of the Ordr Software in accordance with the priority level reasonably assigned to the Error by Ordr.
 - Priority A Errors - Ordr shall respond within one business day and promptly commence the following procedures: (a) assign Ordr engineers to correct the Error; (b) notify Ordr management that Errors have been reported and of steps being taken to correct Error(s); (c) provide Customer with periodic reports on the status of the corrections; and (d) initiate work to provide Customer with a Workaround or Fix. In the event Ordr is unable to provide a Workaround or Fix for any Priority A Error within eight (8) hours of Ordr's initial response to Customer, Ordr shall escalate the Error to Ordr's Vice President of Services. In the event Ordr is unable to provide a Workaround or Fix for any Priority A Error within forty-eight (48) hours of Ordr's initial response to Customer, Ordr shall escalate the Error to Ordr's Chief Executive Officer.
 - Priority B Errors - Ordr shall exercise commercially reasonable efforts to include the Fix for the Error in the next regular Ordr Software maintenance release.
 - Priority C Errors - Ordr may include the Fix for the Error in the next major release of the Ordr Software.
3. **HARDWARE.** Ordr shall respond within one business day to any Hardware maintenance issues and shall resolve those issues pursuant to Ordr's then-current RMA Procedures.
4. **EXCLUSIONS.** Ordr shall have no obligation to support: (a) altered or damaged Ordr Software or any portion of Ordr Software incorporated with or into other software; (b) any Ordr Software that is not the then current release or immediately Previous Sequential Release; (c) Ordr Software problems caused by Customer's negligence, abuse or misapplication, use of Ordr Software other than as specified in the Ordr's user manual or other causes beyond the control of Ordr; or (d) Ordr Software installed on any hardware that is not supported by Ordr. Ordr shall have no liability for any changes in Customer's hardware which may be necessary to use Ordr Software due to a Workaround or maintenance release. If Ordr believes that a problem reported by Customer may not be due to an Error in Ordr Software, Ordr will so notify Customer. At that time, Customer may (1) instruct Ordr to proceed with problem determination at its possible expense as set forth below, or (2) instruct Ordr that Customer does not wish the problem pursued at its possible expense. If Customer requests that Ordr proceed with problem determination at its possible expense and Ordr determines that the error was not due to an Error in the Ordr Software, Customer shall pay Ordr, at Ordr's then-current and standard consulting rates, for all work performed in connection with the determination, plus reasonable related expenses incurred therewith. Customer shall not be liable for (x) problem determination or repair to the extent problems are due to Errors in the Ordr Software; or (y) work performed under this paragraph in excess of its instructions; or (z) work performed after Customer has notified Ordr that it no longer wishes work on the problem determination to be continued at its possible expense Notice shall be deemed given when actually received by Ordr). If Customer instructs Ordr that it does not wish the problem pursued at its possible expense or if the determination requires effort in excess of Customer's instructions, Ordr may, at its sole discretion, elect not to investigate the error with no liability therefor.
5. **DEFINITIONS.**
 - "E-mail support" means ability to make requests for technical support assistance by e-mail at any time (with reasonable efforts by Ordr to respond within one business day) concerning the installation and use of the then current release of the Ordr Software and any supported versions of the Ordr Software.
 - "Error" means an error in the Ordr Software which significantly degrades the Ordr Software as compared to the Documentation.
 - "Error Correction" means the use of reasonable commercial efforts to correct Errors.
 - "Fix" means the repair or replacement of object or executable code versions of the Ordr Software or documentation to remedy an Error.
 - "Priority A Error" means an Error which renders the Ordr Software inoperative.
 - "Priority B Error" means an Error which substantially degrades the performance of Ordr Software or materially restricts Customer's use of the Ordr Software.
 - "Priority C Error" means an Error which causes only a minor impact on the Customer's use of Ordr Software.
 - "Support" means technical support assistance concerning the installation and use of the then current release of the Ordr Software and any supported versions of the Ordr Software. Support shall be available between 7:00AM and 7:00PM Pacific Time on Ordr's regular business days if Customer has purchased Ordr Standard Support and twenty-four hours per day, 365 days per year if Customer has purchased Ordr Premium Support.
 - "Workaround" means a change in the procedures followed or data supplied by Customer to avoid an Error without substantially impairing Customer's use of the Ordr Software.