

MOOGSOFT EMEA
END USER LICENCE AGREEMENT

This End User Licence Agreement (this “Agreement”) is between Moogsoft Limited, a company registered in England and Wales under company number 7528253, whose registered office is at 150 Aldersgate Street, London EC1A 4AB (“Moogsoft”) and _____ under company number _____, whose registered office is at _____ (“End User”), is effective as of _____ (the “Effective Date”).

1. DEFINITIONS

In this Agreement, the following definitions apply:

1.1 “Affiliate” shall mean, with respect to a party, any entity controlling, controlled by or under common control with such party.

1.2 “Data Protection Legislation” shall mean Directive 95/46/EC, Regulation (EU) 2016/679 (General Data Protection Regulation or “GDPR”), any successor legislation and any legislation and/or binding regulations by which it is implemented in the relevant jurisdiction and the terms “data processor”, “data controller” “processor”, “processing” and “personal data” shall each have the meaning ascribed to it in the Data Protection Legislation;

1.3 “Managed Device” means any monitored component capable of producing a unique stream of telemetry messages and creating its own discrete event or log message feed such as servers, applications, network devices, routers and databases.

1.4 “Order Form” means the document detailing the End User’s order for either the Software Product or the SaaS Product.

1.5 “Product Offering” means the Moogsoft products identified in an order form, purchase order, or online order accepted by Moogsoft referencing this Agreement.

1.6 “SaaS Product” means software-as-a-service version of the Moogsoft software product.

2. SOFTWARE LICENCE.

2.1 LICENCE GRANT. Subject to the terms and conditions of this Agreement, Moogsoft hereby grants to End User, during the Licence Term (as defined below), (a) a non-exclusive, non-transferable, non-sublicensable right and licence for the duration of the Licence Term to access, use, perform and digitally display the SaaS Product (if the Product Offering consists of the SaaS Product), as designated in the Order Form, and (b) to use and reproduce a reasonable number of copies of any user manuals, that may be provided by Moogsoft to End User in hard copy or electronic form describing the use and operation of a Product Offering (the “Documentation”) for internal business purposes only. The Product Offering may be used on no more than the number of Managed Devices specified in the Order Form (or, in the case of Evaluation Use, as indicated in Section 2.3). For purposes hereof, and except as provided for under Section 2.3, the “Licence Term” begins on the date Moogsoft delivers to End User the Software Product or Software licence keys, as applicable (in the case of the Software Product), or access credentials for logging in to the hosted service (in the case of the SaaS Product)

to End User (the “Commencement Date”) and extends for the period specified in the applicable Order Form. The Product Offering shall be deemed to be accepted upon such delivery. For the avoidance of doubt, End User’s Affiliates (and employees thereof) shall not use the Product Offering without Moogsoft’s prior written consent. This Agreement supersedes any other agreement (including any click-through or electronic agreements within the Product Offering) between Moogsoft and End User with respect to the Product Offering. Any references in the Order Form to an “Agreement” or “EULA” or other similar term shall be deemed to refer to this Agreement.

2.2 LICENCE RESTRICTIONS. Except as otherwise expressly provided in this Agreement, End User shall not (and shall not permit any third party to): (a) sublicense, sell, resell, transfer, assign, distribute, share, lease, rent, make any external commercial use of, outsource, use on a timeshare or service bureau, or use in an application service provider or managed service provider environment (other than, in the case of the SaaS Product, the remote access environment provided by Moogsoft), or otherwise generate income from the Product Offering; (b) allow the Software to become the subject of any charge, lien or encumbrance; (c) permit any party to access the Product Offering other than End User’s employees and agents authorised by End User; (d) copy the Software Product onto any public or distributed network, except for an internal and secure cloud computing environment; (e) cause the decompiling, disassembly, or reverse engineering of any portion of the Product Offering, or attempt to discover any source code or other operational mechanisms of the Product Offering; (f) modify, adapt, translate or create derivative works based on all or any part of the Product Offering; (g) use any portion of the Product Offering as a general SQL server, as a stand-alone application or with applications other than the Product Offering as provided; (h) modify any proprietary rights notices that appear in the Product Offering or components thereof; (i) use any Product Offering in violation of any applicable laws or regulations (including any export laws, restrictions, national security controls and regulations) or outside of the licence scope set forth in Section 2.1; (j) attempt to disable or circumvent any of the licensing or access control mechanisms within the Product Offering if they are present; (k) either directly or indirectly engage in any form of commercial exploitation of the Product Offering; or (l) use or copy the Product Offering except as expressly allowed under this Agreement. Commercial exploitation for the purposes of this clause means allowing third parties access to the Product Offering (except as expressly permitted under this Agreement) and/or to services provided through use of the Product Offering, regardless of whether revenue is generated by the End User. Notwithstanding the foregoing, decompilation of the Software Product is permitted to the extent the laws of End User’s jurisdiction require Moogsoft to give End User the right to do so to obtain information necessary to render the Software Product interoperable with other software; provided, however, that End User must first request such information from Moogsoft and Moogsoft will then provide such information to End User within a reasonable time. End User may not use such information provided by Moogsoft to create any software whose expression is substantially similar to that of the Software Product nor use such information in any manner which would be restricted by any copyright subsisting in it. Except as expressly set forth herein, no express or implied licence or right of any kind is granted to End User regarding the Product Offering, or any part thereof, including any right to obtain possession of

any source code relating to the Product Offering. End User acknowledges that the Licence is subject to compliance with any and all applicable United States, UK and international laws, regulations, or orders relating to the export of computer software or related know-how (“Export Laws”). The End User agrees that the Product Offering will not be shipped, transferred, exported, or re-exported into any country or used in any manner prohibited by the Export Laws. In addition, if the Product Offering is identified as export controlled items under the Export Laws, the End User represents and warrants that it is not a citizen of, or otherwise located within, an embargoed nation and that it is not otherwise prohibited under the Export Laws from receiving the Product Offering.

2.3 PROOF OF CONCEPT AND EVALUATION USE. If End User downloads or accesses the Product Offering pursuant to a proof of concept or evaluation (“Evaluation Use”), then the terms of this Section 2.3 shall apply. Evaluation Use shall include use of any beta or non-production SaaS Product. Moogsoft may provide a licence for Evaluation Use for a fee or at no charge to End User, as mutually agreed between Moogsoft and End User. The licence term for Evaluation Use is for the period enabled by the licence key for the Product Offering provided by Moogsoft or as specified in writing in an Order Document “The Evaluation Period”. Moogsoft shall have the right to downgrade, limit or otherwise modify the Product Offering provided for Evaluation Use at any time without notice, and no warranty, indemnity, Maintenance or Support obligations of Moogsoft will apply to Evaluation Use. End User’s use of the Product Offering shall be limited to the number and type of licences indicated by Moogsoft in writing prior to End User downloading or accessing the Product Offering. End User may use the Product Offering solely for the internal purpose of evaluating and testing the Product Offering for suitability with the End User’s application and shall not make available the Product Offering to any third party other than in accordance with this Agreement. Moogsoft has the right to immediately revoke and terminate End User’s right to use the Product Offering for Evaluation Use at any time. To the extent that End User invents or develops any intellectual property in connection with using, testing or evaluating the Product Offering, those Intellectual Property Rights shall be owned by (and End User hereby assigns such rights to) Moogsoft. At the end of the Evaluation Period, End User shall cease use of, de-install and delete the Product Offering, destroy or return the Documentation and return the hardware, if applicable. End User shall provide Moogsoft with prompt, written notice certifying that the Product Offering has been removed, returned and / or destroyed and Moogsoft may choose to verify this fact at its sole discretion. End User represents and warrants that: (a) End User has not previously evaluated the relevant Product Offering, and (b) End User will not attempt to, by any means, evaluate the Product Offering again without payment. End User agrees that violation of this provision or this Agreement may subject End User to monetary penalties, including payment of all applicable fees as though the Product Offering were licensed for payment.

2.4 UNAUTHORISED USE. Moogsoft will provide End User with unique usernames and passwords to enable access to the SaaS Product (including any beta or non-production SaaS Product) pursuant to this Agreement. Each username and password may only be used to access the SaaS Product during one (1) concurrent login session. End User will ensure that each username and password will be used only by one (1) authorised employee or

agent of End User. End User shall notify Moogsoft promptly of any unauthorised use of any password or account or any other known or suspected breach of security or misuse of the Product Offering. End User is responsible for use of the Product Offering by any and all employees and other users that it allows to access the Product Offering.

2.5 ACCEPTABLE USE. You are responsible for your use of the services provided through use of the Product Offering, and for any use of your Account. When you use such services, you agree that you will not: (a) violate this Agreement or any Moogsoft rules regarding use of the Services; (b) violate any applicable local, national or international law or regulation; (c) breach any agreements you enter into with any third parties; (d) violate, infringe, or misappropriate other people’s intellectual property, privacy, publicity, or other legal rights; (e) engage in any behavior that is abusive, harassing, indecent, profane, obscene, hateful or otherwise objectionable; (f) stalk, harass, or harm another individual; (g) impersonate any person or entity or perform any other similar fraudulent activity; (h) use any means to scrape or crawl any Web pages or Content contained in the Websites; (i) knowingly transmit any data, send or upload any material that contains viruses, Trojan horses, worms, time-bombs, keystroke loggers, spyware, adware or any other harmful programs or similar computer code designed to adversely affect the operation of any computer software or hardware; (j) attempt to circumvent any technological measure implemented by Moogsoft or any of Moogsoft’s providers or any other third party to protect the Websites or Apps; to the extent permitted by applicable law, attempt to decipher, decompile, disassemble, or reverse engineer any of the software used to provide the Websites or Apps; or (k) advocate, encourage, or assist any third party in doing any of the foregoing.

2.6 SUPPORT AND MAINTENANCE. “Support” is defined as the responsibilities with respect to the Product Offering as set forth in Moogsoft’s standard maintenance and support addendum which can be found at www.moogsoft.com/support (“Support Addendum”). “Maintenance” means the provision of error corrections, bug fixes, new releases, updates, product extensions and enhancements with respect to the Product Offering, in each case as made generally commercially available by Moogsoft in its sole discretion, but excluding new products that are subject to a new licence fee, as determined by Moogsoft in its sole discretion. Subject to End User’s payment of the fees as described herein, Moogsoft will (a) provide Maintenance and Support for the Product Offering in accordance with the Support Addendum, and (b) solely if End User has purchased access to the SaaS Product, make the SaaS Product available to End User in accordance with the availability and security terms as set out in the Support Addendum. For annual or multi-year licences for the Product Offering (as set forth in an Order Form), the fees for Maintenance and Support are included in the fees for the Product Offering set forth in the Order Form. Moogsoft may discontinue Maintenance and Support at any time without notice, provided that it will continue to honor previously-purchased Maintenance and Support plans until the end of their current term. Notwithstanding anything herein to the contrary, if End User receives Support from an authorised partner of Moogsoft (“Partner”), then the support terms agreed upon by End User and such Partner shall govern in lieu of those set forth in the Support Addendum and Moogsoft shall have no support obligations to End User.

2.7 PROFESSIONAL SERVICES. Subject to the terms hereof (including payment of any applicable fees set forth in the Order Form), Moogsoft shall use commercially reasonable efforts to provide the training, enablement and/or other services (“Professional Services”) described in an Order Form (or mutually-agreed statement of work (“SOW”) referencing this Agreement), if any. If not used, pre-purchased Professional Services expire twelve (12) months after the date purchased. End User agrees to provide reasonable cooperation and information as necessary to permit Moogsoft to perform the Professional Services. End User will reimburse Moogsoft for reasonable travel and expenses incurred in connection with the Professional Services (if any) by the Invoice Due Date (as defined below). Unless otherwise agreed between the parties, Professional Services on End User’s premises will be performed on consecutive business days, excluding holidays and weekends. One workday is equal to eight (8) hours; work on weekends or holidays equals one and a half (1.5) workdays. If End User cancels any scheduled, on-site Professional Services less than five (5) business days before the start date of such Professional Services, then Moogsoft will deduct from End User’s account the amount of Professional Services that were scheduled in any of the five (5) days following the date of cancellation, and End User will fully reimburse Moogsoft for any reasonable travel and expenses incurred by Moogsoft for such Professional Services (and for any Professional Services rescheduled by End User) for which Moogsoft is unable to obtain a refund. During the Term and for a period of twelve (12) months thereafter, without Moogsoft’s prior written approval, End User will not solicit for employment or consultancy any Moogsoft’s employees who participated in the performance of Professional Services.

3. FEES.

3.1 PRICING. End User will be invoiced for those amounts and at those prices set forth in an Order Form in an invoice separately issued by Moogsoft or as part of the online ordering process (an “Invoice”). Fees do not include any customisation of the Product Offering (nor support for any such customisations, unless otherwise agreed in writing). If End User’s usage of the Product Offering is in excess of those amounts set forth in the Order Form, End User will be billed for those overages at a pro-rated amount for the remainder of the Term, based on Moogsoft’s then-current standard pricing. If Moogsoft believes in good faith that End User’s usage of the Product Offering exceeds that set forth on the applicable Order Form, End User agrees to allow Moogsoft to audit End User’s use of the Product Offering (not more frequently than twice per calendar year), upon at least twenty-four (24) hours’ notice, to determine the actual use of any and all Product Offering, using a commercially reasonable auditing procedure. If the End User is found to be using the Product Offering in excess of that specified in the applicable Order Form, the End User shall pay Moogsoft’s costs for conducting the audit and any additional fees that are found to be due as a result of such audit. This clause shall survive the termination of this Agreement and shall continue for a period of twelve (12) months following expiry or termination of this Agreement.

3.2 PAYMENTS. If End User purchases the Product Offering by submitting an Order Form, End User will be required to submit payment card information and will be charged at the time of purchase in order to complete the purchase or if payment is not made at time of purchase. If End User submits an Order Form,

End User shall pay Invoices within thirty (30) days of the invoice date (the “Invoice Due Date”). All payment obligations are non-cancellable and all amounts paid are non-refundable, except (a) for amounts paid in error that are not actually due under this Agreement, and (b) as set forth in Sections 7 and 8.1. The fees paid by End User are exclusive of all taxes, levies, or duties imposed by relevant taxing authorities, if any, and End User shall be responsible for payment of all such taxes, including for the avoidance of doubt, Value Added Tax (“VAT”) or any other applicable sales taxes, levies or duties excluding taxes based on Moogsoft’s income. End User represents and warrants that the billing and contact information, including any payment card information, provided to Moogsoft is complete and accurate, and Moogsoft shall have no responsibility for any Invoices that are not received or for payment card charges not successfully processed due to inaccurate or missing information provided by End User. End User shall pay interest on all payments not received by Invoice Due Date at a rate of two per cent (2%) above the base rate from time to time of Barclays Bank plc accruing on a daily basis from (and including) the due date up to (but excluding) the date of actual payment). Alternatively, at Moogsoft’s discretion, Moogsoft may charge interest under the Late Payment of Commercial Debts Regulations 2013. Following written notice to End User, Moogsoft shall be entitled to terminate or suspend End User’s access to the Product Offering if payments are not received within thirty (30) days of the Invoice Due Date. Notwithstanding anything herein to the contrary, if End User makes its payments pursuant to this Agreement to a Partner, then the payment terms agreed upon by End User and such Partner shall govern to the extent anything in this Section 3 conflicts with such Partner payment terms.

4. CONFIDENTIALITY

4.1 SCOPE AND RESTRICTIONS. “Confidential Information” means all information of a party (“Disclosing Party”) disclosed to the other party (“Receiving Party”) that is designated in writing or identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential due to the nature of the information disclosed and the circumstances surrounding the disclosure. The terms of this Agreement, any Documentation, the Software Product, source codes, logins, passwords and other access codes and any and all information regarding Moogsoft’s business, products and services are the Confidential Information of Moogsoft. The Receiving Party will: (a) not use the Disclosing Party’s Confidential Information for any purpose outside of this Agreement; (b) not disclose such Confidential Information to any person or entity, other than its employees, consultants, agents and professional advisers who have a “need to know” for the Receiving Party to exercise its rights or perform its obligations hereunder, provided that such employees, consultants, and agents are bound by agreements or, in the case of professional advisers, ethical duties respecting such Confidential Information in accordance with the terms of this Section 4; and (c) use reasonable measures to protect the confidentiality of such Confidential Information. If the Receiving Party is required by applicable law or court order to make any disclosure of such Confidential Information, it will first give written notice of such requirement to the Disclosing Party, and, to the extent within its control, permit the Disclosing Party to intervene in any relevant proceedings to protect its interests in its Confidential Information, and provide full cooperation to the Disclosing Party in seeking to obtain such protection. Further,

this Section 4 will not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt; (ii) is or has become public knowledge or publicly available through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information.

5. PROPRIETARY RIGHTS. Moogsoft and its suppliers own and shall retain all proprietary rights, including all copyright, patent, trade secret, trademark and all other intellectual property rights, in and to the Product Offering, any error corrections, bug fixes, new releases, updates, product extensions and enhancements, and the results of any Professional Services (“Intellectual Property Rights”). Any rights not expressly granted by Moogsoft in this Agreement are reserved by Moogsoft and its suppliers. Moogsoft may implement updates to its Intellectual Property Rights at any time including in the course of or as a result of providing the Product Offering, Support and Maintenance and Professional Services to End User (including the demonstration of Product Offering to the End User). End User acknowledges that the rights granted under this Agreement do not provide End User with title to or ownership of the Product Offering. Certain software code incorporated into or distributed with the Product Offering may be licensed by third parties under various “open-source” or “public-source” software licences (collectively, the “Open Source Software”). Notwithstanding anything to the contrary in this Agreement, the Open Source Software is not subject to this Agreement and instead is separately licensed pursuant to the terms and conditions of their respective open-source software licences, either attached to this Agreement, reproduced in the appropriate readme file, or available on the Moogsoft web site at docs.moogsoft.com/en/open-source-licenses.html. End User agrees to comply with the terms and conditions of such Open Source Software licence agreements.

6. DATA PROTECTION.

6.1 PRIVACY POLICY. Moogsoft uses, discloses, collects and protects this information as described in its Privacy Policy, the then-current version of which is available at: <https://www.moogsoft.com/legal-information/moogsoft-website-privacy-policy/> and is incorporated by reference herein. Moogsoft’s Product Offering collects data that relates to the performance, health and availability of the End User’s IT infrastructure.

6.2 DATA PROCESSING. To the extent that Moogsoft processes personal data about any living individual (“End User Personal Data”) in the course of providing the Software, Support or Professional Services, it will do so only as a data processor acting on behalf of End User (as data controller) and in accordance with the requirements of this Agreement.

6.3 END USER’S COMPLIANCE WITH PRIVACY LAWS. End User will not configure the Product Offering to collect any personally-identifiable information or payment information (“Personal Data”) without Moogsoft’s prior written approval. Without prejudice to the aforesaid, End User agrees to only control and/or process any personal data it receives, collects, views, accesses, hosts, either from Moogsoft’s Product Offering or from any other third parties, in compliance with Data Protection Legislation and

any applicable regulations thereto (hereinafter jointly the “Laws”). End User guarantees to have put adequate technical and organizational measures in place in order to comply with the Laws, not to export any personal data outside of the European Economic Area (“EEA”), to enter into the required data protection agreements with any third parties. End User will indemnify Moogsoft in full and reimburse any costs and expenses (including but not limited to any attorney fees and legal costs) that Moogsoft may incur relating to any breach of the foregoing and in case Moogsoft is subject to any claim, action or litigation following End User’s non-compliance with the Laws.

6.4 MOOGSOFT’S COMPLIANCE. Moogsoft will process the End User Personal Data in accordance with End User’s lawful instructions under Data Protection Legislation and will not (a) assume any responsibility for determining the purposes for which and the manner in which the End User Personal Data is processed or (b) process the End User Personal Data for its own purposes other than in a manner which is consistent with its rights and obligations under this Agreement.

6.5 WARRANTY. End User warrants, represents and undertakes to Moogsoft that: (a) it is not aware of any circumstances likely to give rise to breach of Data Protection Legislation in the future; and (b) it shall be responsible for ensuring that, for the purposes of compliance with Data Protection Legislation, all data subjects relating to the Data shall give or have given their valid consent to the processing, collection, transfer outside of the EEA and storage of their Data by the parties as anticipated this Agreement.

6.6 SECURITY. Moogsoft will have in place and maintain throughout the Term appropriate technical and organisational measures against accidental or unauthorised destruction, loss, alteration or disclosure of the End User Personal Data, and adequate security programmes and procedures to ensure that unauthorised persons will not have access to any equipment used to process the End User Personal Data.

6.7 SUBPROCESSING. End User authorises Moogsoft to subcontract processing of End User Personal Data under this Agreement to a third party provided that: (a) Moogsoft provides End User with reasonable prior notice of any such subcontracting; (b) Moogsoft flows down its obligations under this Section to protect the End User Personal Data in full to any subcontractor it appoints, such that the data processing terms of the subcontract are no less onerous than the data processing terms set out in this Section; and (c) Moogsoft will remain fully liable to End User for the acts, errors and omissions of any subcontractor it appoints to process the End User Personal Data.

6.8 ADEQUACY. Moogsoft may export End User Personal Data to any part of the world in connection with its performance of this Agreement and will at all times provide an equivalent level of protection to that provided under this Section 6 for End User Personal Data that it processes on behalf of End User.

6.9 COOPERATION. Moogsoft will provide all assistance reasonably required by End User (at End User’s expense) to enable End User to respond to, comply with or otherwise resolve any request, question or complaint received by End User from (a) any living individual whose End User Personal Data is processed by Moogsoft on behalf of End User or (b) any applicable data protection authority.

7. TERM AND TERMINATION. The initial term of this Agreement begins on the Effective Date and extends for the period specified in the Order Form (or if the Product Offering is provided for Evaluation Use, for the Term specified in Section 2.3 hereof) (unless earlier terminated, the “Term”). However, this Agreement may be renewed at any time for successive terms by mutual written agreement of the parties (including by execution of an Order Form referencing this Agreement) and each such renewal will be deemed part of the “Term” hereunder. If either party commits a material breach of this Agreement, and such breach has not been cured within thirty (30) days after receipt of written notice thereof, the non-breaching party may terminate this Agreement, except that Moogsoft may immediately terminate this Agreement and/or End User’s licence to the Product Offering upon End User’s breach of Section 2.2. Upon expiry or termination of this Agreement for any reason, (a) End User shall cease any further use of and destroy any copies of the Software Product and Documentation within End User’s possession and control and (b) each Receiving Party will return or destroy, at the Disclosing Party’s option, the Disclosing Party’s Confidential Information in the Receiving Party’s possession or control. All fees that have accrued as of such expiration or termination, and sections 2.2, **Error! Reference source not found.**, 2.3, 2.4, 3, through 7, 8.4 and 9 through 16, will survive any expiry or termination hereof.

8. WARRANTIES.

8.1 LIMITED WARRANTY. Moogsoft warrants that (a) with respect to SaaS Product licences, during the Licence Term, or (b) with respect to Software Product licences, during the first thirty (30) days following the date the licence to the Product Offering is purchased, the unmodified Product Offering will, in all material respects, conform to the functionality described in the then-current Documentation for the relevant Product Offering version. Moogsoft’s sole and exclusive obligation, and End User’s sole and exclusive remedy, for a breach of this warranty shall be that Moogsoft shall be required to use commercially reasonable efforts to modify the Product Offering to conform in all material respects to the Documentation, and if Moogsoft is unable to materially restore such functionality within thirty (30) days from the date of written notice of such breach, End User shall be entitled to terminate this Agreement upon written notice and receive a pro-rata refund of the Product Offering licence fees that have been paid in advance for the remainder of the Licence Term for the applicable Product Offering (beginning on the date of termination).

8.2 LIMITED WARRANTY FOR SERVICES: Moogsoft will provide the Support and Maintenance and Professional Services using reasonable skill and care.

8.3 NO WARRANTY FOR EVALUATION USE. Moogsoft provides no representations or warranties for any Product Offering provided under a licence for Evaluation Use as described in Section 2.3.

8.4 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 8, THE SOFTWARE, DOCUMENTATION, MAINTENANCE AND SUPPORT AND PROFESSIONAL SERVICES ARE PROVIDED “AS IS” AND MOOGSOFT EXPRESSLY DISCLAIMS ANY AND ALL OTHER REPRESENTATIONS AND WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE WITH

RESPECT THERETO, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, OR THE CONTINUOUS, UNINTERRUPTED, ERROR-FREE, VIRUS-FREE, OR SECURE ACCESS TO OR OPERATION OF THE SOFTWARE. MOOGSOFT EXPRESSLY DISCLAIMS ANY WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF ANY INFORMATION OR DATA ACCESSED OR USED IN CONNECTION WITH THE SOFTWARE, DOCUMENTATION, MAINTENANCE AND SUPPORT, OR PROFESSIONAL SERVICES.

9. INDEMNITY.

9.1 BY MOOGSOFT. Moogsoft agrees to defend, at its expense, End User against any third party claim to the extent such claim alleges that a Product Offering infringes or misappropriates any patent, copyright, trademark or trade secret of a third party, and Moogsoft shall pay all costs and damages finally awarded against End User by a court of competent jurisdiction as a result of any such claim. In the event that the use of a Product Offering is, or in Moogsoft’s sole opinion is likely to become, subject to such a claim, Moogsoft, at its option and expense, may (a) replace the applicable Product Offering with functionally equivalent non-infringing technology, (b) obtain a licence for End User’s continued use of the applicable Product Offering, or (c) terminate the licence and provide a pro-rata refund of the Product Offering licence fees that have been paid in advance for the remainder of the Licence Term for the applicable Product Offering (beginning on the date of termination). The foregoing indemnification obligation of Moogsoft will not apply: (i) if the Product Offering is modified by End User; (ii) if the Product Offering is combined with other non-Moogsoft products, applications, or processes, but solely to the extent the alleged infringement is caused by such combination; (iii) to any unauthorised use of the Product Offering; or (iv) to any Product Offering licensed for Evaluation Use.. The foregoing shall be End User’s sole remedy with respect to any claim of infringement of third party Intellectual Property Rights.

9.2 BY END USER. End User agrees to defend, at its expense, Moogsoft against any third party claim to the extent such claim arises from End User’s breach of Section 2 or End User’s negligence or willful misconduct, and End User shall pay all costs and damages finally awarded against Moogsoft by a court of competent jurisdiction as a result of any such claim.

9.3 INDEMNIFICATION REQUIREMENTS. In connection with any claim for indemnification under this Section 9, the indemnified party must promptly provide the indemnifying party with notice of any claim that the indemnified party believes is within the scope of the obligation to indemnify, provided, however, that the failure to provide such notice shall not relieve the indemnifying party of its obligations under this Section 9, except to the extent that such failure materially prejudices the indemnifying party’s defense of such claim. The indemnified party may, at its own expense, assist in the defense if it so chooses, but the indemnifying party shall control the defense and all negotiations relative to the settlement of any such claim. Any settlement intended to bind the indemnified party shall not be final without the indemnified party’s written consent, which consent shall not be unreasonably withheld, conditioned or delayed.

9.4 End User agrees that a breach of this Agreement may not be adequately compensated by damages alone; Moogsoft shall be entitled to seek the remedies of injunction, specific performance or any other equitable relief for any actual, threatened or potential breach.

10. LIMITATION OF LIABILITY.

10.1 For the purposes of this section, a “Default” means any act, statement, omission, or negligence on the part of Moogsoft in connection with, or in relation to, the subject matter of an Agreement in respect of which Moogsoft is legally liable to End User, whether in contract or tort. A number of Defaults which together result in, or contribute to, substantially the same loss or damage will be treated as one Default.

10.2 Circumstances may arise where, because of a Default, End User is entitled to recover damages from Moogsoft. This Section sets out the extent of Moogsoft’s liability and End User’s sole remedy. (1) Moogsoft will accept unlimited liability for: (a) death or personal injury caused by the negligence of Moogsoft; (b) for physical damage to End User’s tangible property resulting from the negligence of Moogsoft. Moogsoft’s entire liability for actual damages for any one Default will not in any event, except as provided in item 1 above, exceed, in the case of Licenses other than no-charge Evaluation use, the greater of 75,000 GBP, or 100% of the amount End User paid for the Software Product and/ or SaaS Product of the last Order Form only directly relating to the Default and in the case of Licenses for no-charge Evaluation use, 500 GBP. These limits also apply to Moogsoft’s suppliers and developers. They state the maximum for which Moogsoft and such suppliers and developers are collectively responsible.

10.3 Except for liability referred to in Section 10.2 above, under no circumstances is Moogsoft or any of its suppliers or developers liable for any of the following, even if Moogsoft or they were informed of the possibility of such losses: loss of, or damage to, data and its use (including End User data); special, indirect, incidental, punitive, or consequential loss; or loss of profits, business, revenue, goodwill, or anticipated savings. For purposes of this section the term “loss” includes a partial loss or reduction of value as well as complete or total loss.

10.4 End User acknowledges that no Partner can increase Moogsoft’s obligations under this Agreement nor restrict these Limitations of Liability.

11. FORCE MAJEURE. Except for payment obligations, neither party hereto will be liable for defaults or delays due to acts of God, or the public enemy, acts or demands of any government or governmental agency, fires, earthquakes, floods, accidents, or other unforeseeable causes beyond its control and not due to its fault or negligence.

12. ASSIGNMENT This Agreement may not be assigned by either party without the prior written approval of the other party and any purported assignment in violation of this section shall be void; provided, however, that either party may assign this Agreement without such written approval in connection with the transfer, directly or indirectly, of more than fifty percent (50%) of such party’s outstanding voting securities or of all or substantially all of the assets or business of such party (a “Change in Control”); provided, further, that Moogsoft may assign this Agreement to any of its Affiliates. Upon any assignment of this Agreement by End User in connection with a Change in Control, any licences

that contain an “unlimited” feature will, with respect to End User or the successor entity, as applicable, be capped at the number of authorised Product Offering units in use immediately prior to such Change in Control.

13. THIRD PARTY RIGHTS. This Agreement is made and entered for the sole protection and benefit of the parties hereto, and no other person or entity shall be a direct or indirect beneficiary of, or shall have any right to enforce, any term of this Agreement, whether under the Contracts (Rights of Third Parties) Act 1999 or otherwise.

14. SEVERANCE. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable, such provision will be amended to achieve as nearly as possible the same economic effect of the original provision and the remainder of this Agreement will remain in full force and effect.

15. ENTIRE AGREEMENT. This Agreement and its exhibits, together with the Order Form(s) and any statements of work incorporating this Agreement, if applicable, represent the entire agreement between the parties and supersede any previous or contemporaneous oral or written agreements or communications regarding the subject matter of this Agreement.

16. GOVERNING LAW AND JURISDICTION.

16.1 This Agreement and any issues, disputes or claims (whether contractual or non-contractual) arising out of or in connection with it or its subject matter or formation shall be governed by and construed in accordance with the laws of England.

16.2 The parties agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim (whether contractual or non-contractual) that arises out of or in connection with this Agreement or its subject matter or formation. Notwithstanding the foregoing, Moogsoft may bring proceedings in the courts of any other state which have jurisdiction for reasons other than the parties’ choice, for the purpose of seeking: (a) an injunction, order or other non-monetary relief (or its equivalent in such other state); and/or (b) any relief or remedy which, if it (or its equivalent) were granted by the courts of England and Wales would not be enforceable in such other state.

17. MISCELLANEOUS

17.1 WAIVER AND CUMULATIVE REMEDIES. Failure by either Party to exercise any of its rights under, or to enforce any provision of, this Agreement will not be deemed a waiver or forfeiture of such rights or ability to enforce such provision. The rights and remedies of the parties hereunder will be deemed cumulative and not exclusive of any other right or remedy conferred by this Agreement or by law or equity.

17.2 The person signing or otherwise accepting this Agreement for End User represents that s/he is duly authorised by all necessary and appropriate corporate action to enter into this Agreement on behalf of End User.

17.3 CHANGE CONTROL. Any modification to this Agreement must be in writing and signed by a duly authorised agent of both parties. This Agreement shall control over additional or different terms of any purchase order, confirmation, invoice or similar document, even if accepted in writing by both parties, and waivers and amendments to this Agreement shall be effective only if made

by non-pre-printed agreements clearly understood by both parties to be an amendment or waiver to this Agreement.

17.4 For purposes of this Agreement, “including” means “including without limitation.”

17.5 RELATIONSHIP OF THE PARTIES. No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement or use of the Product Offering.

17.6 End User allows Moogsoft to use End Users’ name and logo in Moogsoft’s company marketing materials for business purposes. Subject to a review process before completion, the End User agrees to (a) act as a reference site for Moogsoft, whereupon Moogsoft will co-ordinate with End User with respect to the timing of any related calls or site visits by third parties with the End User and (b) provide a testimonial and quote to Moogsoft for use in its marketing materials, including Moogsoft website and a news release by Moogsoft that End User is a Moogsoft customer.

17.7 End User shall: (a) promptly provide such assistance, facilities, equipment, information and documents, and grant access to computer systems, software and premises, as Moogsoft may reasonably request from time to time in order to discharge its obligations under this Agreement; (b) take all reasonable precautions to protect the health and safety of Moogsoft’s personnel, agents and sub-contractors while at the offices or facilities of the End User; (c) ensure that its employees and other independent contractors provide reasonable co-operation to Moogsoft in relation to the provision of the performance of this Agreement, and ensure that all such personnel shall have the requisite skill, qualification and experience to perform the tasks assigned to them; and (d) shall ensure the adequacy, integrity, security, virus checking and accuracy of the End User Data and its computer systems and shall operate all necessary back-up procedures to ensure the same are maintained in the event of loss for any reason.

17.8 UK BRIBERY ACT. Each party agrees to comply with the UK Bribery Act. End User acknowledges and agrees that End User has not received, requested, been offered, agreed, paid or promised, any offer, promise or gift of any financial or other advantage from and to any person that would constitute a violation under the UK Bribery Act, or which would have influenced or secured any business or other advantage to Moogsoft.

17.9 NOTICES. Moogsoft may give notice to End User by electronic mail to End User’s email address on record in End User’s account information, or by written communication sent by first class mail or pre-paid post to End User’s address on record in End User’s account information. End User may give notice to Moogsoft at any time by any letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to Moogsoft at the following address: Moogsoft Limited, River Reach 31-35 High Street, Kingston Upon Thames, KT1 1LF, UK or such other address as may be notified in writing from time to time, Attn: Director of Finance, with a copy, which shall not constitute notice, to Director of Legal. Notice under this Agreement shall be deemed given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by email; the day after it is sent, if sent for next day delivery by recognised overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Moogsoft Limited	End User:
Signature:	Signature:
Name:	Name:
Title:	Title:
Date:	Date: