

Moogsoft Inc.
Moogsoft Express Evaluation Agreement

This Moogsoft Express Evaluation Agreement (the "Agreement"), between Moogsoft Inc. a Delaware corporation ("**Moogsoft**"), with its principal place of business located at 1265 Battery St., SF, CA 94111, and you (and the organization you represent) ("**Evaluator**"). By accessing the Service described herein, the Evaluator is consenting to be bound by and to be a party to this Agreement.

WHEREAS, Moogsoft is willing to supply under the terms and conditions of this Agreement, access to an evaluation version of Moogsoft's Express service (the "**Service**") to Evaluator solely for testing and internal evaluation purposes, and not for any production use ("**Evaluation**"); and

WHEREAS, Evaluator desires to have access to the Service, and is willing to enter into this Agreement to use and test the Service;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereby agree as follows:

1. Use of Service; Restrictions. Subject to the terms of this Agreement, Moogsoft hereby grants to Evaluator a nontransferable, nonsublicensable, nonexclusive, revocable license to access and use the Service in accordance with the documentation supplied by Moogsoft solely for Evaluator's Evaluation purposes during the term of this Agreement. Except as expressly set forth in this Agreement, Evaluator shall not (and shall not permit any third party to), directly or indirectly: (i) reverse engineer, decompile, disassemble, or otherwise attempt to discover the source code, object code, or underlying structure, ideas, or algorithms of the Service (except to the extent applicable laws specifically prohibit such restriction); (ii) modify, translate, or create derivative works based on the Service; (iii) copy, rent, lease, distribute, pledge, assign, or otherwise transfer or encumber rights to the Service; (iv) use the Service for the benefit of a third party; (v) remove or otherwise alter any proprietary notices or labels from the Service or any portion thereof; (vi) use the Service to build an application or product that is competitive with any Moogsoft product or service; (vii) interfere or attempt to interfere with the proper working of the Service or any activities conducted on the Service; or (viii) bypass any measures Moogsoft may use to prevent or restrict access to the Service (or other accounts, computer systems or networks connected to the Service). Evaluator is responsible for all of Evaluator's activity in connection with the Service. Evaluator (x) shall use the Service in compliance with all applicable local, state, national and foreign laws, treaties and regulations in connection with Evaluator's use of the Service (including those related to data privacy, international communications, export laws and the transmission of technical or personal data laws), and (y) shall not use the Service in a manner that violates any third party intellectual property, contractual or other proprietary

rights. Moogsoft is under no obligation to provide technical support under the terms of this Agreement, and provides no assurance that any specific errors or discrepancies in the Service will be corrected. Evaluator understands that Moogsoft may modify the Service and/or cease supporting old versions or releases of the Service at any time in its sole discretion.

2. Data; Deletion. **“Service Data”** shall mean any data, information or other material provided, uploaded, or submitted by Evaluator to the Service in the course of using the Service. Evaluator acknowledges and agrees that the Service is subject to limitations on (i) the length of time that Service Data will be stored (30 days, unless otherwise agreed by Moogsoft in writing), and (ii) the aggregate amount of Service Data that may be stored (25 gigabytes, unless otherwise agreed by Moogsoft in writing), and that Service Data which exceeds either of such limitations may be automatically deleted by the Service. In addition, Moogsoft may (but is not obligated to) delete all Service Data upon termination or expiration of this Agreement.
3. Confidentiality. Evaluator acknowledges that, in the course of evaluating the Service, the Evaluator will obtain information relating to the Moogsoft and the Service which is confidential in nature (“Confidential Information”). Evaluator agrees not to disclose or use (except as expressly authorized by this Agreement) Confidential Information without the prior written consent of Moogsoft unless such Confidential Information becomes part of the public domain. For purposes hereof, the existence of this Agreement and any information related to the Service shall be Confidential Information.
4. Ownership; Feedback. As between the parties, Moogsoft retains all right, title, and interest in and to the Service, and all software, products, works, and other intellectual property and moral rights related thereto or created, used, or provided by Moogsoft for the purposes of this Agreement, including any copies and derivative works of the foregoing. Any software which is distributed or otherwise provided to Evaluator hereunder shall be deemed a part of the **“Service”** and subject to all of the terms and conditions of this Agreement. No rights or licenses are granted except as expressly and unambiguously set forth in this Agreement. Evaluator may from time to time provide suggestions, comments or other feedback to Moogsoft with respect to the Service (**“Feedback”**). Feedback, even if designated as confidential by Evaluator, shall not create any confidentiality obligation for Moogsoft notwithstanding anything else. Evaluator shall, and hereby does, grant to Moogsoft a nonexclusive, worldwide, perpetual, irrevocable, transferable, sublicensable, royalty-free, fully paid up license to use and exploit the Feedback for any purpose. Nothing in this Agreement will impair Moogsoft’s right to develop, acquire, license, market, promote or distribute products, software or technologies that perform the same or similar functions as, or otherwise compete with any products, software or technologies that Evaluator may develop, produce, market, or distribute. In addition, and notwithstanding anything to the contrary, Evaluator acknowledges and agrees that Moogsoft may (i) internally use and modify (but not disclose) Service Data for the purposes of (A) providing the Service to Evaluator and

(B) generating Aggregated Anonymous Data (as defined below), and (ii) freely use and make available Aggregated Anonymous Data for Moogsoft's business purposes (including without limitation, for purposes of improving, testing, operating, promoting and marketing Moogsoft's products and services). "**Aggregated Anonymous Data**" means data submitted to, collected by, or generated by Moogsoft in connection with Evaluator's use of the Service, but only in aggregate, anonymized form which can in no way be linked specifically to Evaluator. In addition, Moogsoft uses, discloses, collects and protects personal data 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.

5. Warranty Disclaimer. THE SERVICE IS PROVIDED "AS IS" AND "AS AVAILABLE" AND ARE WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND ANY WARRANTIES IMPLIED BY ANY COURSE OF PERFORMANCE, USAGE OF TRADE, OR COURSE OF DEALING, ALL OF WHICH ARE EXPRESSLY DISCLAIMED.
6. Limitation of Remedies and Damages. IN NO EVENT SHALL MOOGSOFT, NOR ITS DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, SUPPLIERS OR CONTENT PROVIDERS, BE LIABLE UNDER CONTRACT, TORT, STRICT LIABILITY, NEGLIGENCE OR ANY OTHER LEGAL OR EQUITABLE THEORY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (I) FOR ANY LOST PROFITS, DATA LOSS, COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES OF ANY KIND WHATSOEVER, SUBSTITUTE GOODS OR SERVICES (HOWEVER ARISING), (II) FOR ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE (REGARDLESS OF THE SOURCE OF ORIGIN), OR (III) FOR ANY DIRECT DAMAGES IN EXCESS OF (IN THE AGGREGATE) \$100.
7. Term. The term of this Agreement commences upon download and terminates on the earlier of (a) Evaluator's notice that it has completed the evaluation or (b) Moogsoft providing notice to Evaluator (in its sole discretion) that the evaluation has ended. Upon any expiration or termination, all rights, obligations and licenses shall cease, except that (a) all obligations that accrued prior to termination and remedies for breach shall survive, (b) the provisions of Sections 2 through 6, inclusive, and 8 shall survive.
8. This Agreement represents the entire agreement between Evaluator and Moogsoft with respect to the subject matter hereof, and supersedes all prior or contemporaneous communications and proposals (whether oral, written or electronic) between Evaluator and Moogsoft with respect thereto. The Agreement shall be governed by and construed in accordance with the laws of the State of California, excluding its conflicts of law rules,

and the parties consent to exclusive jurisdiction and venue in the state and federal courts located in San Francisco, California. All notices under this Agreement shall be in writing and shall be deemed to have been duly given when received, if personally delivered or sent by certified or registered mail, return receipt requested; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; or the day after it is sent, if sent for next day delivery by recognized overnight delivery service. Except as otherwise provided herein, this Agreement may be amended only by a writing executed by both parties. Neither party may assign any of its rights or obligations hereunder without the other party's consent; provided that (i) either party may assign all of its rights and obligations hereunder without such consent to a successor-in-interest in connection with a sale of substantially all of such party's business relating to this Agreement, and (ii) Moogsoft may utilize subcontractors in the performance of its obligations hereunder. No agency, partnership, joint venture, or employment relationship is created as a result of this Agreement and neither party has any authority of any kind to bind the other in any respect. In any action or proceeding to enforce rights under this Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable. The failure of either party to act with respect to a breach of this Agreement by the other party shall not constitute a waiver and shall not limit such party's rights with respect to such breach or any subsequent breaches.
