

MOOGSOFT INC.
END USER LICENSE AGREEMENT

This End User License Agreement (this “Agreement”) between Moogsoft Inc., a Delaware corporation with its principal place of business located at 1265 Battery Street 2nd Floor, San Francisco, CA 94111 (“Moogsoft”) and you (and the organization you represent) (“End User”). By accessing the Product Offering described herein, the End User is consenting to be bound by and to be a party to this Agreement.

1. SOFTWARE LICENSE.

1.1 LICENSE GRANT. As used in this Agreement, “Product Offering” means the Moogsoft product offering identified in an order form, purchase order, or online order entered through Moogsoft’s online order portal (“Order Portal”) accepted by Moogsoft referencing this Agreement (an “Order Form”), consisting of either (a) the on-premise version of the Moogsoft application intelligence software product (the “Software Product”); or (b) the hosted, software-as-a-service version of the Moogsoft application intelligence software product (the “SaaS Product”). Subject to the terms and conditions of this Agreement, Moogsoft hereby grants to End User, during the License Term (as defined below), (i) a non-exclusive, non-transferable, non-sublicensable right and license to access, use, perform and digitally display the SaaS Product (if the Product Offering consists of the SaaS Product), (ii) to install, use, execute and display the Software Product (if the Product Offering consists of the Software Product), as designated in the Order Form, and (iii) to use the Product Offering prescribed by the Moogsoft documentation located at <http://docs.moogsoft.com> (as it may be updated from time to time, 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 1.3). A “Managed Device” is 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. For purposes hereof, and except as provided for under Section 1.3, the “License Term” begins on the date Moogsoft delivers to End User the Software Product or Software license 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 (“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.

1.2 RESTRICTIONS ON USE. 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) permit any party to access the Product Offering other than End User’s employees and agents authorized by End User; (c) copy the Software Product onto any public or distributed network, except for an internal and secure cloud computing environment; (d) 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; (e) modify, adapt, translate or create derivative works based on all or any part of the Product Offering; (f) 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; (g) modify any proprietary rights notices that appear in the Product Offering or components thereof; (h) 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 license scope set forth in Section 1.1; (i) attempt to disable or circumvent any of the licensing or access control mechanisms within the Product Offering if they are present; (j) either directly or indirectly engage in any form of commercial exploitation of the Product Offering; or (k) 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. Except as expressly set forth herein, no express or implied license 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 License 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.

1.3 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 1.3 shall apply. Evaluation Use shall include use of any beta or non-production SaaS Product. Moogsoft may provide a license for Evaluation Use for a fee or at no charge to End User, as mutually agreed between Moogsoft and End User. The License Term is for the period enabled by the license key for the Product Offering provided by Moogsoft or as specified in writing in an Order Document. 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

licenses 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.

1.4 UNAUTHORIZED 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) authorized employee or agent of End User. End User shall notify Moogsoft promptly of any unauthorized 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.

1.5 SUPPORT AND MAINTENANCE. "Support" is defined as the responsibilities with respect to the Product Offering as set forth in Moogsoft's standard Support Agreement which is available on www.moogsoft.com/page/support ("Support Agreement"). "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 license 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 Agreement and (b) solely if End User has purchased access to the SaaS Product, make the SaaS Product available to End User in accordance with Exhibit A (Availability and Security). For annual or multi-year licenses for the Product Offering (as set forth in an Order Form, "Subscription Licenses"), 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 authorized 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 Agreement, and Moogsoft shall have no support obligations to End User.

1.6 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 8 hours; work on weekends or holidays equals 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.

2. FEES.

2.1 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 customization of the Product Offering (nor support for any such customizations, 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.

2.2 PAYMENTS. If End User purchases the Product Offering by submitting an Order Form through the Order Portal, 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. If End User submits an Order Form through means other than the Order Portal, or if payment through the Order Portal was not successful at the time of purchase, End User shall pay Invoices within thirty (30) days of the invoice date (the “Invoice Due Date”). All payment obligations are non-cancelable 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 6.1 and 7.1. 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, 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 the Invoice Due Date at a rate of one percent (1%) per month or the maximum amount allowed by law, whichever is less. 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 2 conflicts with such Partner payment terms.

3. CONFIDENTIALITY

3.1 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, 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 3; 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 3 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.

3.2 EQUITABLE RELIEF. The Receiving Party acknowledges that unauthorized disclosure of the Disclosing Party’s Confidential Information could cause substantial harm to the Disclosing Party for which damages alone might not be a sufficient remedy and, therefore, that upon any such disclosure by the Receiving Party the Disclosing Party will be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law or equity.

4. 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 licenses (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 licenses, either attached to this Agreement, reproduced in the appropriate readme file, or available on the Moogsoft web site at www.moogsoft.com/OpenSourceLicenses. End User agrees to comply with the terms and conditions of such Open Source Software license agreements.

5. TERM AND TERMINATION. The initial term of this Agreement begins on the Commencement 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 1.3 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 fails to comply with any

provision 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 license to the Product Offering upon End User's breach of Section 1.2. Upon expiration or termination of this Agreement for any reason, (a) with respect to Subscription Licenses, 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 1.2, 1.3, 1.4, 2, 3, 4, 5, 6.4 and 7 through 16, will survive any expiration or termination hereof.

6. WARRANTIES.

6.1 LIMITED WARRANTY. Moogsoft warrants that (a) with respect to SaaS Product licenses, during the License Term, or (b) with respect to Software Product licenses, during the first thirty (30) days following the date the license 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 license fees that have been paid in advance for the remainder of the License Term for the applicable Product Offering (beginning on the date of termination).

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

6.3 NO WARRANTY FOR EVALUATION USE. Moogsoft provides no representations or warranties for any Product Offering provided under a license for Evaluation Use as described in Section 1.3.

6.4 WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS SECTION 6, 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.

6.5 Notwithstanding anything to the contrary in this Agreement, Moogsoft accepts no responsibility or liability for any third party software or elements which may be provided under the Agreement, including any Open Source Software, such software or elements being the responsibility of the relevant third party licensor.

7. INDEMNIFICATION.

7.1 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 license for End User's continued use of the applicable Product Offering, or (c) terminate the license and provide a pro-rata refund of the Product Offering license fees that have been paid in advance for the remainder of the License 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 unauthorized 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.

7.2 BY END USER. End User agrees to defend, at its expense, Moogsoft against any claim to the extent such claim arises from End User's breach of Section 1 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.

7.3 INDEMNIFICATION REQUIREMENTS. In connection with any claim for indemnification under this Section 7, 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 7, 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.

7.4 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.

8. LIMITATION OF LIABILITY.

8.1 EXCEPT FOR LIABILITY ARISING OUT OF END USER'S BREACH OF SECTION 1.2 (RESTRICTIONS ON USE) OR SECTION 4 (PROPRIETARY RIGHTS) OR EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY), IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES FOR LOSS OF REVENUES OR PROFITS, LOSS OF USE, BUSINESS INTERRUPTION, OR LOSS OF DATA (INCLUDING END USER DATA), WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FOR THE PURPOSES OF THIS SECTION THE TERM "LOSS" INCLUDES A PARTIAL LOSS OR REDUCTION IN VALUE AS WELL AS A COMPLETE OR TOTAL LOSS.

8.2 EXCEPT FOR LIABILITY ARISING OUT OF END USER'S BREACH OF SECTION 1.2 (RESTRICTIONS ON USE), EITHER PARTY'S BREACH OF SECTION 3 (CONFIDENTIALITY) OR EACH PARTY'S INDEMNIFICATION OBLIGATIONS UNDER THIS AGREEMENT, NEITHER PARTY'S LIABILITY FOR ANY DAMAGES (WHETHER FOR BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY, OTHER TORTS OR OTHERWISE) ARISING FROM OR RELATING TO THE PRODUCT OFFERING, ANY SERVICES PROVIDED HEREUNDER, OR THIS AGREEMENT SHALL NOT EXCEED (A) IN THE CASE OF LICENSES OTHER THAN FOR NO-CHARGE EVALUATION USE, AN AMOUNT EQUAL TO THE TOTAL FEES PAID (PLUS FEES PAYABLE) TO MOOGSOFT DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE CLAIM GIVING RISE TO SUCH DAMAGES; OR (B) IN THE CASE OF LICENSES FOR NO-CHARGE EVALUATION USE, FIFTY U.S. DOLLARS (U.S. \$50). THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

9. 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.

10. DATA COLLECTION. Moogsoft's Product Offering collects data that relates to the performance, health and availability of the End User's IT infrastructure. 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, and End User will indemnify Moogsoft for reasonable costs and other amounts that Moogsoft may incur relating to any breach of the foregoing.

11. US GOVERNMENT MATTERS. As defined in FAR section 2.101, the Product Offering and Documentation are "commercial items" and according to DFAR section 252.227

7014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

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

13. 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.

14. 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.

15. GOVERNING LAW AND JURISDICTION. This Agreement shall be governed by and construed under the laws of the State of California, U.S.A., without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The parties consent to the exclusive jurisdiction and venue of the courts located in and serving San Francisco, California. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. End User will always comply with all international and domestic laws, ordinances, regulations, and statutes that are applicable to its purchase and use of the Product Offering, Documentation, Support and Maintenance and Professional Services.

16. MISCELLANEOUS

16.1 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.

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

16.3 CHANGE CONTROL. Any modification to this Agreement must be in writing and signed by a duly authorized 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.

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

16.5 No joint venture, partnership, employment, or agency relationship exists between the parties as a result of this Agreement or use of the Product Offering.

16.6 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.

16.7 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.

16.8 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 Inc., 1265 Battery Street 2nd Floor, San Francisco, CA, 94111, USA 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 recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

EXHIBIT A
AVAILABILITY AND SECURITY

The terms set forth in this Exhibit A apply only if End User has purchased access to the online SaaS Product, as indicated on the Order Form.

Hosting: Moogsoft's SaaS Product (servers, infrastructure, and storage) is hosted by Amazon Web Services (AWS). Every Server is operated in a fully redundant fail-over pair to ensure high availability. Data is backed up nightly, stored redundantly and can be restored rapidly in case of failure. Security updates and patches are actively evaluated by engineers and are deployed based upon the security risk and stability benefits they offer to our SaaS Product and customers.

Availability: Moogsoft shall use commercially reasonable efforts to make Services generally available twenty four (24) hours a day, seven (7) days a week at a rate of 98% uptime, ("Uptime Commitment") except for: (i) planned downtime, which shall be any period for which Moogsoft gives eight (8) hours or more notice that the Services will be unavailable; (ii) any unavailability caused by circumstances beyond Moogsoft's reasonable control, including without limitation, computer or telecommunications failure or delays involving hardware or software not within Moogsoft's possession or reasonable control, and network intrusions or denial of service attacks; (iii) any period of unavailability lasting fifteen (15) minutes or less; (iv) a disruption in the connection between the server on which Services is located based on a failure of the End User's connection to the public Internet or a general failure of the public Internet not related specifically to Services's infrastructure; and (v) time the server is unavailable due to unavailability resulting from the improper use of Services by End User. If Moogsoft fails to meet the Uptime Commitment for two (2) consecutive calendar months or fails to meet the Uptime Commitment for any three (3) calendar months within any twelve (12) month period, then by notice given within thirty (30) days after the end of the month which triggered End User's right of termination, End User may terminate this Agreement, and receive a refund of any pre-paid fees for periods after the effective date of termination. The provisions of this SLA state End User's sole and exclusive remedy for any service level deficiencies of any kind.

End User Account Login: For Moogsoft user interface access, we use TLS1.2 with AES 256 bit encryption, terminated at the server to ensure end-to-end security over the wire. Moogsoft are also able to restrict user interface access to End User corporate networks for additional security.

Data Access: Access to Moogsoft SaaS Product infrastructure and data is secured by multiple authentication challenges including RSA and DSA key pairs, passwords, and network access control lists. Infrastructure and data access is restricted to Moogsoft employees and contractors, all of whom are under strict confidentiality agreements. Systems and Network activity is actively monitored by a team of engineers 24/7. Failed authentication attempts are audited and engineers are paged immediately so that any possible intrusion or threat can be investigated promptly. Standard firewall policies are deployed to block all access except to ports required for our SaaS Product and agent communication.