MadCap Software, Inc. Terms and Conditions

PLEASE READ THE FOLLOWING TERMS AND CONDITIONS (THE "**TERMS**") CAREFULLY. THESE TERMS TOGETHER WITH ANY APPLICABLE ORDER FORM (DEFINED BELOW) AND ALL SUPPLEMENTAL TERMS THAT MAY BE PRESENTED TO YOU FOR YOUR REVIEW AND ACCEPTANCE (COLLECTIVELY, THE "**AGREEMENT**") CONSTITUTE THE AGREEMENT BETWEEN THE ENTITY OR THE INDIVIDUAL ACCESSING OR USING THE PRODUCTS (AS DEFINED BELOW) ("**YOU**" OR "**CUSTOMER**") AND MADCAP SOFTWARE INC. ("**MADCAP**"). THIS AGREEMENT REPRESENTS THE ENTIRE AGREEMENT CONCERNING THE PRODUCTS BETWEEN THE PARTIES AND IT SUPERSEDES ANY PRIOR PROPOSAL, REPRESENTATION, OR UNDERSTANDING BETWEEN THE PARTIES.

BY EXECUTING AN ORDER FORM, OR BY DOWNLOADING, INSTALLING, ACCESSING OR USING, OR SUBSCRIBING TO USE, THE PRODUCTS, YOU ARE ACCEPTING AND AGREEING TO BE BOUND BY AND COMPLY WITH ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT (PERSONALLY AND ON BEHALF OF ANY COMPANY OR OTHER LEGAL ENTITY THAT YOU REPRESENT WHEN USING THE PRODUCTS OR THAT YOU NAME AS THE USER WHEN YOU CREATE AN ACCOUNT), AND YOU REPRESENT AND WARRANT THAT YOU HAVE THE RIGHT, AUTHORITY, AND CAPACITY TO ENTER INTO THIS AGREEMENT AND TO BIND ANY SUCH COMPANY OR LEGAL ENTITY TO THIS AGREEMENT. EACH ORDER IS INCORPORATED HEREIN BY REFERENCE. IF YOU DO NOT AGREE WITH ALL OF THE PROVISIONS OF THIS AGREEMENT, YOU MAY NOT DOWNLOAD, INSTALL, USE OR ACCESS THE PRODUCTS.

UNLESS OTHERWISE AGREED TO IN WRITING, YOUR SUBSCRIPTION FOR ACCESS AND USE OF THE PRODUCTS WILL BE AUTOMATICALLY RENEWED AT EXPIRATION OF THE INITIAL TERM FOR ADDITIONAL PERIODS OF THE SAME DURATION AND AT THE SAME LEVEL OF ACCESS AS THE INITIAL TERM AT MADCAP SOFTWARE'S THEN CURRENT FEES UNLESS YOU OPT OUT OF THE AUTO RENEWAL IN ACCORDANCE WITH SECTION 17.1 (TERM) BELOW.

MadCap may change these Terms from time to time at its sole discretion, and if it makes any material changes, it will attempt to notify You by sending You an email to the last email address You provided to MadCap and/or posting a notice on MadCap's website. Therefore, You agree to promptly notify MadCap of any changes in your email address. Any material changes to these Terms will be effective upon the earlier of (1) your acceptance of the new Terms if MadCap provides a mechanism for Your immediate acceptance in a specified manner (such as a click-through review and acceptance mechanism) or (2) the next renewal date of the Agreement pursuant to the applicable Order Form.

1. **Definitions**. The following terms have the meanings set forth below, unless otherwise indicated:
    1. "*Affiliate*" means an entity that directly or indirectly controls, is controlled by, or is under common control by either party. For purposes of the preceding

sentence, "control" means direct or indirect ownership or control of more than fifty percent (50%) of the voting interests of the subject entity.

2. "***Authorized Users***" means Customer's employees and Third Party Users (as defined in *Section 3 (Third Party Users)*), if applicable, authorized by Customer to access and use the Products on behalf of Customer and for whom use and access has been purchased in the applicable Order Form.

3. "***Auxiliary Program***" means any software provided by or on behalf of MadCap Software in executable code form to Customer for purposes of facilitating access to, operation of, and/or use with, the Products.

4. "***MadCap Materials***" all documentation, materials, methodologies, processes, techniques, inventions, ideas, concepts, trade secrets, and know-how embodied in the Products, Auxiliary Programs, or Deliverables, or that MadCap Software may develop or supply in connection with the Products, Auxiliary Programs, or Deliverables.

5. "***MadCap Offerings***" means the Products and Professional Services.

6. "***MadCap Properties***" means the Products, Auxiliary Programs, Deliverables, Documentation, and MadCap Materials, including all copies, portions, extracts, selections, arrangements, compilations, adaptations, modifications, and improvements thereof, and all derivative works of any of the foregoing.

7. "***Customer Data***" means all data, content, and materials (i) uploaded or transmitted to the SaaS Service by Customer or any Authorized User, (ii) created, uploaded, transmitted or otherwise made available through the On-Premise Software by Customer or any Authorized User or visitor to Customer's webpage(s), and (iii) Tracking Code Data.

8. "***Deliverable***" means all works of authorship, formulas, algorithms, databases, scripts, modifications, configurations, logos, symbols, designs, and inventions that MadCap Software authors, makes, conceives, reduces to practice, develops or otherwise creates, either alone or jointly with others, while performing Professional Services.

9. "***Documentation***" means the then-current technical specifications for a Product contained in the user and system documentation made generally available by MadCap Software to its customers.

10. "***Education Version***" means a version, so identified on the applicable Order Form, of the On-Premise Software for use by students and faculty of educational institutions only.

11. "***Intellectual Property Rights***" means registered and unregistered rights in intellectual or industrial property recognized in any jurisdiction in the world, including rights in: (i) patents and patent rights, rights of priority, works of authorship, copyrights, mask work rights, moral rights, trade secrets, know-how, and proprietary information; (ii) trademarks, service marks, designs, and other designations of source; and in each case of (i) and (ii), all extensions and renewals thereof, and all applications for registration in connection therewith.

12. "***MadCap Software***" means MadCap and its Affiliates.

13. "***Not For Resale (NFR) Version***" means a version, so identified on the applicable Order Form, of the On-Premise Software for use only to review and evaluate the On-Premise Software.

14. "***On-Premise Software***" means software provided by or on behalf of MadCap Software in executable code form to Customer pursuant to an Order Form, and if applicable, new releases, versions, and updates to the foregoing provided by MadCap Software during the Term.

15. "***Open Source Software***" means any open source, community, or other free code or libraries of any type, including any code licensed under licenses approved by the Open Source Initiative at https://opensource.org/licenses.
16. "***Order Form***" means each MadCap Software order form (including any webpage order form), renewal quote, or other order document utilized by Customer to purchase or signup for Products or MadCap Software quote which by its terms is accepted by the issuance of a purchase order by Customer or its authorized representative, which identifies the Products and/or Professional Services ordered by Customer. Each Order Form is incorporated into and forms a part of this Agreement.
17. "***Personal Information***" means any Customer Data that by itself or in combination with other information identifies or is capable of identifying a specific individual.
18. "***Privacy Laws***" means laws that govern the collection, use, processing, privacy, security, protection, loss, disclosure, storage, transmission, transfer, breach notification, or unauthorized access of Personal Information.
19. "***Privacy Policy***" means the MadCap Software Privacy Policy, the current version of which is located on the MadCap Software website at http://www.madcapsoftware.com/privacy/.
20. "***Products***" means the On-Premise Software and SaaS Service.
21. "***Professional Services***" means any implementation, training, consulting, or other professional services provided by MadCap Software, as set forth on an Order Form or in a Statement of Work.
22. "***Restricted Information***" means any confidential or personal information that is protected by law and that requires the highest level of access control and security protection, whether in storage or in transit. Restricted Information includes, but is not limited to: electronic protected health information (ePHI as defined by the HIPAA and HITECH Acts), credit, debit or payment card information regulated by the payment card industry, information subject to the Children's Online Privacy Protection Act of 1998, 15 U.S.C. 6501-6505, and information classified as "sensitive data" (or similar term) under applicable Privacy Laws.
23. "***SaaS Service***" means the hosted software-as-a-service provided by or on behalf of MadCap Software to Customer pursuant to an Order Form, including the electronic reports, analyses, and statistical and performance related information generated thereby.
24. "***Statement of Work***" means a written description of the Professional Services to be provided to Customer pursuant to the terms of this Agreement.
25. "***Suite***" a bundle of Products licensed to or purchased by Customer pursuant to an Order Form.
26. "***Tracking Code***" means the proprietary MadCap tracking code, which is voluntarily enabled by Customer within the Product(s) with respect to desired documentation for the purpose of collecting Tracking Code Data.
27. "***Tracking Code Data***" means the data concerning the characteristics and activities of visitors, including Customer's internal traffic, to Customer's web pages, documentation, or any other content made available by Customer through the Products, including characteristics of the devices being used by visitors to access Customer Data, any user comments and ratings provided by visitors using Customer Data, which is collected through use of the Tracking Code and then forwarded, analyzed and saved using the SaaS Service.

28. "*Trial Version*" means a version, so identified, of the SaaS Service or On-Premise Software to be used only to review, demonstrate and evaluate the SaaS Service or On-Premise Software for a limited time period. The Trial Version may have limited features, scrambled output, may lack the ability for the end-user to save content or work product, and will cease operating after a predetermined amount of time due to an internal mechanism within the Trial Version.

2. **Agreement; Order of Precedence**. This Agreement governs the use by Customer and its Authorized Users of the MadCap Offerings. In the event of a conflict between an Order Form and the body of this Agreement or any attachment hereto, the body of this Agreement or such attachment will take precedence, except for any specific provision in an Order Form that expresses an intent to supersede a specified provision in the body of this Agreement or any attachment hereto.

3. **Third Parties**.
    1. **Third Party Users**. Customer may designate certain of its third party contractors as Authorized Users as necessary to facilitate Customer's use of the Products for Customer's internal business operations (each, a "***Third Party User***"), provided that the use and access by each Third Party User must be under obligation of non-disclosure and use consistent with *Section 15 (Confidentiality)*, solely for Customer's benefit, and otherwise subject to the terms of this Agreement. Customer accepts responsibility for the acts and omissions of each Third Party User as if they were its own, and agrees to enforce (and to enable MadCap Software to enforce) the terms of this Agreement against Third Party Users.
    2. **Tracking Code**. If Customer provides access to Customer Data or any portion thereof to any third party or uses the Tracking Code to collect information on behalf of any third party, this Section 3.2 shall apply. If Customer uses the Tracking Code on behalf of any third party, Customer (a) represents and warrants that Customer is authorized to act on behalf of such third party, (b) shall ensure that each such third party is bound by and abides by the terms of this Agreement, (c) as between MadCap Software and Customer, shall be fully liable and responsible for any and all of such third party's data contained in the Customer Data, (d) shall not disclose such third party's data to any other party without such third party's consent; and (e) has obtained all necessary authorizations, rights and consents to collect such third party's data. Customer shall take all measures necessary to disclaim any and all representation or warranties that may pertain to MadCap Software, the Tracking Code, the Products or use thereof. MadCap Software makes no representations or warrantied for the direct or indirect benefit of any third party.

4. **License and Rights Grants**. The license and use rights in the Products granted hereunder are subject to compliance by Customer and its Authorized Users with this Agreement, and may be suspended or terminated as set forth herein.
    1. **Documentation**. MadCap Software grants Customer, during the Term, a limited, non-exclusive, non-transferable right and license (without the right to grant or authorize sublicenses) to use the Documentation solely in connection with Customer's authorized use of the Products. Customer may reproduce the Documentation as reasonably necessary to support such authorized use, provided such copies include all MadCap Software trademarks and proprietary rights notices present on the Documentation as made available by MadCap Software.

2. **On-Premise Software**. Customer's rights to use the On-Premise Software and the license granted in this Section 4.2 are subject to the terms and conditions set forth in Exhibit A and dependent upon the type of license identified in the Order Form. Subject to Exhibit A, MadCap Software grants Customer, during the On-Premise Term, a limited, non-exclusive, non-transferable license (without the right to grant or authorize sublicenses) for its Authorized Users to install and use the On-Premise Software and Auxiliary Programs on computer systems controlled by Customer solely for Customer's internal business operations, in accordance with the Documentation and this Agreement. Customer may reproduce the On-Premise Software and Auxiliary Programs only as reasonably necessary to support its authorized use of the On-Premise Software and Auxiliary Programs, and for routine backup and archival purposes, provided such copies include all MadCap Software trademarks and proprietary rights notices present on the On-Premise Software and Auxiliary Programs as made available by MadCap Software.

    1. **Mandatory Product Activation**. The license rights granted under this Agreement may be limited to a specified number of days after you first install the On-Premise Software unless you supply information required to activate your licensed copy of the On-Premise Software within the time and the manner described during the On-Premise Software setup sequence and/or the dialog boxes appearing during use of the On-Premise Software. You may need to activate the On-Premise Software through the use of the Internet or telephone; toll charges may apply. You may need to reactivate the On-Premise Software if you modify your computer hardware or alter the On-Premise Software. On-Premise Software activation is based on the exchange of information between your computer and MadCap Software. None of this information contains personally identifiable information nor can it be used to identify any personal information about you or any characteristics of your computer configuration. YOU ACKNOWLEDGE AND UNDERSTAND THAT THERE ARE TECHNOLOGICAL MEASURES IN THE ON-PREMISE SOFTWARE THAT ARE DESIGNED TO PREVENT UNLICENSED OR ILLEGAL USE OF THE ON-PREMISE SOFTWARE. YOU AGREE THAT MADCAP SOFTWARE MAY USE SUCH MEASURES AND YOU AGREE TO FOLLOW ANY REQUIREMENTS REGARDING SUCH TECHNOLOGICAL MEASURES. YOU ACKNOWLEDGE AND AGREE THAT THE ON-PREMISE SOFTWARE WILL CEASE TO FUNCTION UNLESS AND UNTIL YOU ACTIVATE THE APPLICABLE ON-PREMISE SOFTWARE ACTIVATION KEY.

    2. **Upgrades.** If the On-Premise Software is an upgrade from an earlier version of the On-Premise Software, it is provided to you on a license exchange basis. You agree by your installation and use of such copy of the On-Premise Software to voluntarily terminate your earlier Agreement with respect to the applicable earlier version of the On-Premise Software and that you will not continue to use the earlier version of the On-Premise Software or transfer it to another person or entity unless such transfer is pursuant to Section 21 (Assignment).

3. **Prior Same Version License.** If the On-Premise Software is licensed as part of a Suite, and you have a prior license to the same version of the On-Premise Software, and the Suite was licensed to you with a discount based, in whole or in part, on your prior license to the same version, the On-Premise Software is provided to you on a license exchange basis. You agree by your installation and use of this copy of the On-Premise Software to voluntarily terminate your License Agreement with respect to such prior license and that you will not continue to install or use such prior license of the On-Premise Software or transfer it to another person or entity.

3. **SaaS Service**. MadCap Software grants Customer, during the SaaS Term, a limited, non-exclusive, non-transferable right for its Authorized Users to access and use the SaaS Service solely for Customer's internal business operations, in accordance with the Documentation and this Agreement. MadCap Software will provide the SaaS Service in accordance with its then-current Service Level Agreement which can be found at https://www.madcapsoftware.com/company/service-level-agreement/, as may be updated from time to time.

4. **Open Source Software; Third Party Software**. Notwithstanding the foregoing license and rights grants, this Agreement is not meant to change or supersede the terms of any Open Source Software license applicable to any portion of the Products. The terms of any such Open Source Software licenses are available from MadCap Software upon Customer's request. The On-Premise Software may contain third party software which may require notices and/or additional terms and conditions. Such required third party software notices, if any, and/or additional terms and conditions are located within the application Readme.txt file and are made a part of and incorporated by reference into this Agreement. By accepting this Agreement, Customer also accepts such additional terms and conditions, if any, set forth therein.

5. **Modifications; Maintenance & Support**.
   1. **Modifications**. Customer acknowledges that MadCap Software may continually develop, deliver, and provide to Customer on-going innovation to the Products in the form of new features, functionality, and efficiencies. Accordingly, MadCap Software reserves the right to modify the Products from time to time. Some modifications will be provided to Customer at no additional charge. In the event MadCap Software adds new features or functionality to the Products, MadCap Software may condition the implementation of such features or functionality on Customer's payment of additional fees, provided Customer may continue to use the version of the Products that MadCap Software makes generally available (without such features or functionality) without paying additional fees.
   2. **Maintenance & Support**. Customer's license to On-Premise Software entitles Customer to purchase maintenance and support from MadCap Software, Inc. pursuant to the standard maintenance and support programs available for the applicable On-Premise Software, as identified in the Order Form. If Customer acquired a Subscription License, as identified in the Order Form, maintenance and support shall be included for all licensed users as specified in the applicable Order Form. If Customer acquired a Subscription License, as identified in the Order Form, basic maintenance and support shall be included for all licensed users during the applicable On-Premise Term.

6. **Evaluation of Products**. This *Section 6 (Evaluation of Products)* applies only if Customer has been provided evaluation access to the Products by MadCap Software through a Trial Version or Not for Resale Version ("***Evaluation Access***"). Evaluation Access to the Products is subject to all restrictions set forth in this Agreement. In addition, Evaluation Access is provided for the sole and exclusive purpose of enabling Customer to evaluate the Products and will not be put into productive use or included as part of Customer's business processes in any manner, unless and until a license or subscription, as applicable, is purchased by Customer. Customer agrees not to remove any automatically created MadCap Software branding included in any output created, produced or generated by the Products while using the Products under Evaluation Access. Evaluation Access is provided "AS IS," with no warranties of any kind, express or implied. Certain features may not be available for use during the period of Evaluation Access. Unless otherwise agreed by the parties in writing, the period for Evaluation Access will be thirty (30) days, beginning on the date MadCap Software provides such access. Evaluation Access will automatically time-out at the end of the relevant evaluation period without further notice, and may be terminated by MadCap Software at any time and for any reason.

7. **Professional Services**. This *Section 7 (Professional Services)* applies only to an Order Form that includes Professional Services.
    1. **Statements of Work**. MadCap Software will provide the Professional Services identified on an Order Form, which may be further described in one or more Statements of Work, subject to this Agreement. Such Order Form and, if applicable, Statement of Work, may include: (i) a description of the scope and type of Professional Services; (ii) the location where the Professional Services will be performed; (iii) any Deliverables; (iv) the schedule for performance and delivery of Deliverables; and (v) additional fees and payment terms applicable to the Professional Services. MadCap Software and Customer will cooperate to enable MadCap Software to perform the Professional Services according to the performance schedule and delivery terms set forth therein, if any, and Customer agrees to timely perform any Customer obligations specified therein. MadCap Software will not be liable to the extent its performance of Professional Services is affected by Customer's failure to fulfill such Customer obligations.
    2. **Deliverables**. Unless otherwise expressly agreed in the applicable Order Form and/or Statement of Work, MadCap Software retains all Intellectual Property Rights in the Deliverables and MadCap Materials prepared by MadCap Software in connection therewith. Subject to Customer's compliance with this Agreement, MadCap Software hereby grants Customer, during the Term, a limited, non-exclusive, non-transferable, license to use and reproduce the Deliverables, solely for Customer's internal business operations in connection with Customer's related authorized use of the Products. Notwithstanding any other provision of this Agreement, nothing herein will be construed to assign or transfer any Intellectual Property Rights in the MadCap Materials used by MadCap Software to develop the Deliverables, and to the extent such MadCap Materials are delivered with or as part of the Deliverables, they are licensed, not assigned, to Customer, on the same terms as the Deliverables.

8. **Pricing, Invoices, and Payments**.
    1. **Pricing and Invoicing**. Prices and invoice instructions for the MadCap Offerings and Maintenance & Support are set forth in the applicable Order

Form. Fees may be invoiced in advance, as set forth in the applicable Order Form.

2. **Payments**. Unless otherwise specified in an Order Form, Customer will pay MadCap Software the amounts set forth on any invoice issued pursuant to this Agreement in the specified currency within thirty (30) days of the date of the invoice and are payable in advance at the beginning of a billing term or, if applicable, following completion of a Trial Version. If the Order Form indicates selection of an auto-pay option, Customer hereby authorizes MadCap Software to collect payments due from Customer's credit card or debit the account through ACH debit as indicated by Customer in any Order Form, invoice, webpage or other payment authorization form submitted by Customer to MadCap Software for the Products. Payment obligations for all MadCap Offerings are non-cancelable, and fees paid are non-refundable, except as otherwise provided in this Agreement. MadCap Software may impose a late payment charge not to exceed the maximum rate allowed by law. If Customer fails to pay any fee due under an Order Form or this Agreement, without limitation of any of its other rights or remedies, MadCap Software may suspend performance until MadCap Software receives all past due amounts from Customer. Customer understands that one or more invoices may be issued under each Order Form, that multiple Order Forms may be executed under this Agreement, and that Customer shall have no right to set-off, deduct from, or reduce payments owed under this Agreement. In the event of a good faith dispute for payment on any invoice, Customer will, within fifteen (15) days of receipt of the invoice, notify MadCap Software in writing of the dispute and the parties will use good faith efforts to resolve such dispute. Undisputed amounts remain payable as provided herein and in the relevant Order Form.

3. **No Requirement for Purchase Order**. Customer acknowledges that Customer may provide a purchase order number or copy of its purchase order to MadCap Software for Customer's administrative convenience, and that MadCap Software has the right to issue an invoice and collect payment without a corresponding purchase order. If Customer issues a purchase order, MadCap Software hereby rejects and Customer hereby retracts any additional or conflicting terms appearing in a purchase order or any other ordering materials submitted by Customer and conditions are solely based on the terms and conditions of this Agreement and the applicable Order Form, as offered by MadCap Software. On request, MadCap Software will reference the purchase order number on its invoices (solely for administrative convenience), provided the purchase order references the Order Form and is received reasonably prior to the date of the invoice.

4. **Delivery**. Products are made available by electronic delivery. Products are deemed to be delivered and accepted on issuance of the license key or when electronic notice is sent that the purchased Products are available.

9. **Taxes**. MadCap Software' fees do not include any local, state, federal, or foreign taxes, levies, or duties of any nature, including value-added, sales, use, or withholding taxes ("*Taxes*"). Customer is responsible for paying all Taxes, excluding only taxes based on MadCap Software' income. If MadCap Software has the legal obligation to pay or collect Taxes for which Customer is responsible under this Section, the appropriate amount shall be invoiced to and paid by Customer unless Customer

provides MadCap Software with a valid tax exemption certificate authorized by the appropriate taxing authority.

10. **Restrictions**.

    1. **General**. Customer will not directly or indirectly, and will not permit any Authorized User or any other person or entity, to: (i) use any of the MadCap Properties in contravention of any applicable laws or government regulations, including, without limitation, applicable Privacy Laws or in violation of this Agreement; (ii) except and to the extent specifically permitted by applicable law, reverse engineer, decompile, disassemble, or otherwise attempt to derive or gain access to the object code, source code, or underlying ideas, methodologies, or algorithms of any of the MadCap Properties; (iii) modify, adapt, translate, or create derivative works based on any of the MadCap Properties; (iv) sublicense, rent, lease, distribute, publish, sell, resell, assign, or otherwise transfer its rights to use any of the MadCap Properties, including on or in connection with the internet or any time-sharing, service bureau, software as a service, cloud, or other technology or service; (v) commercially exploit any of the MadCap Properties; (vi) use any of the MadCap Properties for any purpose other than their intended purposes; (vii) introduce any Open Source Software into any of the MadCap Properties; (viii) disclose passwords, usernames, or other account information to any third party, except to the applicable Authorized User; (ix) access or use any MadCap Properties for competitive analysis or to design, create, offer, or build a product or service that is competitive with any MadCap Properties or that uses ideas, features, or functions similar to any MadCap Properties; or (x) remove or alter any proprietary notices, labels, or marks in the MadCap Properties. Customer will not make the SaaS Service or any portion thereof available for use, access, display, searching, or retrieval by, or on behalf of, any third party, or make the SaaS Service available in any "public" or "free" area or area accessible on the internet.

    2. **On-Premise Software**. Customer may receive the On-Premise Software in more than one media form, however Customer shall only install or use one such form and may use only the form that is appropriate for the server or computer on which the On-Premise Software is to be installed. Customer may receive the On-Premise Software in more than one platform but you shall only install or use one platform. If the On-Premise Software is delivered in multiple versions or languages, you may only run one version or language of the On-Premise Software, and you may not run the additional versions in any other language on any other computer.

    3. **Tracking Code**. Customer shall not, and shall not allow any third party to: use the Tracking Code to track or unlawfully collect personally identified information of Internet users, nor associate any data gathered from Customer's website(s) (or such (or such third parties' website(s)) with any personally identifying information from any source as part of Customer's use (or such third parties' use) of the Tracking Code. Customer shall have and abide by an appropriate privacy policy and comply with all applicable laws relating to the collection of information. Customer shall post a privacy policy and that policy must provide notice of Customer's use of a cookie that collects anonymous traffic data.

11. **Ownership**.

1. **General**. Customer acknowledges and agrees that this is not an agreement for custom development or "work for hire", and as such, Customer will not acquire any ownership rights in any of the MadCap Properties.
2. **MadCap Properties; Feedback**. As between MadCap Software and Customer, all right, title, and interest in and to the MadCap Properties, and all suggestions, ideas, and feedback proposed by Customer regarding any of the MadCap Properties (collectively, "*Feedback*"), including all Intellectual Property Rights in all of the foregoing, belong to and are retained exclusively by MadCap Software or its suppliers, as applicable. Customer hereby assigns to MadCap Software all Feedback and all Intellectual Property Rights therein. Certain Products may be protected by patents, including without limitation, the following U.S. patents: U.S. Patent No. 7,934,153; U.S. Patent No. 9,058,312; and U.S. Patent No. 11,126,787.
3. **Customer Data**. As between MadCap Software and Customer, all right, title and interest in and to the Customer Data and all Intellectual Property Rights therein, belong to and are retained solely by Customer. Customer hereby grants to MadCap Software a limited, non-exclusive, royalty-free, worldwide license to (i) use and reproduce the Customer Data as may be necessary for MadCap Software to provide any MadCap Offerings to Customer and (ii) retain and use the Tracking Code Data in accordance with MadCap Software's Privacy Policy.
4. **Use of Aggregate or Anonymized Data**. Notwithstanding anything else in this Agreement or otherwise, MadCap Software may, in accordance with applicable Privacy Laws, monitor use of the SaaS Service by its customers and use the data generated by such use in the aggregate (the "**Aggregate Data**") in the pursuit of its legitimate commercial interests, including for analysis, benchmarking, analytics, and marketing. Customer agrees that MadCap Software may collect, use, and disclose such information that does not incorporate Customer Data or Personal Information, or otherwise identify Customer or its Authorized Users.

12. **Warranties**.
1. **Mutual Warranty**. Each party represents, warrants and covenants that: (i) it has the full power and authority to enter into this Agreement and to perform its obligations hereunder, without the need for any consents, approvals or immunities not yet obtained; and (ii) its acceptance of and performance under this Agreement will not breach any oral or written agreement with any third party or any obligation owed by it to any third party.
2. **Limited Warranties and Remedies**. The following limited warranties apply only to the extent that Customer has purchased the applicable MadCap Software Offering:
    1. **Products**. MadCap Software warrants that the Products will operate substantially in compliance with the applicable Documentation for the first thirty (30) days of the Initial On-Premise Term and the Initial SaaS Term (each as defined below), as applicable, provided that the Products have been properly used as described in the applicable Documentation, and have not been modified or added to other than by MadCap Software. If the Product does not perform as warranted during the warranty period, MadCap Software will undertake, at its sole option and as Customer's exclusive remedy for breach of this warranty, to correct or replace the non-conformity. If MadCap

Software determines that it is not commercially reasonable or possible to correct a substantial non-conformity within a commercially reasonable time from receipt of written notice from Customer detailing the warranty claim, the Order Form for the affected Product will be cancelled and MadCap Software will refund any unused prepaid fees for the affected Product.

2. **Professional Services**. MadCap Software will use commercially reasonable efforts to perform the Professional Services and deliver the Deliverables according to the specifications, if any, set forth in the relevant Order Form and Statement of Work, as applicable. If MadCap Software fails to do so and Customer notifies MadCap Software within thirty (30) days of the date the Professional Services were performed, MadCap Software will, as Customer's exclusive remedy for breach of this warranty, re-perform the non-conforming Professional Services. If MadCap Software determines that re-performance is not commercially reasonable, Customer may cancel the applicable Order Form and/or Statement of Work as to the affected Professional Services and MadCap Software will refund to Customer any fees paid for the affected Professional Services.

3. **SaaS Service**. Customer acknowledges that factors such as changes by Customer to its IT environment, and corrupted, incomplete and/or interrupted data received by MadCap Software from Customer, may have a material impact on the accuracy, reliability and/or timeliness of results, and MadCap Software shall not be responsible for any such factors. Customer shall be responsible for the legality, accuracy, and completeness of all Customer Data and for complying with reasonable instructions and/or specifications provided to Customer by MadCap Software with respect to the SaaS Service.

4. **Exclusions**. The warranties set forth in this Section 12 shall not apply to any Sample Application Code (as defined in Exhibit A), MadCap Software Inc. Redistributables (as defined in Exhibit A), MS Redistributables (as defined in Exhibit A), Trial Version and/or NFR Version of the Products.

3. **WARRANTY DISCLAIMER**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT FOR THE EXPRESS WARRANTIES SPECIFIED ABOVE IN *SECTION 12.1 (MUTUAL WARRANTY)* AND *12.2 (LIMITED WARRANTIES AND REMEDIES)*, MADCAP SOFTWARE DISCLAIMS ALL OTHER WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. MADCAP SOFTWARE DOES NOT WARRANT THAT: (A) THE USE OF ANY PRODUCT OR DELIVERABLE WILL OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM, OR DATA UNLESS EXPRESSLY IDENTIFIED IN THE DOCUMENTATION; (B) THE PRODUCTS OR DELIVERABLES OR ANY INFORMATION OBTAINED THROUGH THE PRODUCTS OR DELIVERABLES WILL MEET CLIENT'S REQUIREMENTS OR EXPECTATIONS; OR (C) THE PRODUCTS OR DELIVERABLES WILL BE UNINTERRUPTED OR ERROR-FREE. MADCAP OFFERINGS MAY

BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. MADCAP SOFTWARE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGES RESULTING FROM SUCH LIMITATIONS, DELAYS, OR PROBLEMS. ANY SAMPLE APPLICATION CODE, TRIAL VERSION AND THE NOT FOR RESALE VERSION OF THE SOFTWARE ARE PROVIDED "AS IS."

4. **ADDITIONAL CONTENT AND ON-PREMISE SOFTWARE DISCLAIMER**. FOR THE AVOIDANCE OF DOUBT, MADCAP SOFTWARE IS NOT RESPONSIBLE FOR ANY CONTENT CREATED USING THE PRODUCTS. FURTHERMORE, THE ON-PREMISE SOFTWARE MAY ENABLE THIRD PARTIES TO ADD COMMENTS, ATTACHMENTS OR OTHER CONTENT ("***THIRD PARTY CONTENT***") TO AN INSTANCE OF THE ON-PREMISE SOFTWARE OPERATED BY CUSTOMER, CUSTOMER WILL BE RESPONSIBLE FOR MODERATING AND CONTROLLING SUCH CONTENT AND CUSTOMER, NOT MADCAP SOFTWARE, ASSUMES THE RISK OF ALL SUCH THIRD PARTY CONTENT. MADCAP SOFTWARE SHALL HAVE NO RESPONSIBILITY OR LIABILITY WITH RESPECT TO ANY SUCH THIRD PARTY CONTENT OR ITS EFFECTS. THE ON-PREMISE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. MADCAP SOFTWARE SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

13. **MADCAP SOFTWARE INDEMNITY**.

1. **Indemnity**. MadCap Software, at its expense, will defend Customer and its Affiliates and their respective officers, directors and employees (the "***Customer Indemnified Parties***") from and against all actions, proceedings, claims, and demands brought by a third party (a "***Third Party Claim***") alleging that the Products received by Customer under the applicable Order Form, as of the delivery date, infringe or misappropriate any Intellectual Property Rights of such third party, and will pay all damages, costs, and expenses, including reasonable attorneys' fees, incurred by the Customer Indemnified Parties from any such Third Party Claim. Notwithstanding anything to the contrary in this Agreement, the foregoing obligations will not apply with respect to a claim of infringement or misappropriation to the extent that claim arises out of or relates to (i) the Customer Data or specifications or requirements provided by or on behalf of Customer; (ii) use of the Products in combination with any software, hardware, network, technology, or system not supplied by MadCap Software; (iii) any modification of the Products other than by MadCap Software; or (iv) use of the Products other than as authorized under this Agreement.

2. **Mitigation**. If any Third Party Claim which MadCap Software is obligated to defend has occurred, or in MadCap Software' determination, is likely to occur, MadCap Software may, at its option (i) obtain for Customer the right to

continue using the Products; (ii) replace or modify the Products so that they avoid such claim; or if such remedies are not reasonably available, (iii) terminate the applicable Order Form and provide Customer with a refund of any unused fees Customer prepaid to MadCap Software for the infringing Products.

3. **Procedures**. MadCap Software' obligations under this *Section 13 (MadCap Software Indemnity)* are conditioned upon (i) being promptly notified in writing of any Third Party Claim under this Section, (ii) having the sole and exclusive right to control the defense and settlement of the Third Party Claim, and (iii) the Customer Indemnified Parties providing all reasonable assistance (at MadCap Software' expense and reasonable request) in the defense of such Third Party Claim. In no event will a Customer Indemnified Party settle any claim without MadCap Software' prior written approval. The Customer Indemnified Party may, at its own expense, engage separate counsel to advise it regarding a Third Party Claim and participate in the defense of the Third Party Claim, subject to MadCap Software' right to control the defense and settlement.

4. **Sole Remedy**. THE TERMS OF THIS *SECTION 13 (MADCAP SOFTWARE INDEMNITY)* STATE MADCAP SOFTWARE'S ENTIRE LIABILITY, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY WITH RESPECT TO THE INFRINGEMENT OF ANY INTELLECTUAL PROPERTY OR PROPRIETARY RIGHTS BY THE PRODUCTS.

14. **CUSTOMER Indemnity**.

1. **Indemnity**. Customer will, at its expense, defend MadCap and its Affiliates and their respective officers, directors, and employees (the "***MadCap Software Indemnified Parties***") from and against any and all Third Party Claims (i) alleging that the Customer Data infringes, misappropriates, or violates any third party's privacy or Intellectual Property Rights; (ii) arising out of or relating to (x) any representations or warranties made by Customer to any third party or (y) any claims made by or on behalf of any third party pertaining to Customer's use of the Tracking Code or Customer Data; or (iii) alleging violation of Customer's obligations of privacy to any third party, and will pay all damages, costs, and expenses, including reasonable attorneys' fees, incurred by the MadCap Software Indemnified Parties from any such Third Party Claim.

2. **Procedures**. Customer's obligations under this *Section 14 (Customer Indemnity)* are conditioned upon (i) being promptly notified in writing of any Third Party Claim under this Section, (ii) having the sole and exclusive right to control the defense and settlement of the Third Party Claim, and (iii) the MadCap Software Indemnified Parties providing all reasonable assistance (at Customer's expense and reasonable request) in the defense of such Third Party Claim. In no event will a MadCap Software Indemnified Party settle any claim without Customer's prior written approval. The MadCap Software Indemnified Party may, at its own expense, engage separate counsel to advise it regarding a Third Party Claim and to participate in the defense of the Third Party Claim, subject to the Customer's right to control the defense and settlement.

15. **Confidentiality**.

1. **Definition of Confidential Information**. "***Confidential Information***" means any and all non-public information disclosed by one party or its Affiliates (the

"*Disclosing Party*") to the other party or its Affiliates (the "*Receiving Party*") in any form or medium, whether oral, written, graphical, or electronic, pursuant to this Agreement, that is designated confidential or proprietary, or that a reasonable person should understand is confidential or proprietary. Confidential Information includes, but is not limited to: the terms of this Agreement, information related to either party's technology, products, know-how, trade secrets, specifications, customers, business plans, pricing information, promotional and marketing activities, finances, and other business affairs, and with respect to MadCap Software, the MadCap Properties.

2. **Nondisclosure Obligations**. The Receiving Party will not use the Confidential Information of the Disclosing Party for any purpose other than as necessary to fulfill its obligations or to exercise its rights under this Agreement, and by MadCap Software to improve the MadCap Offerings (the "*Purpose*"). The Receiving Party will not disclose Confidential Information of the Disclosing Party to any third party; provided that the Receiving Party may disclose Confidential Information to its employees, contractors, advisors, or representatives who need access to such Confidential Information for the Purpose and who are subject to written confidentiality obligations at least as stringent as the obligations set forth in this *Section 15 (Confidentiality)*. Each party accepts responsibility for the actions of any individual or entity to whom it provides the other party's Confidential Information, and will protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but with no less than reasonable care. The Receiving Party will promptly notify the Disclosing Party upon becoming aware of a breach or threatened breach hereunder, and will cooperate with any reasonable request of the Disclosing Party in enforcing its rights.

3. **Exceptions to Confidential Information**. Confidential Information does not include information which: (i) is known by the Receiving Party prior to receipt from the Disclosing Party, free of any obligation of confidentiality; (ii) becomes known to the Receiving Party from a third party free of any obligation of confidentiality; (iii) lawfully becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the Receiving Party without use of or access to the Disclosing Party's Confidential Information. The Receiving Party may disclose Confidential Information pursuant to the requirements of applicable law, legal process, or government regulation, but only after it notifies the Disclosing party (if legally permissible) to enable the Disclosing party to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.

4. **Injunctive Relief**. The Parties agree that any unauthorized disclosure of Confidential Information would cause immediate and irreparable injury to the Disclosing Party and that, in the event of such breach, the Receiving Party will be entitled, in addition to any other available remedies, to seek immediate injunctive and other equitable relief, without bond and without the necessity of showing actual monetary damages.

16. **Limitation of Liability**.

1. **LIABILITY CAP**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL THE COLLECTIVE AGGREGATE LIABILITY OF MADCAP AND ITS AFFILIATES AND

SUPPLIERS ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY, OR ANY OTHER LEGAL OR EQUITABLE THEORY, EXCEED THE FEES PAID BY CUSTOMER IN THE TWELVE (12) MONTHS PRECEDING THE INITIAL INCIDENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MULTIPLE CLAIMS UNDER THIS AGREEMENT WILL NOT ENLARGE SUCH LIMIT.

2. **EXCLUSION OF CERTAIN DAMAGES**. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL MADCAP SOFTWARE BE LIABLE FOR INCIDENTAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY, OR CONSEQUENTIAL DAMAGES, OR ANY DAMAGES FOR BUSINESS INTERRUPTION, LOST PROFITS, LOST REVENUE, OR LOST BUSINESS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF MADCAP SOFTWARE KNEW OR SHOULD HAVE KNOWN OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL MADCAP SOFTWARE BE LIABLE FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES. THE FOREGOING LIMITATIONS APPLY EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

3. **EXCEPTIONS**. THE FOREGOING LIMITATIONS ON LIABILITY AND DISCLAIMERS OF DAMAGES SHALL NOT APPLY TO LIABILITY OF MADCAP SOFTWARE FOR INTENTIONAL MISCONDUCT OR GROSS NEGLIGENCE.

17. **Term and Termination**.

1. **Term**. Each Order Form and Statement of Work begins on its effective date and, unless earlier terminated in accordance with the terms of this Agreement, continues in effect through the term set forth therein. Unless earlier terminated in accordance with the terms of this Agreement, this Agreement will become effective on the Effective Date and continue in effect until all Order Forms have expired or been terminated (the "***Term***").

   1. **SaaS Service Term**. Unless otherwise agreed in writing, the term for SaaS Services will commence on the effective date of the applicable Order Form and continues in effect until the expiration of the subscription term indicated in the applicable Order Form (the "***Initial SaaS Term***"), after which the term shall automatically renew for additional successive terms of length equal to the Initial SaaS Term (each a "***SaaS Renewal Term***," and together with the Initial SaaS Term, the "***SaaS Term***") at MadCap Software's then-current renewal pricing, unless a party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current SaaS Term. Customer agrees to be invoiced or charged for the applicable renewal fees in accordance with the same payment schedule and for the same level of SaaS Services as Customer's then-current SaaS Services subscription.

   2. **On-Premise Software Term**. Notwithstanding anything to the contrary, the term for On-Premise Software shall commence on the date of license key generation and unless earlier terminated in accordance with the terms of this Agreement, shall remain in effect for an initial subscription period as indicated on the Order Form (the "***Initial On-Premise Term***"). In the event the Initial On-Premise Term

is for a finite length of time, unless otherwise agreed on the Order Form, the term shall automatically renew for additional successive terms of length equal to the Initial On-Premise Term (each an "***On-Premise Renewal Term***," and together with the Initial On-Premise Term, the "***On-Premise Term***") at the then-current renewal pricing, unless earlier terminated in accordance with the terms of this Agreement or a party gives the other party written notice of non-renewal at least sixty (60) days prior to the expiration of the then-current On-Premise Term. Customer agrees to be invoiced or charged for the applicable renewal fees in accordance with the same payment schedule and for the same level of On-Premise Software license as the Initial On-Premise Term.

3. **On-Premise Software Return Policy**. You may return your purchase of the On-Premise Software by delivering written notice to MadCap Software (the "***Cancellation Notice***") as set forth in this section 17.1.3. If the Cancellation Notice is delivered to MadCap Software within fourteen (14) days of the applicable Order Form's effective date, your access to the On-Premise Software shall terminate immediately, MadCap Software shall issue you a full refund of amounts paid to MadCap Software under the applicable Order Form for the canceled On-Premise Software, and you shall not owe any further fees for the canceled On-Premise Software. If the Cancellation Notice is delivered to MadCap Software more than fourteen (14) days after the applicable Order Form's effective date, your access to the On-Premise Software shall continue until the end of the then-current monthly billing period. And (i) if you pre-paid fees to MadCap Software for the entirety of the On-Premise Term of the canceled On-Premise Software (the "***Pre-Paid Fees***"), MadCap Software shall refund to you the Pre-Paid Fees on a pro rata basis for the number of months remaining in the On-Premise Term after the effective termination date less a nine percent (9%) penalty or (ii) if you did not pre-pay for the On-Premise Term, you shall pay to MadCap Software within thirty (30) days of giving the Cancellation Notice an amount equal to nine percent (9%) of MadCap Software's then-current monthly subscription price for the On-Premise Software multiplied by the number of remaining months for which you contracted use of the On-Premise product plus any outstanding amounts owing for the use of the On-Premise product. For the avoidance of doubt, this Section 17.1.3 applies only to stand-alone purchases of the On-Premise Software and does not apply to any bundled or combination purchase of other MadCap Offerings.

2. **Termination for Cause**. Either party may terminate this Agreement or any Order Form or Statement of Work (i) on at least thirty (30) days' written notice to the other party of a material breach of this Agreement by such other party if such breach remains uncured at the expiration of such period (or immediately if the material breach is not capable of being remedied); or (ii) immediately upon written notice if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation, or an assignment for the benefit of creditors.

3. **Effect of Termination or Expiration**.

1. **Termination of Rights to Use**. On termination or expiration of any Order Form, Customer's license or subscription to the Products under the applicable Order Form will terminate and Customer and all Authorized Users will immediately cease use of such Products and either uninstall or destroy the On-Premise Software and Auxiliary Programs. Upon request by MadCap Software, Customer will certify in writing to MadCap Software that all copies of such On-Premise Software and Auxiliary Programs have been uninstalled or destroyed, and are no longer in use. On termination or expiration of this Agreement, each Receiving Party will return or destroy all Confidential Information of the Disclosing Party in the Receiving Party's possession or control. Notwithstanding the foregoing, MadCap Software will retain and make any Customer Data stored in the SaaS Service available on request by Customer in the format in which it is stored in the SaaS Service for a period of thirty (30) days following the effective date of termination. After such thirty (30)-day period, MadCap Software will have no obligation to maintain or provide any Customer Data and may thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control. For the avoidance of doubt, termination of one Order Form will not terminate any other Order Form.
2. **Payment upon Termination**. Subject to Section 17.1.3, on expiration or termination of any Order Form, Customer will pay MadCap Software any unpaid fees and expenses covering the remainder of the term of such Order Form.
3. **Survival**. The following provisions will survive expiration or termination of this Agreement: (i) any payment obligations of Customer hereunder; and (ii) *8 (Pricing, Invoicing, and Payments)*, *9 (Taxes)*, *10 (Restrictions)*, *11 (Ownership)*, *13 (MadCap Software Indemnity)*, *14 (Customer Indemnity)*, *15 (Confidentiality)*, *16 (Limitation of Liability)*, *17 (Term and Termination)*, *23 (Data Protection and Security)*, *24 (Notices)*, and *26 (Governing Law)*. The expiration or termination of this Agreement does not affect any rights which accrued before the date of expiration or termination.

18. **Audit**. Customer grants MadCap Software, or its designated agent, the right to audit Customer's use of the Products, on reasonable notice and during normal business hours, once in any twelve (12)-month period. Customer will reasonably cooperate with the audit and provide access to all records reasonably requested to verify Customer's use of the Products as permitted by this Agreement. Customer will, without prejudice to other rights of MadCap Software, promptly address any non-compliance identified by the audit.
19. **Independent Contractors**. The parties are independent contractors and will so represent themselves in all regards.
20. **Force Majeure**. Except for Customer's payment obligations hereunder, neither party will be responsible for any failure to perform due to causes beyond its reasonable control, including acts of God, war, acts of terrorism (whether actual or threatened), riot or civil unrest, failure of electrical, Internet, co-location or telecommunications service, non-MadCap Software applications, denial of service or similar attacks, acts of civil or military authorities, fire, floods, earthquakes, accidents, strikes, epidemics, quarantines, or energy crises.

21. **Assignment**. Neither party may transfer or assign this Agreement, in whole or in part, without the other's prior written consent. Notwithstanding the foregoing, MadCap Software, Inc. may, without Customer's consent, assign this Agreement in its entirety to an entity who acquires all or substantially all of its business or assets, or in connection with a change in control (through merger, consolidation, reorganization, operation of law or otherwise). Any assignment in violation of this Section will be void and of no effect. Subject to the foregoing, this Agreement is binding upon and inures to the benefit of the parties and their respective successors and permitted assigns.

22. **Compliance with Laws**.
    1. **By MadCap Software**. MadCap Software will comply with all laws and regulations that apply to its provision of the MadCap Offerings, including applicable Privacy Laws. However, MadCap Software is not responsible for compliance with any laws or regulations that apply to Customer or Customer's industry that are not generally applicable to information technology service providers. MadCap Software does not determine whether Customer Data includes information subject to any specific law or regulation.
    2. **By Customer**. Customer will comply with all laws and regulations that apply to its use of the MadCap Offerings, including applicable Privacy Laws. Customer is responsible for implementing and maintaining privacy protections and security measures for components that Customer provides or controls, and for determining whether the SaaS Service is appropriate for storage and processing of information subject to any specific law or regulation. Customer acknowledges and agrees that the On-Premise Software may communicate automatically with cloud-based technology to function and to make any On-Premise Software or other services offered by MadCap Software more effective. Customer further acknowledges and agrees that Customer may withdraw consent to such communication only by uninstalling and/or deactivating the On-Premise Software.

23. **Data Protection and Security**.
    1. As between MadCap Software and Customer, Customer is the data controller of the Personal Information and MadCap Software shall process Personal Information only as a data processor acting on behalf of Customer in order to perform its obligations under this Agreement.
    2. MadCap Software will process Personal Information in accordance with the terms of this Agreement and its Privacy Policy. The parties agree that the Customer's complete and final instructions are set out in this Agreement. Processing outside the scope of these instructions (if any) will require prior written agreement between Customer and MadCap Software with additional instructions for processing. In the event of a conflict between the terms of this Agreement and the Privacy Policy, the terms of this Agreement will control with respect to the MadCap Software Offering being purchased under this Agreement.
    3. MadCap Software has implemented and will maintain and follow commercially reasonable technical and organizational measures intended to protect Personal Information against accidental, unauthorized, or unlawful access or disclosure. Notwithstanding the above, Customer is responsible for its secure use of the Products, including securing its account authentication credentials, protecting the security of Personal Information when in transit to

and from the SaaS Service, and taking any appropriate steps to securely encrypt or backup any Personal Information uploaded to the SaaS Service.

4. If MadCap Software becomes aware of any loss, disclosure, or unauthorized use of Personal Information under the custody or control of MadCap Software (a "***Security Incident***"), MadCap Software will (i) promptly notify Customer of the Security Incident (provided that such notification may be delayed as required by a law enforcement agency); (ii) take reasonable steps to address any Security Incident and prevent any further Security Incident; and (iii) at Customer's request, take commercially reasonable steps to assist Customer in complying with its obligations under applicable Privacy Laws pertaining to responding to a Security Incident.

5. Notification(s) of Security Incidents will be delivered to one or more of Customer's administrators by any means MadCap Software selects including via email. It is Customer's sole responsibility to ensure Customer's administrators maintain accurate contact information with MadCap Software. MadCap Software' obligation to report or respond to a Security Incident under this Section is not an acknowledgement by MadCap Software of any fault or liability with respect to the Security Incident. Customer must notify MadCap Software promptly about any possible misuse of its accounts or authentication credentials or any security incident related to the SaaS Service.

6. MadCap Software may transfer Personal Information to its Affiliates as necessary for MadCap Software to perform its obligations under this Agreement. Customer expressly acknowledges that Personal Information may be transferred to the United States, and Customer authorizes MadCap Software (where applicable) to transfer Personal Information to and process it in the United States, which may not have the same level of data protection as the country from which the Personal Information originated.

7. Customer represents and warrants that it has the authority to provide the Customer Data, including Personal Information therein, to MadCap Software for processing as contemplated by this Agreement. If any applicable law requires a data subject to receive notice of or to provide consent to the processing and/or transfer of his/her Personal Information, Customer will provide such notice and obtain such consent from the applicable data subjects.

8. MadCap Software will abide by applicable Privacy Laws pertaining to any relevant individual's exercise of his or her rights to access, correct, or object to the processing of Personal Information. Notwithstanding the foregoing, unless otherwise required by applicable Privacy Laws, MadCap Software will promptly notify Customer if MadCap Software receives a request from a data subject to have access to Personal Information or any other complaint or request relating to Customer's obligations under applicable Privacy Laws. MadCap Software will provide reasonable assistance to Customer to facilitate Customer's ability to respond to such request or complaint (including, without limitation, by allowing data subjects to have access to their Personal Information if such access is required by the applicable data protection laws, and where the Personal Information is not already available to the Customer).

9. Customer consents to MadCap Software' engaging third party sub-processors to process the Personal Information for the permitted purpose provided that: (i) MadCap Software maintains an up-to-date list of its sub-processors, which such list is available from MadCap Software at Customer's request; (ii) MadCap Software imposes data protection terms on any sub-processor it

appoints that require it to protect the Personal Information to the standard required by applicable Privacy Laws; and (iii) MadCap Software remains liable for any breach of this Section that is caused by an act, error, or omission of its sub-processor.

10. Customer will provide MadCap Software with only the Personal Information necessary for MadCap Software to perform its obligations under this Agreement. The Customer acknowledges that the MadCap Offerings do not require the need to process Restricted Information; therefore, under no circumstances will Customer upload or otherwise transmit o the SaaS Service any Restricted Information. In the event that Customer provides MadCap Software with any Restricted Information inadvertently, MadCap Software will treat it in the same way in which it treats Personal Information under this Agreement.

11. Following termination or expiration of the subscription to the SaaS Service, MadCap Software will, where required by applicable Privacy Laws and at the option of the Customer, return to Customer or securely delete all Personal Information processed in connection with the SaaS Service. This requirement shall not apply to the extent that MadCap Software is required by applicable law to retain some or all of the Personal Information, or to Personal Information it has archived on back-up systems, in which event MadCap Software shall securely protect from any further processing except to the extent required by such law.

24. **Notices; Complaints**. Except as otherwise set forth in *Section 23 (Data Protection and Security)* regarding notification of a Security Incident, either party may give notice by written communication, sent by first class postage prepaid mail or nationally recognized overnight delivery service, to Customer at the address as specified in the latest Order Form or to MadCap Software at 9171 Towne Centre Dr #335, San Diego, CA, 92122, Attention: Support. In addition, MadCap Software may provide notices related to the SaaS Service and Maintenance & Support either through the SaaS Service or to the email address on record with MadCap Software. Either party may from time to time change its address for notices under this Section by giving the other party notice of the change in accordance with this Section. In accordance with California Civil Code §1789.3, you may report complaints to the Complaint Assistance Unit of the Division of Consumer Services of the California Department of Consumer Affairs by contacting them in writing at 1625 North Market Blvd., Suite N 112, Sacramento, CA 95834, or by telephone at (800)-952-5210.

25. **Customer Reference**. Customer agrees that MadCap Software may reference Customer as a MadCap Software customer on its website and marketing materials, subject to any Customer trademark and logo usage guidelines provided by Customer.

26. **Governing Law**. This Agreement will be governed by and construed in accordance with the laws of the State of California without regard to its conflicts of law principles. The parties hereby consent to the personal and exclusive jurisdiction of the state courts sitting in San Diego County, California or the federal courts located in the Southern District of California. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

27. **Export Controls**. Customer agrees to comply with applicable export and re-export laws, regulations and requirements. Customer further certifies that it will not export or re-export any software that may be subject to such laws, regulations and requirements, to any location, or to any end-user, or for any end-use, without first obtaining any

export license, permit, or other approval that may be required. Without limiting the foregoing, Customer specifically agrees that it will not export or re-export any software subject to export and re-export laws to (1) any Group E country listed in SUPPLEMENT NO. 1 TO PART 740 – COUNTRY GROUPS and the Crimea Region of Ukraine or (2) any company, entity or person listed as a party of concern found here http://2016.export.gov/ecr/eg_main_023148.asp.

28. **U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND.** The On-Premise Software and Documentation are provided with "RESTRICTED RIGHTS" applicable to private and public licenses alike. The On-Premise Software is a "commercial item," as that term is defined at 48 C.F.R. 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Any technical data provided with such On-Premise Software is commercial technical data as defined in 48 C.F.R. 12.211 (Sep 1995). Consistent with 48 C.F.R. 12.211 through 12.212, 48 C.F.R. 227.7202-1 through 227.7202-4 (Jun 1995), and 48 C.F.R. 252.227-7015 (Nov 1995), all U.S. Government End Users acquire the On-Premise Software with only those rights expressly set forth in this Agreement. Without limiting the foregoing, use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in this Agreement and as provided in DFARS 227.7202-1(a) and 227.7202-3(a) (1995), DFARS 252.227-7013 (c)(1)(ii)(OCT 1988), FAR 12.212(a)(1995), FAR 52.227-19, or FAR 52.227-14, as applicable. For purposes of these regulations the Manufacturer of the On-Premise Software is MadCap Software, Inc., 9171 Towne Centre Dr #335, San Diego, CA, 92122.

29. **Entire Agreement**. This Agreement sets forth the entire agreement and understanding between the parties with respect to the subject matter hereof, and supersedes any other agreements, discussions, proposals, representations or warranties, written or oral, with respect to the subject matter hereof. Each party acknowledges that it has participated in negotiating this Agreement, and agrees that contractual ambiguities are not to be construed in favor of or against any party based on its role in drafting this Agreement. As used herein, the words "include" and "including" shall be deemed to be followed by the words "without limitation." Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party. Failure or delay by either party in exercising any right or remedy will not constitute a waiver. If any provision of this Agreement will be declared invalid, the entire Agreement will not fail on its account, and that provision will be severed, with the balance of this Agreement continuing in full force and effect. This Agreement may only be amended in writing signed by both parties.

EXHIBIT A

SUPPLEMENTAL ON-PREMISE SOFTWARE LICENSE TERMS

Customer's right and license to use the On-Premise Software, including the license granted in Section 4.2, are subject to the terms and conditions set forth:

1. **On-Premise License Type**.
    1. **Subscription License**. If Customer acquired a Subscription License, as identified on the Order Form, Customer is entitled to use the On-Premise

Software within Customer's organization for up to the total number of Authorized Users for the applicable period of the license as set forth in the Order Form. Customer's subscription shall continue so long as Customer remains in full compliance with the terms of this Agreement and has paid all applicable license fees.

2. **Standard Perpetual License**. If Customer acquired a Standard Perpetual License, as identified on the Order Form, the Initial On-Premise Term of your license is perpetual, subject to continued full compliance with the terms of this Agreement and payment of all applicable license fees.

3. **Floating License**. If Customer acquired a Floating License, as identified on the Order Form, Customer i entitled to use the On-Premise Software within Customer's organization without restriction up to the total number of concurrent Authorized Users that are specified in the Order Form, provided that Customer's use is limited to the business entity or division that is specified in such Order Form. The Initial On-Premise Term of Customer's Floating License shall continue so long as Customer remains in full compliance with the terms of this Agreement and has paid all applicable license fees. Customer's Floating License requires activation and continued connectivity to the Internet to remain active.

4. **Enterprise Floating License**. If Customer acquired an Enterprise Floating License, as identified on the Order Form, Customer is entitled to use the On-Premise Software within Customer's organization up to the total number of concurrent Authorized Users that are specified in the Order Form, provided that Customer's use is limited to the business entity or division that is specified in such Order Form. The Initial On-Premise Term of Customer's Enterprise Floating License shall continue so long as Customer remains in full compliance with the terms of this Agreement and has paid all applicable license fees. Customer's Floating License requires activation and continued connectivity to the Internet to remain active. Customer may install Customer's Enterprise Floating License on a central network server in order to be accessed remotely by the specified number of concurrent users as specified in the Order Form.

1. **Additional On-Premise Software Terms.**
    1. **Source Code**. Unless otherwise expressly set forth in the Documentation or in a separate written agreement between you and MadCap Software, you may not modify MadCap Software's source code except for the source code form of those portions of such software programs that are expressly identified by MadCap Software in the accompanying Documentation as sample code, sample application code, or components (each, "*Sample Application Code*"). You are permitted to copy and distribute the Sample Application Code (modified or unmodified) only if all of the following conditions are met: (1) you distribute the compiled object Sample Application Code with your application; (2) you do not include the Sample Application Code in any product or application designed for website development; and (3) you do not use MadCap Software's name, logos or other MadCap Software trademarks to market your application. You agree to indemnify, hold harmless and defend MadCap Software from and against any loss, damage, claims or lawsuits, including attorney's fees, that arise or result from the use or distribution of the

Sample Application Code or your application containing some or all of the Sample Application Code.

2. **MadCap Software, Inc. Redistributables**. Subject to the terms and conditions of this Agreement, MadCap Software, Inc. grants you the non-exclusive, royalty-free right to reproduce and distribute, in executable object code form only, any MadCap Software, Inc. Redistributables identified expressly as such in the REDISTRB.TXT file located 1) on the On-Premise Software CD-ROM, 2) if the On-Premise Software was downloaded, in the unpacked installation folder or 3) in the On-Premise Software folder on the computer hard drive, provided, that you (a) do not distribute the MadCap Software, Inc. Redistributables as a stand-alone product, except however, that you may distribute updates of the MadCap Software, Inc. Redistributables separately for purposes of updating an existing end user of your previously-distributed product that uses the MadCap Software, Inc. Redistributables; (b) include MadCap Software's copyright notice for the MadCap Software, Inc. Redistributables on the title page of any documentation, on the product CD, and/or in the "About" box for any software product that incorporates the MadCap Software, Inc. Redistributables; (c) except as required above, do not use MadCap Software's name, logo, or trademarks in connection with any product that incorporates the MadCap Software, Inc. Redistributables; (d) agree to and shall indemnify, defend and hold MadCap Software harmless from any and all liabilities (including attorney's fees) arising from any claims, lawsuits, or other legal proceedings that arise from or are related to the use or distribution of any software application product that you reproduced and/or distributed that incorporates the MadCap Software, Inc. Redistributables; and (e) do not incorporate the MadCap Software, Inc. Redistributables into any competitive software product to the Product.

3. **MS-Redistributables**. Subject to the terms and conditions of this Agreement, MadCap Software, Inc. grants you the non-exclusive, royalty-free right to reproduce and distribute, in executable object code form only, any MS-Redistributables expressly identified as such in the REDISTRB.TXT located 1) on the On-Premise Software CD-ROM, 2) if the On-Premise Software was downloaded, in the unpacked installation folder or 3) in the On-Premise Software folder on the computer hard drive, provided that you (a) do not distribute the MS-Redistributables as a stand-alone product, provided, however, that you may distribute updates of the MS-Redistributables separately for purposes of updating an existing end user of your previously-distributed product that uses MS-Redistributables; (b) include the following copyright notice for the MS-Redistributables "Portions copyright © Microsoft Corporation. All rights reserved." on the product CD, disk label, the title page of the documentation, and/or the "About" box for any software application product that incorporates the MS-Redistributables; (c) except as required above, do not use Microsoft's or MadCap Software's name, logo, or trademarks to market any Help system that incorporates the MS-Redistributables; (d) agree to and shall indemnify, defend and hold MadCap Software and Microsoft harmless from any and all liabilities (including attorney's fees) arising from any claims, lawsuits, or other legal proceedings that arise from or are related to the use or distribution of any software application product that you reproduced and/or distributed that incorporates the MS-Redistributables; (e) do not incorporate the MS-Redistributables into

any competitive software product to the On-Premise Software, and (f) if Microsoft makes a new release of the MS-Redistributables (other than an update release), use all reasonable efforts to cease distribution of the older version and commence distribution of the new release. You may continue to distribute existing inventory that contains the older release for up to 3 months following such new release.

4. **Education Version**. Education Versions of the On-Premise Software shall be used for educational purposes only and may not be used for, or distributed to any party for, any commercial purpose.

5. **Trial Version**. Unless otherwise expressly provided herein, you shall not (A) in the aggregate, install or use more than one copy of the Trial Version of the On-Premise Software, (B) download the Trial Version of the On-Premise Software under more than one username, (C) alter the contents of a hard drive or computer system to enable the use of the Trial Version of the On-Premise Software for an aggregate period in excess of the trial period for one license to such Trial Version, or (D) use the Trial Version of the On-Premise Software for a purpose other than the sole purpose of determining whether to purchase a license to a commercial or education version of the On-Premise Software; provided, however, notwithstanding the foregoing, you are strictly prohibited from installing or using the Trial Version of the On-Premise Software for any commercial training purpose.