

## END USER LICENSE AGREEMENT

THIS END USER LICENSE AGREEMENT (THE "**AGREEMENT**") IS A LEGAL AGREEMENT BETWEEN YOU, EITHER AS AN INDIVIDUAL, COMPANY OR OTHER LEGAL ENTITY ("**YOU**") AND **MODEL 9 SOFTWARE INC.** AND ITS AFFILIATES (THE "**COMPANY**"). PLEASE READ THIS AGREEMENT CAREFULLY BEFORE INSTALLING AND/OR USING THE COMPANY'S SOFTWARE PROGRAM LISTED IN **EXHIBIT A**. ANY USE OF THE ABOVEMENTIONED SOFTWARE, INCLUDING ANY OF ITS REVISIONS, MODIFICATIONS, ENHANCEMENTS, UPDATES AND/OR UPGRADES (THE "**SOFTWARE**") AND ANY SOFTWARE MAINTENANCE (AS DEFINED BELOW) SUPPLIED BY THE COMPANY ARE AND SHALL BE, SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT. UNLESS YOU AND THE COMPANY HAVE EXECUTED A SEPARATE AGREEMENT IN WRITING WHICH EXPRESSLY SUPERSEDES THIS AGREEMENT, YOUR USE OF THE SOFTWARE IS SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN THIS AGREEMENT.

**BY SUBMITTING AN ORDER FOR THE SOFTWARE, DOWNLOADING, INSTALLING, OPERATING OR OTHERWISE USING THE SOFTWARE, YOU ARE EXPRESSLY AND EXPLICITLY ACCEPTING THIS AGREEMENT AND AGREEING TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO THIS AGREEMENT OR ARE NOT WILLING TO BE BOUND BY IT, DO NOT DOWNLOAD, INSTALL, OPERATE OR OTHERWISE USE THE SOFTWARE AND PROMPTLY UNINSTALL THE SOFTWARE FROM YOUR SYSTEM.**

### 1. **License grant, Subscription and restrictions.**

- 1.1 **The Software.** The Software is proprietary software provided to You in binary executable form for the regular and standard purposes the Software was designed for. For the avoidance of doubt, the term "**Software**" in this Agreement also includes compilation of data, or visual display resulting from the operation of the Software, and any associated materials, equipment, systems, specifications and documentation.
- 1.2 **Software License.** Subject to the terms and conditions of this Agreement and during the applicable Subscription Term indicated in Your Order, the Company hereby grants You, and You accept, a limited, personal, non-exclusive, non-sublicensable, non-transferable and fully revocable license to use the Software solely for Your internal business purposes, pursuant to the functionalities and limitations specified in **Exhibit A** and the applicable Order form. The Software will be installed and used in accordance with (a) the terms contained in this Agreement, (b) the applicable Software's documentation; (c) the applicable Order terms, and for the Subscription Term specified therein, and the payment of the applicable fees (d) the functionalities and limitations specified in **Exhibit A**. Other than the rights expressly set forth in this Section, no other right or interest whatsoever in or relating to the Software is transferred or granted to You.
- 1.3 **Subscription.** Subject to payment of the applicable subscription fees, each subscription You download or purchase from the Company (a "**Subscription**") entitles You to receive during the Subscription Term: (i) revisions, modifications, enhancements, updates, upgrades or new releases to the Software made generally available to the Company's customers from time to time. Once provided with such upgrades, modifications or new releases, You shall take the required measures to ensure that the any part of the Software is up to date. The Company will not be liable for any damages, errors or malfunctions which result from Your failure to install or implement such upgrades, modifications or new releases; and (ii) support and maintenance services in accordance with the Order; (iii) Software Maintenance in accordance with the Subscription Term and the terms specified under the Order. In this Agreement, "**Subscription Term**" means (i) the initial twelve (12) month period following the Effective Date (as define below); (ii) or such shorter or longer period following the Effective Date as may be specified upon purchase of Your Subscription and as approved in the Order. To the extent the relevant Subscription Term expires, You may continue to use the original Software version purchased under the terms and conditions set forth herein, however, You will not be entitled to any Software Maintenance regarding such original Software version purchased.
- 1.4 **Prohibited Uses.** Except as specifically permitted herein, without the prior written consent of the Company You agree not to (nor permit anyone else to), directly or indirectly: (i) modify, convert, alter, change, manipulate, divide, part, revise or incorporate into or with other software, or create a derivative work of any part of the Software; (ii) sell, resell, license (or sub-license), lease, assign, transfer, pledge, or share Your rights under this Agreement with any third party; (iii) copy, distribute, publish or reproduce the Software, including without limitation its documentation and any other materials accompanying the Software; (iv) use or permit the Software to be used to perform services for third parties, whether on a service bureau or time sharing basis or otherwise; (v) disclose, publish or otherwise make publicly available the results of any benchmarking of the Software, or use such results for Your own competing software development activities; (vi) modify, disassemble, decompile, reverse engineer, revise or enhance the Software or attempt to reconstruct or discover any source code or underlying ideas or algorithms of the Software, except to the extent otherwise permitted under applicable law in the jurisdiction of use; (vii) remove or otherwise alter any of the Company's trademarks, logos, copyrights or other proprietary notices or indicia, if any, fixed or attached to the Software; (viii) ship, transfer or export the Software into any country, or use the Software in any manner which is in violation of applicable export control laws, restrictions or regulations and/or (ix) disclose, provide or otherwise make available trade secrets contained within the Software, in any manner.
- 1.5 **Lawful Use:** You hereby declare and agree that You shall only use the Software in a manner that complies with all applicable laws in the jurisdiction in which You use the Software, including, but not limited to, applicable restrictions concerning the protection of privacy and intellectual property.
- 1.6 **Affiliates.** If You purchase the right to use the Software by Your Affiliate (as defined below), You shall: (i) provide each such Affiliate with a copy of this Agreement; (ii) ensure that each such Affiliate complies with the terms and conditions herein; and (iii) be responsible for any breach of these terms and conditions by any such Affiliate. For purposes of this Agreement, "**Affiliate**" means any entity that Controls, is Controlled by, or is under common Control with You, where "**Control**" means ownership, directly or

indirectly, of 50% or more of the voting interest of Your company.

2. **Consideration.** The consideration for the Software License and Software Maintenance granted hereunder, will be in accordance with the payment model specified in the applicable order document (the "**Order**"). Unless otherwise specified in the applicable Order (i) You will pay all amounts due under this Agreement in U.S. Dollars, and (ii) all amounts invoiced hereunder are due and payable within thirty (30) days of the date of the invoice. Any amount not paid when required to be paid hereunder shall accrue interest on a daily basis until paid in full at the lesser of: (i) the rate of one and a half percent (1.5%) per month; or (ii) the highest amount permitted by applicable law. All amounts payable under this Agreement are exclusive of sales, use, value-added, withholding, and other taxes and duties. You shall pay all taxes and duties assessed in connection with this Agreement by any authority, except for taxes payable on Company's net income. If any such tax or duty has to be withheld or deducted from any payment under this Agreement, You shall gross-up the payment under this Agreement by such amount to ensure that after such withholding or deduction the Company shall receive an amount equal to the payment otherwise required.
3. **Title & Ownership.** The Software is licensed and not sold. The Company and its licensors are and shall retain all right, interest and ownership in and to the Software, including without limitation in and to any and all Intellectual Property Rights.) evidenced by or embodied in and/or attached/connected/related to the Software. For the purpose of this Agreement, "**Intellectual Property Rights**" shall mean any and all rights existing from time to time under patent law, copyright law (including moral rights), trade secret law, trademark law, unfair competition law, publicity rights law, privacy rights law, and any and all other proprietary rights, and any and all applications, modifications or corrections thereto, including all derivative works thereof, renewals, extensions and restorations thereof, now or hereafter in force and effect worldwide. Nothing in this Agreement constitutes a waiver of the Company's intellectual property rights under any law. If You contact the Company with feedback (e.g., questions, comments, suggestions or the like) regarding the Software (collectively, "**Feedback**"), such Feedback shall be deemed non-confidential, and the Company shall have a non-exclusive, worldwide royalty-free and perpetual license to use or incorporate such Feedback into the Software and/or other current or future products or services of the Company (without Your approval and without compensation to You).
4. **Limited Warranty, Exclusions and Disclaimers.**
  - 4.1 **Limited Warranty.** Subject to the limitations and conditions set forth in the Agreement, the Company represents and warrants that commencing from the date the Software is delivered to You and for ninety (90) days thereafter, under normal authorized use, the Software shall perform in substantial conformance with its documentation. As Your sole and exclusive remedy and the Company's sole liability for breach of this warranty, the Company shall make commercially reasonable efforts to repair the Software during such term.
  - 4.2 **Exclusions.** The warranty set forth above shall not apply if the failure of the Software results from or is otherwise attributable to: (i) repair, maintenance or modification of the Software by persons other than the Company's authorized third parties; (ii) accident, negligence, abnormal physical or electrical stress, abnormal environmental conditions, abuse or misuse of the Software by You; (iii) installation and/or use of the Software (including its use on operating environments) other than in accordance with the Software's manuals, specifications or documentation; (iv) the combination of the Software with equipment or software not authorized or provided by the Company or otherwise approved by the Company in the Software's manuals, specifications or documentation; or (v) the Software being licensed for evaluation, testing or demonstration purposes.
  - 4.3 **Disclaimers.** ANY USE BY YOU OF THE SOFTWARE IS AT YOUR OWN RISK. THE SOFTWARE IS PROVIDED ON AN "AS IS" BASIS. THE COMPANY DOES NOT WARRANT THAT THE SOFTWARE WILL MEET YOUR REQUIREMENTS OR THAT ITS OPERATION WILL BE SECURE, UNINTERRUPTED, ERROR-FREE, WITHOUT DELAY, FREE OF VIRUSES, BUGS, WORMS, OTHER HARMFUL COMPONENTS OR OTHER PROGRAM LIMITATIONS. THE COMPANY IS NOT OBLIGATED TO PROVIDE ANY UPDATES TO THE SERVICE. TO THE EXTENT ALLOWED BY LAW, THE COMPANY EXPRESSLY DISCLAIMS ALL EXPRESS WARRANTIES AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, MERCHANTABILITY, NON-INTERFERENCE, NON-INFRINGEMENT, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY AND ANY WARRANTIES ARISING OUT OF COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, DUE TO THE CONTINUAL DEVELOPMENT OF NEW TECHNIQUES FOR INTRUDING UPON AND ATTACKING NETWORKS AND COMPUTER PROGRAMS, COMPANY DOES NOT WARRANT THAT THE SOFTWARE WILL BE FREE OF VULNERABILITY TO INTRUSIONS OR ATTACKS. TO THE EXTENT THAT ANY OF THE SAME CANNOT BE EXCLUDED, SUCH IMPLIED CONDITION, REPRESENTATION AND/OR WARRANTY IS LIMITED IN DURATION TO THE WARRANTY PERIOD AND REMEDIES REFERRED TO IN SUBSECTION 4.1 ABOVE. NO COMPANY DEALER, DISTRIBUTOR, RESELLER, AGENT OR EMPLOYEE IS AUTHORIZED TO MAKE ANY MODIFICATIONS, EXTENSIONS, OR ADDITIONS TO THIS WARRANTY.
5. **Limitation of Liability.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW (A) THE COMPANY OR ITS SUPPLIERS AND/OR LICENSED DISTRIBUTORS AND/OR LICENSORS SHALL NOT BE LIABLE WHETHER UNDER CONTRACT, TORT OR ANY LIABILITY THEORY, TO YOU OR ANY THIRD PARTY FOR ANY LOSS OR DAMAGE, INCLUDING, WITHOUT LIMITATION, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING BUT NOT LIMITED TO, ANY LOSS OR DAMAGE TO BUSINESS EARNINGS, LOST PROFITS OR GOODWILL AND LOST OR DAMAGED DATA OR DOCUMENTATION), SUFFERED BY ANY PERSON, ARISING FROM AND/OR RELATED TO THE SOFTWARE, EVEN IF THE COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; AND (B) IN NO EVENT SHALL THE COMPANY'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, FROM ALL CLAIMS OR CAUSES OF ACTION AND UNDER ALL THEORIES OF LIABILITY, EXCEED THE TOTAL AMOUNTS ACTUALLY RECEIVED BY THE COMPANY FOR THE SOFTWARE, IF ANY, DURING THE TWELVE

(12) MONTH PERIOD PRIOR TO ANY SUCH CLAIM OR CAUSE OF ACTION AROSE. THIS LIMITATION OF LIABILITY IS CUMULATIVE AND NOT PER INCIDENT.

6. **Third Party Software.** The Software is based on software which is developed and owned by the Company and/or its licensors. The Software may use or include third party software, files and components that are subject to open source and third party license terms ("**Third Party Components**"). Your right to use such Third Party Components is subject to any applicable acknowledgements and license terms accompanying such Third Party Components. If there is a conflict between the licensing terms of such Third Party Components and this Agreement, the licensing terms of the Third Party Components shall prevail in connection with the related Third Party Components. You hereby acknowledge that such Third Party Components are provided on an "AS IS" basis without any warranty of any kind and shall be subject to any and all limitations and conditions required by their third party licensors. For the avoidance of doubt, the Software (except for the Third Party Components contained therein) is not deemed as "open source" or "publicly available" software. A list of Third Party Components is available in the Software or in its documentation, as may be applicable, and will be updated from time to time. With respect to licenses of Third Party Components that require the provision of the open source code of such Components, the Company will provide You and any third party, during a period set forth by each such license, for a charge of no more than Company's cost of physically performing source distribution, a complete machine-readable copy of the corresponding source code, on a medium customarily used for software interchange. For that purpose, You should contact the Company at: support@model9.io.

## **7. Indemnification.**

**7.1** Company acknowledges and agrees to defend, at its expense, any third party action or suit brought against You alleging that the Software licensed to You hereunder infringes intellectual property rights held by any third party ("**IP Infringement Claim**"), and the Company will pay any damages awarded in final judgment of a competent court against You that are attributable to any such claim; *provided* that (i) You notify the Company promptly in writing of such IP Infringement Claim; and (ii) You grant the Company sole authority to handle the defense or settlement of any such IP Infringement Claim, suit or proceeding and will provide the Company with all reasonable information and assistance, at Company's expense. The Company will not be bound by any settlement that You enter into without the Company's prior written consent. If the Software becomes, or in the Company's opinion is likely to become, the subject of an IP Infringement Claim, then the Company may, at its sole option and expense (a) procure for You the right to continue using the Software; (b) replace or modify the Software to avoid the **IP Infringement Claim**; or (c) if options (a) and (b) cannot be accomplished despite the Company's reasonable efforts, the Company may accept return of the affected Software and refund prorated payments for such returned Software. Notwithstanding the foregoing, the Company shall have no responsibility for any IP Infringement Claim resulting from or based on: (i) modifications to the Software made by a party other than the Company or its designee; (ii) Your failure to use updated or modified Software provided by the Company specifically to avoid infringement; or (iii) combination or use of the Software with equipment, devices or software not supplied or authorized by the Company or not in accordance with the Company's instructions. THE FOREGOING TERMS STATE THE COMPANY'S SOLE AND EXCLUSIVE LIABILITY AND YOUR SOLE AND EXCLUSIVE REMEDY FOR ANY CLAIMS OF INTELLECTUAL PROPERTY INFRINGEMENT OR MISAPPROPRIATION.

**7.2** You agree to defend, indemnify and hold harmless the Company, its officers, directors, employees and agents, from and against any and all claims, damages, obligations, losses, liabilities, costs, debts, and expenses (including but not limited to attorney's fees) arising from: (i) Your unauthorized use of the Software; and/or (ii) Your breach of this Agreement.

8. **Term and Termination.** This Agreement is effective upon the earlier of submitting an Order, downloading, installing, operating or otherwise using the Software (the "**Effective Date**") and will remain in force during the applicable Subscription Term until terminated in accordance with this Agreement. The Company may terminate this Agreement immediately without notice if You fail to comply or breach any provision of this Agreement. Upon termination of this Agreement: (i) the license granted to You in this Agreement shall expire and You shall discontinue all further use of the Software; (ii) You shall promptly remove the Software from all hard drives, networks and other storage media and destroy all copies of the Software in Your possession or under Your control. Upon the Company's request You shall within three (3) days certify destruction of, all full or partial copies of the Software, documentation and related materials provided to You by the Company or on its behalf; and (iii) any sums paid by You until the date of termination are non-refundable, and You shall not be relieved of Your duty to discharge in full all due sums owed by You to the Company under this Agreement, which sums shall become immediately due and payable on the date of termination of the Agreement. Sections 3, 4, 5, 7, 8 and 13 shall survive any termination of this Agreement.
9. **Maintenance and Support.** During the applicable Subscription Term specified in the Order and in consideration for the full payment of the fees specified therein the Company shall provide You with support, maintenance, upgrades, modifications, or new releases ("**Software Maintenance**"). For the avoidance of doubt, Software Maintenance does not include any on-site visits by the Company or its contractor's personnel.
10. **Consent to the collection and use of Data.** The Company may collect, use and disclose in any other manner data and anonymous information which derives from Your use of the Software (*i.e.*, non-identifiable information, aggregated and analytics information) ("**Analytics Information**") in order to provide and improve the Software (including updates), the Software Maintenance and other services and for any legitimate business purpose. The Company is and shall remain the sole owner of the Analytics Information.
11. **Customer Records.** You hereby grant Company and its independent accountants the right to examine Your books, records, and accounts, during Your normal business hours, to verify compliance with this Agreement. In the event that such audit discloses non-compliance with the terms of this Agreement, You shall promptly pay to Company the appropriate license fees or other applicable fees as well as reasonable

cost associated with conducting the audit.

- 12. **Reference Customer.** You agree that the Company may identify you as a user of the Software and use your trademark and/or logo in sales presentations, promotional/marketing materials, such as case studies distributed online and displayed on the Company's website, and press releases.
- 13. **Miscellaneous.** This Agreement shall be construed and governed in accordance with the laws of the State New York (except for conflict of law provisions) and the competent courts of New York shall have exclusive jurisdiction in any conflict or dispute arising out of this Agreement. The application of the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This Agreement represents the complete agreement concerning the license granted herein and the subject matter hereof and may be amended only by a written agreement executed by both parties. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of future breaches. If any provision of this Agreement is held to be unenforceable, such provision shall be reformed only to the extent necessary to make it enforceable. No action, regardless of form, arising out of this Agreement may be brought by You more than two (2) years after such cause of action shall have accrued. You may not assign, sublicense, transfer, pledge, lease, rent or share Your rights or obligations under this Agreement without the prior written consent of the Company. The Company may assign or transfer its rights and/or obligations under this Agreement without restriction or notification. The Company shall not liable for any malfunction of the Software and/or delays or breach of its obligations caused by circumstances beyond its reasonable control, regardless of whether such circumstances could have been foreseen.

**I HAVE READ AND UNDERSTOOD THIS AGREEMENT AND AGREE TO BE BOUND BY ALL OF ITS TERMS AND CONDITIONS.**

<b>CUSTOMER NAME</b>
<b>Signature</b>
<b>Name:</b>
<b>Title:</b>
<b>Date Executed:</b>

<b>Model 9 Software Inc.</b>
<b>Signature</b>
<b>Name:</b>
<b>Title:</b>
<b>Date Executed:</b>

**EXHIBIT A**

**Software Programs and limitations**

<b>Software Program</b>	<b>Functionality</b>	<b>Use limitations</b>
Model9 Cloud Data Manager for Mainframe.		