

Boomi Master Services Agreement

This Boomi Master Services Agreement (the "Agreement") is made between you, the customer ("Customer") and Boomi, Inc. with its principal place of business at 1400 Liberty Ridge Drive, Chesterbrook, PA 19087 ("Boomi"). Customer's address will be either the address listed herein (if this Agreement is signed by Customer) or on the Boomi Order into which this Agreement is incorporated by reference. If the parties sign this Agreement, Customer name and address appear below.

1. **Definitions.** Capitalized terms not defined in context will have the meanings assigned to them below:

1.1 "Affiliate" means any legal entity controlling, controlled by or under common control with a party to this Agreement, for so long as such control relationship exists.

1.2 "Boomi Services" means one or more of the software services Boomi provides under this Agreement (such as the Boomi AtomSphere Service) and the Software to which Customer is given access in connection with such service (the "Software").

1.3 "Documentation" means the user manuals and documentation that Boomi makes available for the Boomi Services.

1.4 "Support Services" means Boomi's maintenance and support for the Boomi Services as stated at www.boomi.com/legal/service.

1.5 "Order" means the document by which Customer orders Boomi Services. Orders that both Customer and Boomi sign are governed solely by the terms of this Agreement and the applicable Order. Any conflicting or additional terms in or accompanying an Order are not binding on Boomi unless Boomi accepts such terms in writing. Each Order is subject to Boomi's approval and acceptance and represents the Customer's irrevocable commitment to purchase and pay for the Boomi Services stated in the Order.

1.6 "Services Order" or "SO" means the document by which Customer orders consulting and/or training services, such as a Services Order Form or Statement of Work, which is governed by the *Professional Service Addendum*. Boomi, through its employees, agents and contractors, will perform the consulting and/or training services stated in the SO. Any conflicting or additional terms in or accompanying a SO are not binding on Boomi unless Boomi accepts such terms in writing. Each SO is subject to Boomi's approval.

1.7 "Professional Services" means the Activities or Project Deliverables identified in a Services Order and defined in the *Professional Service Addendum* (the "Addendum" or "Professional Service Addendum"), at www.boomi.com/psaddendum. Customer's purchase of Professional Services, if any, is governed by this Agreement and the Addendum.

2. **License.**

2.1 **General.** Subject to the terms of this Agreement, Boomi grants to Customer, and Customer accepts, a nonexclusive, nontransferable (except as otherwise set forth herein) and non-sublicensable license to access and use the quantities of the Boomi Services identified in the applicable Order to support the internal business operations of itself and its Affiliates for the term stated on the applicable Order. If any Software delivered to Customer for Customer's installation and use on its own equipment is provided in connection with the Boomi Services, the license duration for such Software will be for the term stated on the applicable Order. Boomi reserves all rights it does not specifically grant hereunder.

2.2 **Evaluation Use.** If an Order indicates that the Boomi Services are to be used by Customer for evaluation purposes, or if access to the Boomi Services is otherwise obtained from Boomi for evaluation purposes, such as a free trial or a proof of concept, Customer will be granted a right to use the Boomi Services solely for Customer's own non-production, internal evaluation purposes (an "Evaluation Right"). Each Evaluation Right shall be for a period of up to 30 days (subject to Boomi's right to terminate the Evaluation Right in its sole discretion at any time) from the date of delivery of the credentials needed to access the applicable Boomi Services, plus any extensions Boomi grants in writing (the "Evaluation Period"). There is no fee for an Evaluation Right during the Evaluation Period, but Customer is responsible for any fees associated with usage beyond the scope permitted. Notwithstanding anything otherwise set forth in this Agreement, Customer understands and agrees that Evaluation Rights are provided "AS IS" and that Boomi does not provide warranties or Support Services for Evaluation Rights.

2.3 **Use by Third Parties.** Customer may allow its services vendors and contractors (each, a "Third Party User") to access and use the Boomi Services made available to Customer hereunder solely for purposes of providing services to support the internal business operations of Customer, provided that Customer ensures that (a) the Third Party User's access to or use of the Boomi Services is subject to the restrictions and limitations contained in this Agreement, and the applicable Order(s), (b) the Third Party User cooperates with Boomi during any compliance review and (c) the Third Party User promptly removes any Software installed on its computer equipment, environment and the integrated system(s) upon completion of its need for access or use permitted by this section. Customer agrees to be liable to Boomi for those acts and omissions of its Third Party Users as if they were done or omitted by Customer itself.

3. **Proprietary Rights.** Each party reserves for itself all proprietary rights that it has not expressly granted to the other. Customer agrees that (a) the Boomi Services are protected by copyright and other intellectual property laws and treaties, (b) Boomi, its Affiliates and/or its licensors own the copyright, and other intellectual property rights in the Boomi Services, (c) this Agreement does not grant Customer any rights to Boomi's trademarks or service marks.

4. **Payment.** Customer agrees to pay to Boomi the fees each Order or Services Order specifies. Customer will be invoiced promptly following execution of the Order or Services Order and Customer will make all payments due to Boomi in full within 30 days from the date of each invoice or such other period (if any) stated in an Order or Services Order. Customer will provide a Purchase Order ("PO") to Boomi prior to or at the time of execution, except if otherwise stated in the Order or Service Order. If Customer fails to provide the PO to Boomi, then Boomi will not be obligated to provide the Boomi and/or Professional Services until it receives the PO. All fees not subject to a good

faith dispute and not paid when due shall accrue interest of 1.5% per month (or the maximum rate permitted by law, if lower). Nonpayment may result in, without limitation, suspension of Customer's right to use the Service until payment is made.

5. **Taxes.** Customer is responsible for payment of any sales, use, value added, GST and any other similar taxes or governmental fees associated with Customer's Order. Customer is not responsible for taxes based on Boomi's net income, gross revenue or employment obligations. If Boomi is obligated by applicable law to collect and remit any taxes or fees, then Boomi will add the appropriate amount to Customer's invoices as a separate line item. If Customer qualifies for a tax exemption, Customer must provide Boomi with a valid certificate of exemption or other appropriate proof of exemption. In the event Boomi is to invoice Customer outside of the United States, then if Customer is required by law to make a withholding or deduction in respect of the price payable to Boomi, Customer will pay Boomi the amount necessary to ensure that the actual amount Boomi receives after deduction or withholding (and after payment of any additional taxes due because of such additional amount) equals the amount that would have been payable to Boomi if such deduction or withholding were not required.

6. **Termination.**

6.1 The term of this Agreement begins on the Effective Date in the relevant Order incorporating this Agreement, or, if executed by the parties, the last date of the signatures on this Agreement (the "Effective Date" (if only one date appears by the signatures, that date shall be the Effective Date)) and will continue until terminated as stated in this section. Unless otherwise stated in the Order: (a) Orders will automatically renew at the end of the term of each Order for an additional one-year term unless either party provides 30 days' notice prior to expiration of its intent not to renew; and (b) Orders will renew at a rate that is 10% higher than the rate applicable to the last full year prior to such renewal up to, but not exceeding, the then-current list price. This Agreement or Orders or Services Orders may be terminated (a) by mutual written agreement of Boomi and Customer or (b) by either party for a material breach of this Agreement or an Order by the other party (or its Third Party Users) (1) upon 30 days following its receipt of notice of the breach where the breach is reasonably capable of being cured and the breaching party fails to cure to the non-breaching party's reasonable satisfaction or (2) with immediate effect where such breach is not reasonably capable of being cured.

6.2 Upon termination or expiration of this Agreement or an Order or Service Order for any reason, all rights granted to Customer for the applicable Boomi Services or Professional Services, respectively, will immediately cease and Customer will immediately: (a) cease using such services, (b) remove all copies, installations and instances of any Software from all Customer computers and any other devices on which the Software was installed, and ensure that all applicable Third Party Users do the same and (c) pay Boomi all amounts due and payable but not yet paid.

6.3 Any provision of this Agreement that requires or contemplates execution after termination of this Agreement or a termination or expiration of an Order or Service Order is enforceable against the other party and their respective successors and assignees notwithstanding such termination or expiration including, without limitation, the Conduct, Payment, Proprietary Rights, Taxes, Termination, Warranty Disclaimer, Infringement Indemnity, Limitation of Liability, Confidential Information and General sections of this Agreement. Termination of this Agreement or a license will be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement.

6.4 If required by law enforcement or the legal process, or in the event of an imminent security risk to Boomi or its customers, Boomi may suspend Customer's use of the Boomi Services. Boomi will make commercially reasonable efforts under the circumstances to provide prior notice of any such suspension.

7. **Trade Compliance.** Customer's purchase of Boomi Services and access to related technology (collectively, the "Materials") are for its own use, not for resale, export, re-export or transfer. Customer is subject to and responsible for compliance with the export control and economic sanctions laws of the United States and other applicable jurisdictions. Materials may not be used, sold, leased, exported, imported, re-exported or transferred except in compliance with such laws including, without limitation, export licensing requirements, end user, end use and end-destination restrictions, and prohibitions on dealings with sanctioned individuals and entities including, but not limited to, persons on the Office of Foreign Assets Control's Specially Designated Nationals and Blocked Persons List or the U.S. Department of Commerce Denied Persons List. Customer represents and warrants that it is not the subject or target of, and that Customer is not located in a country or territory (including without limitation, North Korea, Cuba, Iran, Syria and Crimea) that is the subject or target of, economic sanctions of the United States or other applicable jurisdictions.

8. **Warranties and Remedies.**

8.1 **Warranties & Remedies.** Boomi warrants that, during the term of an Order, the applicable Boomi Services will (a) substantially conform to the applicable Documentation (the "Operational Warranty"); and (b) be available subject to the description in Boomi's SLA at www.boomi.com/sla (the "SLA") 24 hours a day, seven days a week except for scheduled maintenance, the installation of updates and factors beyond the reasonable control of Boomi (the "Availability Warranty"). Customer's sole and exclusive remedy and Boomi's sole obligation for any breach of the Operational Warranty or Availability Warranty will be for Boomi to provide a fix or reasonably accepted workaround for the Boomi Services and for Boomi to provide Service Level Credits as defined at the SLA.

8.2 **No Further Warranties.** Except as expressly stated in this Agreement, and to the maximum extent permitted by applicable law, with regard to Boomi Services, Boomi makes no other express warranties, written or oral, and disclaims all implied warranties. Insofar as permitted under applicable law, all other warranties are specifically excluded, including, but not limited to, the implied warranties of merchantability, fitness for a particular purpose, title and non-infringement, and any warranty arising by statute, operation of law, course of dealing or performance or usage of trade. Boomi does not warrant that the Software will operate uninterrupted or that it will be free from defects or that it will meet Customer's requirements.

8.3 **High Risk Disclaimer.** **Customer understands and agrees that Boomi Services are not fault-tolerant and are not designed or intended for use in any high-risk or hazardous environment, including any application where failure or malfunction can reasonably be expected to result in death, personal injury, severe property damage or severe environmental harm (a "High Risk**

Environment”). Any use of the Boomi Services by Customer in a High Risk Environment is at Customer’s own risk; Boomi, its Affiliates and suppliers will not be liable to Customer in any way for use of the Boomi Services in a High Risk Environment, and Boomi makes no warranties or assurances, express or implied, regarding use of the Boomi Services in a High Risk Environment.

9. Infringement Indemnity.

9.1 Boomi will defend Customer from and against any claim, suit, action, or proceeding brought against Customer by a third-party to the extent it is based on an allegation that the Boomi Services infringe any patent, copyright, trademark, or other proprietary right enforceable in a country that is a signatory to the Berne Convention, in which Boomi has authorized Customer to use the Boomi Services, including, but not limited to the country to which the Boomi Services is delivered to Customer, or misappropriates a trade secret in such country (a “Claim”). Boomi will indemnify the Customer by paying (a) the resulting costs and damages finally awarded against Customer by a court of competent jurisdiction to the extent that such are the result of the third-party Claim, or (b) the amounts stated in a written settlement negotiated and approved by Boomi. Boomi’s obligations under this Infringement Indemnity Section are conditioned upon Customer (i) giving prompt written notice of the Claim to Boomi, (ii) permitting Boomi to retain sole control of the investigation, defense or settlement of the Claim, and (iii) using all reasonable efforts to mitigate any actual or anticipated claims and providing Boomi with cooperation and assistance as Boomi may reasonably request in connection with the Claim. Boomi will have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Boomi Services other than as authorized by this Agreement, (b) resulting from a modification of the Boomi Services other than by Boomi, (c) to the extent the Claim arises from or is based on the use of the Boomi Services with other products, services, or data not supplied by Boomi if the infringement would not have occurred but for such use, (d) based on Customer’s use of a superseded or altered release of any code, document, service, product, or deliverable after Boomi has recommended discontinuation, if the infringement would have been avoided by use of a current or unaltered release made available to Customer, (e) if Customer is in material breach of this Agreement, or (f) based on any Boomi modifications made pursuant to instructions, designs, specifications or any other information provided by or on behalf of Customer, if any.

9.2 If, as a result of a Claim or an injunction, Customer must stop using any portion of the Boomi Services (“Infringing Services”), Boomi may at its expense and option either (i) obtain for Customer the right to continue using the Infringing Services, (ii) replace the Infringing Services with a functionally equivalent noninfringing Services, (iii) modify the Services so that they are non-infringing, or (iv) terminate the availability of the Infringing Services and refund the unused pro-rated portion of any fees pre-paid by Customer allocable to such Infringing Services. To the extent that Boomi delivers any documentation, training materials, or other written materials or software to Customer for a fee under the Professional Services Addendum, such items will be treated as Boomi Services within the scope of, and subject to the limits of, this Section. This Section states Boomi’s entire liability and its sole and exclusive obligations for a Claim.

10. Limitation of Liability.

10.1 In no event will Customer or Boomi or its Affiliates be liable for (a) any indirect, incidental, punitive, exemplary, special or consequential loss or damage of any kind, or (b) loss of revenue, loss of actual or anticipated profits, loss of business, loss of contracts, loss of goodwill or reputation, loss of anticipated savings, loss of, damage to, or corruption of data, howsoever arising, whether such loss or damage was foreseeable or in the contemplation of the parties and whether arising in or for breach of contract, tort (including negligence), breach of statutory duty or otherwise except for: any breach of the Customer Conduct section of this Agreement and any amount which Boomi is liable to pay to a third party under the Infringement Indemnity section of this Agreement, or any liability to the extent liability may not be excluded or limited as a matter of applicable law.

10.2 The maximum aggregate and cumulative liability of Customer and Boomi and each of their Affiliates, for damages under this Agreement, whether arising in or for breach of contract, tort (including negligence), breach of statutory duty or otherwise, will not exceed the greater of the amount paid and/or owed for the Boomi Services or Professional Services during the 12 months preceding the breach or USD\$500.00, except for:

- A. Boomi’s express obligations under the Infringement Indemnity section of this Agreement;
- B. Customer’s breaches of the Conduct, and Use by Third Parties sections of this Agreement;
- C. Boomi’s costs of collecting delinquent amounts that are not subject to a good faith dispute; or
- D. Any liability to the extent liability may not be excluded or limited as a matter of applicable law.

10.3 Nothing herein waives or limits any claim of either party for violating the intellectual property rights of the other, including use of intellectual property outside of the applicable license scope.

10.4 **Limitations on Damages.** The limitations, exclusions and disclaimers stated apply to all disputes. The terms of this section are agreed allocations of risk constituting part of the consideration for Boomi’s and/or its Affiliates’ sale of products and services to Customer and will apply even if there is a failure of the essential purpose of any limited remedy, and regardless of whether a party has been advised of the possibility of the liabilities. In no event may Customer bring any claim against a contractor, licensor or supplier to Boomi for a matter associated with performance of this contract, beyond the amounts and theories of liabilities permitted if such claims were asserted against Boomi itself.

10.5 **Regular Backups.** Customer is solely responsible for its data. Customer is always responsible to backup its data. If applicable law prohibits exclusion of liability for lost data, then Boomi will only be liable for the cost of commercially reasonable and customary efforts to recover the lost data from Customer’s last available backup.

10.6 **Limitation Period.** Except as stated in this section, all claims must be made within the period specified by applicable law. If the law allows the parties to specify a shorter period for bringing claims, or the law does not provide a time at all, then claims must be made within 18 months after the cause of action accrues.

11. Confidential Information.

11.1 **Definition.** “Confidential Information” means information or materials disclosed by one party (the “Disclosing Party”) to the other party (the “Receiving Party”) that are not generally available to the public and which, due to their character and nature, a reasonable

person under like circumstances would treat as confidential, including without limitation, financial, marketing and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Boomi Services, the Software (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Software, any Software license keys provided to Customer and the terms and conditions of this Agreement.

11.2 This Agreement imposes no obligation upon a Receiving Party with respect to information designated as confidential which: (a) the Receiving Party can demonstrate was already in its possession before receipt from the Disclosing Party; (b) is or becomes publicly available through no fault of the Receiving Party or its Representatives (defined below); (c) is rightfully received by the Receiving Party from a third party who has no duty of confidentiality is independently developed by the Receiving Party without a breach of this Agreement; (d) is disclosed by the Disclosing Party to a third party without a duty of confidentiality on the third party; or (e) is transmitted or processed by Customer using Boomi Services and not sent by Customer for specific review by or discussion with personnel of Boomi.

11.3 Obligations: Recipient will use Confidential Information only for the purpose of and in connection with the evaluation of a potential, or continuation of, a business transaction or relationship between the parties. If a Recipient is required by a government body or court of law to disclose Confidential Information, to the extent permitted by law, the recipient agrees to give the discloser reasonable notice so that the discloser may contest the disclosure or seek a protective order. Recipient may disclose Confidential Information to its directors, officers, employees and employees of its Affiliates, as well as its and its Affiliates' contractors, advisors and agents, so long as those individuals have a need to know in their work for recipient in furtherance of the potential or continued business transaction or relationship and are bound by obligations of confidentiality at least as restrictive as those imposed on recipient in this Agreement (collectively, "Representatives"). Recipient will use the same degree of care, but no less than reasonable care, as the recipient uses with respect to its own similar information to protect the Confidential Information. Recipient may only disclose Confidential Information as authorized herein. Unless the parties otherwise agree in writing, a recipient's duty to protect Confidential Information expires 3 years from the date of disclosure. Upon the discloser's written request, recipient will promptly return or destroy all Confidential Information received from the discloser, together with all copies. Notwithstanding the above, recipient's professional advisors (e.g., lawyers and accountants) may retain in confidence one file copy of their respective work papers and final reports in accordance with their professional and ethical obligations. The Receiving Party will be liable to the Disclosing Party for the acts or omissions of any Representatives to which it discloses Confidential Information which, if done by the Receiving Party, would breach this Agreement.

12. **Personal Data**

12.1 Definitions. For purposes of this section, "Personal Data" means any information relating to an identified or identifiable natural person that Customer submits to the Boomi Services during this Agreement or which is received, accessed and/or processed by Boomi in the capacity of "processor" acting on behalf of Customer, as "controller", in connection with the performance of the Boomi Services under this Agreement. "Privacy Laws" means any applicable law regarding privacy, data protection and/or the processing of Personal Data to which Boomi and/or the Customer are subject and which is applicable to the parties' data protection obligations under this Agreement, including if applicable the *General Data Protection Regulation (EU) 2016/679*.

12.2 Instructions. Customer (a) represents that it has the right to transfer the Personal Data to Boomi, and (b) instructs Boomi to process the Personal Data for the purposes of performing its obligations and complying with its rights under this Agreement and any applicable Orders. Boomi will process the Personal Data only in accordance with Customer's instructions detailed in this section 12 and Customer's configurations and administrative settings, which shall comprise Customer's complete instructions regarding the processing of the Personal Data. Customer retains responsibility for all data that Customer integrates through the Boomi Services, and is responsible for complying with applicable Privacy Law regarding the lawfulness of the processing of Personal Data including all activities requested by Customer, and, in particular, for ensuring that the data subjects (who the data pertains to) of any data transmitted by Customer have consented to Boomi processing the Personal Data. Boomi will have no liability to Customer for any breach of this Agreement resulting from Boomi's compliance with Customer's system configurations or instructions.

12.3 Customer acknowledges that Boomi does not sell a data storage service, and the Boomi Services generally include a number of controls including security features and functionality such as purge data settings, user role settings and support access settings. Customer is responsible for reviewing the default settings and onboarding materials, and for properly configuring the Boomi Services to fit Customer's security and operational needs. Should the Boomi Services be configured to move data from one point to another, Customer is responsible for ensuring that Customer is rightfully integrating among connected systems, whether Customer transmits data outside of a particular cloud or system, outside of a particular geography or otherwise.

12.4 Compliance. Each party will comply with their respective obligations under the Privacy Laws in relation to the processing of Personal Data under this Agreement. Except as permitted herein or to the extent required by Privacy Laws or legal process, Boomi will implement appropriate technical and organizational measures to ensure a level of security appropriate to the risk. This will include prevention of unauthorized disclosure of or access to Personal Data by third parties, and will only store and process Personal Data as required to fulfill its obligations under this Agreement and any applicable SO's or Orders and/or as required by the Privacy Laws. Boomi will notify Customer without undue delay after becoming aware of any disclosure of or access to the Personal Data by a third party in breach of this section and will reasonably cooperate with Customer to reasonably remediate the effects of such disclosure or access. Customer's exclusive remedy and Boomi's sole obligation for any breach of this section 12 will be for Boomi to pay or reimburse Customer for the reasonable costs of notification, credit monitoring and call center support, each to the extent made necessary by the breach and required by applicable law.

12.5 International Transfers & Subprocessors. Customer authorizes Boomi, in connection with the provision of the Boomi Services, or in the normal course of business, to make worldwide transfers of Personal Data to its "Subprocessors" (meaning any processor engaged by Boomi, who agree to receive from Boomi, or from another Boomi Subprocessor, Personal Data intended for processing activities to be carried out on behalf of the Customer under the terms of this Agreement and the written subcontract). Boomi will ensure appropriate agreements are in place with such Subprocessors to seek to safeguard the Personal Data transferred under or in connection with this Agreement. Where the provision of the Boomi Services involves the transfer of Personal Data from the EEA to countries outside the EEA

(which are not subject to an adequacy decision under Privacy Laws), Boomi further affirms to Customer that it has adequate agreements in place (both intra-group agreements with any Affiliates as well as with its Subprocessors which may have access to the Personal Data) incorporating the Standard Contractual Clauses. Customer agrees that Personal Data may be sent to Subprocessors as part of Boomi's Support Services and authorizes Boomi, by means of general consent, to appoint and use Subprocessors to process the Personal Data in connection with the Services. Where Boomi appoints Subprocessors, Boomi will put in place a contract that imposes appropriate obligations that are (a) relevant to the Services to be provided by that Subprocessor and (b) materially equivalent to the obligations imposed on Boomi under this section 12. Subprocessors may include third parties or any Boomi Affiliate. Boomi will provide a list of Subprocessors supporting the provision of Services to Customer upon Customer's written request, or at a web site linked to Boomi's URL.

13. **Conduct.** Customer may not reverse engineer, decompile, disassemble or attempt to discover or modify in any way the underlying source code of the Software, or any part thereof unless and to the extent such restrictions are prohibited by applicable law. Customer may not: (a) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Boomi Services or any part thereof; (b) resell, provide, make available to or permit use of or access to the Boomi Service or associated access credentials, in whole or in part, by any third party; (c) use the Boomi Services to create or enhance a competitive offering or for any purpose which is competitive to Boomi; or (d) perform or fail to perform any other act which would result in a misappropriation or infringement of Boomi's intellectual property rights in the Boomi Services. Each permitted copy of the Software made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. In connection with the use of Boomi Services, Customer may not: (a) attempt to use or gain unauthorized access to Boomi's or to any third party's networks or equipment; (b) attempt to probe, scan or test the vulnerability of the Boomi Services, or a system, account or network of Boomi or any Boomi customers or suppliers; (c) engage in fraudulent, offensive or illegal activity or intentionally engage in any activity that infringes the intellectual property rights or privacy rights of any individual or third party or transmit through the Boomi Service any data or information without the legal right to do so; (d) transmit unsolicited bulk or commercial messages or intentionally distribute worms, Trojan horses, viruses, corrupted files or any similar items; (e) restrict, inhibit, interfere or attempt to interfere with the ability of any other person, regardless of purpose or intent, to use or enjoy the Boomi Services or a user's network, or cause a performance degradation to any facilities used to provide the Boomi Services. If Customer purchases any managed services from Boomi, Customer will not cause Boomi to use anything for which Boomi would need to obtain a license from such third party in order to provide those managed services. Customer will cooperate with Boomi's reasonable investigation of Boomi Services outages, security issues and any suspected breach of this section, and shall, at its expense, defend Boomi and its Affiliates from any claim, suit or action by a third party (a "Third Party Claim") alleging harm caused by Customer's breach of this section. Customer shall pay any judgments or settlements reached in connection with the Third Party Claim and Boomi's costs of responding to it.

14. **Boomi Flow Terms.** If Customer uses a Boomi Service in connection with creation and hosting of external-facing websites, Customer will comply with applicable law in any use of cookies or other tracking technologies on such websites. If Boomi is required to take any action because of Customer or its Third Party Users violating applicable law or third party rights, Customer will fully cooperate with any legal duties or related instructions of Boomi and will promptly remove any illegal or offensive content from Customer systems. Boomi may also disable the applicable content, or the Boomi Flow service (howsoever named) or any application interacting therewith, until the potential violation is resolved. A "Non-Boomi Flow Application" means a web-based or offline software application that is provided by Customer or a third party and interoperates with the Boomi Flow service sold hereunder, including, for example, an application that is developed by or for Customer or is listed on a Marketplace, i.e., an online directory, catalog or marketplace of applications that interoperate with the Boomi Flow Services. Any acquisition by Customer of a Non-Boomi Flow Application, and any exchange of data between Customer and any non-Boomi Flow provider, is solely between Customer and the applicable non-Boomi Flow provider. Boomi does not warrant or support Non-Boomi Flow Applications, nor is it responsible for any results or effects of Customer's use of such applications. If Customer installs or enables a Non-Boomi Flow Application for use with a Boomi Flow Service, Customer grants Boomi permission to allow the provider of that Non-Boomi Flow Application to access Customer data as required for the interoperation of that Non-Boomi Flow Application with the Boomi Flow Service. Boomi Flow Services may contain features designed to interoperate with Non-Boomi Flow Applications, for which Customer may be required to grant Boomi access. If the provider of a Non-Boomi Flow Application ceases to make the Non-Boomi Flow Application available for interoperation with the corresponding Boomi Flow Service features on terms acceptable to Boomi, Boomi may cease providing those features without entitling Customer to any refund, credit or other compensation.

15. **General.**

15.1 **Governing Law; Disputes.** This Agreement and any dispute (whether in contract, tort or otherwise) related to it or any quote or Order ("Dispute") is governed by the laws of the State of Texas (excluding the conflicts of law rules) and the federal laws of the United States. The U.N. Convention on Contracts for the International Sale of Goods does not apply. To the extent permitted by law, the state and federal courts located in Texas will have exclusive jurisdiction for any Disputes. The parties agree to submit to the personal jurisdiction of the state and federal courts located within Travis or Williamson County, Texas, and agree to waive all objections to the exercise of jurisdiction over the parties by those courts and to venue in those courts. As a condition precedent to filing any lawsuit, the parties will attempt to resolve any Dispute through negotiation with persons fully authorized to resolve the Dispute, or through mediation utilizing a mutually agreeable mediator, rather than through litigation. The existence or results of any negotiation or mediation will be treated as confidential. Although the merits of the underlying Dispute will be resolved in accordance with this Section, any party has the right to seek to obtain from a court of competent jurisdiction a temporary restraining order, preliminary injunction or other equitable relief to preserve the status quo, prevent irreparable harm, avoid the expiration of any applicable limitation periods or preserve a superior position with respect to other creditors. If the parties are unable to resolve the Dispute within 30 days (or other mutually agreed time) of notice of the Dispute to the other party, the parties will be free to pursue all remedies available at law or in equity. In any Dispute (other than Boomi's efforts to collect overdue amounts from Customer) each party will bear its own attorneys' fees and costs and expressly waives any statutory right to attorneys' fees under § 38.001 of the Texas Civil Practices and Remedies Code. For Orders placed in the European Economic Area, unless stated otherwise in an Order, this Agreement will be governed by and construed in accordance with the laws of England and Wales, without giving effect to any conflict of laws principles that would require the application of laws of a different state or country and any action seeking enforcement of this Agreement or any provision hereof will be brought exclusively in the courts located in London, England. For Orders placed in the Asia Pacific region, law and venue may be revised in a mutually signed Order, but will otherwise default to Australian law and venue in the State of New South Wales, Australia. Each party hereby agrees to submit to the jurisdiction of such courts.

15.2 Assignment. Except as otherwise set forth herein, Customer will not, in whole or part, assign or transfer any part of this Agreement, whether licenses or any other rights, interests or obligations, whether voluntarily, by contract, by operation of law or by merger (whether that party is the surviving or disappearing entity), stock or asset sale, consolidation, dissolution, through government action or order or otherwise without Boomi's prior written consent. Any attempted transfer or assignment by Customer that this Agreement does not permit will be null and void.

15.3 Severability. If any provision of this Agreement including, but not limited to, those that limit, disclaim or exclude warranties, remedies or damages, will be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. The parties agree: (a) they have relied on the damage and warranty limitations and exclusions set forth in this Agreement; (b) they acknowledge the terms represent the allocation of risk as set forth in the Agreement; and (c) they would not enter into this Agreement without such terms.

15.4 Use by U.S. Government. The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in subsection **Error! Reference source not found.** of the Infringement Indemnity section of this Agreement and the Injunctive Relief section of this Agreement will not be applicable.

15.5 Notices. All notices provided hereunder will be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this section. Except as may be expressly permitted, notices may be delivered personally, and sent via a nationally recognized courier or overnight delivery service. Any legal notice to Boomi must be sent simultaneously to Boomi Legal by email to boomilegal@dell.com and mailed by first class mail, postage prepaid. All notices, requests, demands or communications will be deemed effective upon personal delivery or, if sent by mail, four days following deposit in the mail in accordance with this paragraph, or if sent by email, the following business day.

15.6 Waiver. 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, which waiver will be effective only with respect to the specific obligation described. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

15.7 Counterparts. This Agreement and the applicable Order(s) may be executed in one or more counterparts, including by facsimile, electronically or via scanned copies, each of which will be deemed an original and will constitute one and the same instrument.

15.8 Excused Performance. Except for payment of amounts due and owing, neither Boomi nor Customer will be liable for failure to perform its obligations during any period if performance is delayed or rendered impracticable or impossible due to circumstances beyond that party's reasonable control.

15.9 Equal Opportunity. Boomi, Inc. is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the *Equal Opportunity clause* C.F.R. § 60-741.5(a).

15.10 Headings. Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."

15.11 Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter thereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. This Agreement and the applicable Order and/or Service Order will constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any proceeding that may involve the Agreement. Each party acknowledges that in entering into the Agreement it has not relied on and will have no right or remedy in respect of, any statement, representation, assurance or warranty other than as expressly set out in the Agreement. In those jurisdictions where an original (non-faxed, non-electronic or non-scanned) copy of an agreement or an original (non-electronic) signature on agreements is required by law or regulation, the parties agree that, notwithstanding any such law or regulation, a faxed, electronic or scanned copy of and a certified electronic signature on this Agreement or any Order or Service Order will be sufficient to create an enforceable and valid agreement. The terms of this Agreement will control over any conflicting terms and conditions contained in an Order or Service Order, except where this Agreement specifically allows for an Order or Service Order to supersede. Neither this Agreement, nor an Order or Service Order, may be modified or amended except by a writing executed by a duly authorized representative of each party.