

Carahsoft Rider to Manufacturer Commercial Supplier Agreements
(for U.S. Government End Users)
Revised 20160504

- 1. Scope.** This Carahsoft Rider and the Manufacturer’s Commercial Supplier Agreement (CSA) establish the terms and conditions enabling Carahsoft to provide Software and Services to U.S. Government agencies (the "Client" or “Licensee”).
- 2. Applicability.** The terms and conditions in the attached Manufacturer’s CSA are hereby incorporated by reference to the extent that they are consistent with Federal Law (e.g., the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)(B)), the Contracts Disputes Act of 1978 (41. U.S.C. § 601-613), the Prompt Payment Act, the Anti-Assignment statutes (31 U.S.C. § 3727 and 41 § U.S.C. 15), 28 U.S.C. § 516 (Conduct of Litigation Reserved to Department of Justice (DOJ), and 28 U.S.C. § 1498 (Patent and copyright cases)). To the extent the terms and conditions in the Manufacturer's CSA is inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft’s Multiple Award Schedule Contract, GS-35F-0119Y, including, but not limited to the following:

 - (a) Contracting Parties.** The Government customer (Licensee) is the “Ordering Activity”, defined as an entity authorized to order under Government contracts as set forth in Government Order 4800.2H ADM, as may be revised from time to time. The Licensee cannot be an individual because any implication of individual licensing triggers the requirements for legal review by Federal Employee unions. Conversely, because of competition rules, the contractor must be defined as a single entity even if the contractor is part of a corporate group. The Government cannot contract with the group, or in the alternative with a set of contracting parties.
 - (b) Changes to Work and Delays.** Subject to General Services Administration Acquisition Regulation (GSAR) 552.238-81 Modifications (Federal Supply Schedule) (APR 2014) (Alternate I – APR 2014) and GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) regarding which of the GSAR and the FAR provisions shall take precedence.
 - (c) Contract Formation.** Subject to FAR Sections 1.601(a) and 43.102, the Government Order must be signed by a duly warranted contracting officer, in writing. The same requirement applies to contract modifications affecting the rights of the parties. All terms and conditions intended to bind the Government must be included within the contract signed by the Government.

- (d) Audit.** During the term of this CSA: (a) If Ordering Activity's security requirements included in the Order are met, Manufacturer or its designated agent may audit Ordering Activity's facilities and records to verify Ordering Activity's compliance with this CSA. Any such audit will take place only during Ordering Activity's normal business hours contingent upon prior written notice and adherence to any security measures the Ordering Activity deems appropriate, including any requirements for personnel to be cleared prior to accessing sensitive facilities. Carahsoft on behalf of the Manufacturer will give Ordering Activity written notice of any non-compliance, including the number of underreported Units of Software or Services ("Notice"); or (b) If Ordering Activity's security requirements are not met and upon Manufacturer's request, Ordering Activity will run a self-assessment with tools provided by and at the direction of Manufacturer ("Self-Assessment") to verify Ordering Activity's compliance with this CSA.
- (e) Termination.** Clauses in the Manufacturer's CSA referencing termination or cancellation of the Manufacturer's CSA are hereby deemed to be deleted. Termination shall be governed by the GSAR 552.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:
- Carahsoft may request cancellation or termination of the CSA on behalf of the Manufacturer if such remedy is granted to it after conclusion of the Contracts Disputes Act dispute resolutions process referenced in Section (q) below or if such remedy is otherwise ordered by a United States Federal Court.
- (f) Consent to Government Law / Consent to Jurisdiction.** Subject to the Contracts Disputes Act of 1978 (41. U.S.C §§ 7101-7109) and Federal Tort Claims Act (28 U.S.C. §1346(b)). The validity, interpretation and enforcement of this Rider and the CSA will be governed by and construed in accordance with the laws of the United States. All clauses in the Manufacturer's CSA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.
- (g) Force Majeure.** Subject to GSAR 552.212 -4 (f) Contract Terms and Conditions – Commercial Items, Excusable Delays (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer's CSA referencing unilateral termination rights of the Manufacturer's CSA are hereby deemed to be deleted.
- (h) Assignment.** All clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (MAY 2014) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer's CSA are hereby deemed to be deleted.
- (i) Waiver of Jury Trial.** All clauses referencing waiver of Jury Trial are subject to FAR Clause 52.233-1, Disputes (MAY 2014), and all clauses governing waiver of jury trial in the Manufacturer's CSA are hereby deemed to be deleted.

- (j) Customer Indemnities.** All of the Manufacturer's CSA clauses referencing Customer Indemnities are hereby deemed to be deleted.
- (k) Contractor Indemnities.** All of the Manufacturer's CSA clauses that (1) violate DOJ's right (28 U.S.C. 516) to represent the Government in any case and/or (2) require that the Government give sole control over the litigation and/or settlement, are hereby deemed to be deleted.
- (l) Renewals.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11) ban on automatic renewal are hereby deemed to be deleted.
- (m) Future Fees or Penalties.** All of the Manufacturer's CSA clauses that violate the Anti-Deficiency Act (31 U.S.C. 1341, 41 U.S.C. 11), which prohibits the Government from paying any fees or penalties beyond the Contract amount, unless specifically authorized by existing statutes, such as the Prompt Payment Act, or Equal Access To Justice Act 31 U.S.C. 3901, 5 U.S.C. 504 are hereby deemed to be deleted.
- (n) Taxes.** Taxes are subject to GSAR 552.212-4(k) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored) and GSAR 552.212-4 (w)(1)(x) Contract Terms and Conditions – Commercial Items, Taxes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored).
- (o) Third Party Terms.** Subject to the actual language agreed to in the Order by the Contracting Officer. Any third party manufacturer will be brought into the negotiation, or the components acquired separately under Federally-compatible agreements, if any. Contractor indemnities do not constitute effective migration.
- (p) Installation and Use of the Software.** Installation and use of the software shall be in accordance with the Rider and Manufacturer's CSA, unless an Ordering Activity determines that it requires different terms of use and Manufacturer agrees in writing to such terms in a valid task order placed pursuant to the Government contract.
- (q) Dispute Resolution and Venue.** Any disputes relating to the Manufacturer's CSA and to this Rider shall be resolved in accordance with the FAR, the GSAR and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. See GSAR 552.212-4 (w)(1)(iii) Contract Terms and Conditions – Commercial Items, Law and Disputes (MAY 2015) (Alternate II – JUL 2009) (FAR Deviation – JUL 2015) (Tailored). The Ordering Activity expressly acknowledges that Carahsoft, as the vendor selling the Manufacturer's licensed software, shall have standing under the Contract Disputes Act to bring such claims that arise out of licensing terms incorporated into Multiple Award Schedule Contract GS-35F-0119Y.

(r) Limitation of Liability: Subject to the following:

Carahsoft, Manufacturer and Ordering Activity shall not be liable for any indirect, incidental, special, or consequential damages, or any loss of profits, revenue, data, or data use. Further, Carahsoft, Manufacturer and Ordering Activity shall not be liable for punitive damages except to the extent this limitation is prohibited by applicable law. This clause shall not impair the U.S. Government's right to recover for fraud or crimes arising out of or related to this Government Contract under any federal fraud statute, including the False Claims Act, 31 U.S.C. §§ 3729-3733.

(s) Advertisements and Endorsements. Unless specifically authorized by an Ordering Activity in writing, such use of the name or logo of any U.S. Government entity is prohibited.

(t) Public Access to Information. Manufacturer agrees that the CSA and this Rider contain no confidential or proprietary information and acknowledges the CSA and this Rider will be available to the public.

(u) Confidentiality. Any provisions that require the Licensee to keep certain information confidential are subject to the Freedom of Information Act, 5 U.S.C. §552, and any order by a United States Federal Court. The Licensee may provide information to other components of the United States Government pursuant to proper requests for such information as permitted by law, regulation or policy (e.g., disclosures to Congress, auditors, Inspectors General, etc.).

**PAXATA
SOFTWARE END USER LICENSE AGREEMENT**

VERSION EFFECTIVE DATE: 6/16/2015

BY INDICATING YOUR ACCEPTANCE OF THIS AGREEMENT, EXECUTING ANY PURCHASE AUTHORIZATION, ORDER FORM OR ONLINE REGISTRATION REFERENCING THIS AGREEMENT, OR INSTALLING OR USING ALL OR ANY PORTION OF THE SOFTWARE, YOU ARE ACCEPTING ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THESE TERMS, YOU MAY NOT USE THE SOFTWARE. YOU AGREE THAT THIS AGREEMENT IS ENFORCEABLE LIKE ANY WRITTEN AGREEMENT SIGNED BY YOU.

IF YOU DO NOT AGREE TO ALL OF THESE TERMS AND CONDITIONS, DO NOT ACCEPT THIS AGREEMENT AND DO NOT INSTALL OR USE THE SOFTWARE. IF YOU HAVE PAID A LICENSE FEE FOR USE OF THE SOFTWARE AND DO NOT AGREE TO THESE TERMS, YOU MAY RETURN THE SOFTWARE FOR A FULL REFUND PROVIDED YOU (A) DO NOT USE THE SOFTWARE AND (B) RETURN THE SOFTWARE WITHIN THIRTY (30) DAYS OF YOUR INITIAL PURCHASE.

IF YOU ARE USING THE SOFTWARE AS AN EMPLOYEE, CONTRACTOR, OR AGENT OF A CORPORATION, PARTNERSHIP OR SIMILAR ENTITY, THEN YOU MUST BE AUTHORIZED TO SIGN FOR AND BIND THE ENTITY IN ORDER TO ACCEPT THE TERMS OF THIS AGREEMENT. THE RIGHTS GRANTED UNDER THIS AGREEMENT ARE EXPRESSLY CONDITIONED UPON ACCEPTANCE BY SUCH AUTHORIZED PERSONNEL.

AGREEMENT

This Software End User License Agreement ("**Agreement**") is entered into by and between Paxata, Inc. ("**Paxata**") and the entity or person placing an order for or accessing the Software ("**Customer**" or "**you**"). The "**Effective Date**" of this Agreement is the date which is the earlier of (a) Customer's initial access to the Software (as defined below) through any online provisioning, registration or order process or (b) the effective date of the first Order Form (as defined below) referencing this Agreement. This Agreement consists of the terms and conditions set forth below, any attachments or exhibits identified below and any Order Forms that reference this Agreement.

This Agreement permits you to purchase the Software and related Professional Services (as defined below) pursuant to a Paxata or Reseller (as defined below) purchase authorization, order form or online registration referencing this Agreement ("**Order Form**") and sets forth the basic terms and conditions under which the Software and related Professional Services will be delivered. This Agreement shall govern your initial purchase on the Effective Date as well as any future purchases made by you that reference this Agreement.

Purchase from Reseller: If you purchase the Software from an authorized reseller of Paxata ("**Reseller**"), your use of the Software shall be governed by this Agreement, subject to Section 12.16 (Purchase from Reseller) below.

Modifications to this Agreement: From time to time, Paxata may modify this Agreement. Unless otherwise specified by Paxata, changes become effective upon acceptance by the Federal Government or incorporated into the Multiple Award Schedule Contract or the Task/Delivery Order.

1. Paxata Software. Paxata provides a proprietary adaptive data preparation installed software solution (the "**Software**") designed to enable customers to aggregate, compare, compile, govern, and export data from multiple sources into new data sets for use with a variety of business intelligence tools. The Software is provided on a subscription basis for the Subscription Term specified on the applicable Order Form.

1.1 Orders and Delivery.

(a) **Order Forms.** Customer may purchase a subscription to the Software by executing an Order Form.

(b) **Subscription Term and Renewals.** Unless otherwise specified on the applicable Order Form, the term of any subscription shall be one (1) year commencing on the subscription start date specified on the applicable Order Form (the "**Initial Subscription Term**"). Unless terminated earlier in accordance with Section 4.2 (Termination), the Initial Subscription Term will

automatically renew upon expiration of the Initial Subscription Term for additional successive one (1) year terms (each, a "**Renewal Term**" and together with the Initial Subscription Term, the "**Subscription Term**") unless either party gives the other party prior written notice of cancellation at least thirty (30) days prior to the expiration of the then-current term. Paxata reserves the right to increase the subscription fees specified in an Order Form for any Renewal Term.

(c) **Delivery.** All Software and Documentation shall be delivered by electronic means unless otherwise specified on the applicable Order Form.

1.2 Grant of License. Subject to all of the terms and conditions of this Agreement, Paxata grants to Customer during the Subscription Term a non-transferable, non-sublicensable, non-exclusive license to use the object code form of the particular Software specified in an Order Form internally, but only in accordance with (a) the technical specification documentation

generally made available by Paxata to its customers with regard to the Software (“**Documentation**”), (b) this Agreement and (c) any limits on cores or other scope of use restrictions set forth in the applicable Order Form. “**Software**” shall also include any Documentation and any Support and Maintenance releases of the same Software product provided to Customer under this Agreement.

1.3 Installation and Copies. Customer may copy and install the Software on Customer's computers for use only by Customer's employees and Contractors (as defined in Section 1.4 below) subject to any limitations specified in the applicable Order Form. Customer may also make a reasonable number of copies of the Software for back-up and archival purposes.

1.4 Use by Affiliates and Contractors. Subject to the terms and conditions of this Agreement, Customer's Affiliates and Contractors may use the Software licensed to Customer, provided that (a) such use is only for Customer's or such Affiliate's benefit, (b) Customer agrees to remain responsible for each such Affiliate's and Contractor's compliance with the terms and conditions of this Agreement and (c) upon request Customer will identify each such Affiliate and Contractor. Use of the Software by the Affiliates, Contractors and Customer in the aggregate must be within the restrictions in the applicable Order Form. “**Affiliate**” means any entity under the control of Customer where “control” means ownership of or the right to control greater than 50% of the voting securities of such entity. The Affiliate rights granted in this section shall not apply to any “enterprise wide” licenses unless Affiliate usage is designated in the applicable Order Form. “**Contractor**” means any third party employed by Customer to perform services on behalf of Customer.

1.5 License Management Solution. The Software may utilize a license management solution which enables use of the Software as purchased by Customer in accordance with the applicable Order Form (including as with respect to Subscription Term, number of users and data usage limits). The license management solution may prevent further user login, availability of certain functionality, processing of additional data or setup of new users until a valid license is obtained by Customer from Paxata.

1.6 License Restrictions. Customer shall not (and shall not allow any third party to):

(a) decompile, disassemble, or otherwise reverse engineer the Software or attempt to reconstruct or discover any source code, underlying ideas, algorithms, file formats or programming interfaces of the Software by any means whatsoever (except and only to the extent that applicable law prohibits or restricts reverse engineering restrictions, and then only with prior written notice to Paxata);

(b) distribute, sell, sublicense, rent, lease or use the Software (or any portion thereof) for time sharing, hosting, service provider or like purposes;

(c) remove any product identification, proprietary, copyright or other notices contained in the Software (including any reports or data printed or exported from the Software);

(d) modify any part of the Software, create a derivative work of any part of the Software, incorporate the Software into or with other software, or use the Software (or any part thereof) to provide any product or service to a third party, except to the extent expressly authorized in writing by Paxata;

(e) publicly disseminate performance information or analysis (including, without limitation, benchmarks) from any source relating to the Software; or

(f) use the Software if Customer is a direct competitor of Paxata, except with Paxata's prior written consent.

2. **Ownership.** Notwithstanding anything to the contrary contained herein, except for the limited license rights expressly provided herein, Paxata and its suppliers have and will retain all rights, title and interest in and to the Software (including, without limitation, all patent, copyright, trademark, trade secret and other intellectual property rights) and all copies, modifications and derivative works thereof (including as may reflect any suggestions or feedback received from Customer). Customer acknowledges that it is obtaining only a limited license right to the Software and that irrespective of any use of the words “purchase”, “sale” or like terms hereunder no ownership rights are being conveyed to Customer under this Agreement or otherwise.

3. **Payment.** All payments are non-refundable (except as expressly set forth in this Agreement) and shall be made in U.S. dollars within thirty (30) days of invoice date, unless otherwise specified in the applicable Order Form. Customer shall be responsible for all taxes, withholdings, duties and levies arising from the order (excluding taxes based on the net income of Paxata). Any late payments shall be subject to a service charge equal to 1.5% per month of the amount due or the maximum amount allowed by law, whichever is less.

4. **Term of Agreement.**

4.1 Term. This Agreement is effective as of the Effective Date and expires on the day that the Subscription Terms for all Software licensed hereunder have expired. Either party may terminate this Agreement (including all related Order Forms) if the other party: (a) fails to cure any material breach of this Agreement within thirty (30) days after written notice of such breach; (b) ceases operation without a successor; or (c) seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within sixty (60) days thereafter). Except where an exclusive remedy may be specified in this Agreement, the exercise by either party of any remedy, including termination, will be without prejudice to any other remedies it may have under this Agreement, by law, or otherwise.

4.2 Termination. Upon any expiration or termination of this Agreement, Customer's license to the Software terminates and Customer shall cease any and all use of the Software. Customer shall further destroy all copies of the Software, the Documentation and any other Paxata Confidential Information in its possession and so certify to Paxata in writing.

4.3 Survival. Sections 1.6 (License Restrictions), 2 (Ownership), 3 (Payment), 4 (Term of Agreement), 5.3 (Disclaimer), 8 (Limitation of Remedies and Damages), 10 (Confidential Information) and 12 (General) shall survive any termination or expiration of this Agreement.

5. **Limited Warranty and Disclaimer.**

5.1 Limited Warranty. Paxata warrants to Customer that the Software shall operate in substantial conformity with the Documentation. Paxata does not warrant that Customer's use of

the Software will be uninterrupted or error-free or that any security mechanisms implemented by the Software will not have inherent limitations. Paxata's sole liability (and Customer's exclusive remedy) for any breach of this warranty shall be, in Paxata's sole discretion, to use commercially reasonable efforts to provide Customer with an error-correction or work-around which corrects the reported non-conformity, to replace the non-conforming Software with conforming Software, or if Paxata determines such remedies to be impracticable within a reasonable period of time, to terminate the applicable Subscription Term and refund any fees Customer has pre-paid for use of the Software for the terminated portion of the applicable Subscription Term.

5.2 **Exclusions.** The above warranty shall not apply: (a) unless Customer makes a claim within thirty (30) days of the date on which Customer first noticed the non-conformity, (b) if the Software is used with hardware or software not specified in the Documentation; (c) if any modifications are made to the Software by Customer or any third party; (d) to defects in the Software due to accident, abuse or improper use by Customer; or (e) to Software, services or items provided on a no charge or evaluation basis.

5.3 **Disclaimer.** THIS SECTION 5 CONTAINS A LIMITED WARRANTY AND EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 5 THE SOFTWARE AND ALL RELATED SERVICES ARE PROVIDED "AS IS". NEITHER PAXATA NOR ITS SUPPLIERS MAKES ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT. CUSTOMER MAY HAVE OTHER STATUTORY RIGHTS, BUT THE DURATION OF STATUTORILY REQUIRED WARRANTIES, IF ANY, SHALL BE LIMITED TO THE SHORTEST PERIOD PERMITTED BY LAW.

6. **Support & Maintenance.** Provided Customer has paid the applicable subscription fee, Paxata shall make available during the Subscription Term: (a) access to customer knowledgebase FAQs and other online support for the Software available at <http://servicedesk.paxata.com> and (b) maintenance releases for the Software from time-to-time in its sole discretion ("**Support and Maintenance**").

7. **Professional Services.** Paxata shall provide the professional services ("**Professional Services**"), if any, purchased in the applicable Order Form. The parties acknowledge that the scope of the Professional Services provided hereunder consists solely of either or both of: (a) assistance with Software installation, deployment, and usage; or (b) development or delivery of additional related Paxata copyrighted software or code. Customer shall have a license right to use anything delivered as part of the Professional Services subject to the terms of its license to use the Software, but Paxata shall retain all right, title and interest in and to any such work product, code or Software and any derivative, enhancement or modification thereof created by Paxata (or its agents). Professional Services may be ordered by Customer pursuant to a Statement of Work ("**SOW**") describing the work to be performed, fees and any applicable milestones, dependencies and other technical specifications or related information. Each SOW must be signed by both parties before Paxata shall commence work under such SOW. If the parties do not execute a separate SOW, the Services shall be provided as stated on the Order Form. Paxata may request reimbursement of reasonable travel and lodging expenses.

8. **Limitation of Remedies and Damages.**

8.1 **Consequential Damages Waiver.** EXCEPT FOR EXCLUDED CLAIMS (DEFINED BELOW), NEITHER PARTY (NOR ITS SUPPLIERS) SHALL BE LIABLE FOR ANY LOSS OF USE, LOST DATA, FAILURE OF SECURITY MECHANISMS, INTERRUPTION OF BUSINESS, OR ANY INDIRECT, SPECIAL, INCIDENTAL, RELIANCE, OR CONSEQUENTIAL DAMAGES OF ANY KIND (INCLUDING LOST PROFITS), REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EVEN IF INFORMED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

8.2 **Liability Cap.** NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, PAXATA'S AND ITS SUPPLIERS' ENTIRE LIABILITY TO CUSTOMER SHALL NOT EXCEED THE AMOUNT ACTUALLY PAID BY CUSTOMER TO PAXATA DURING THE PRIOR TWELVE (12) MONTHS UNDER THIS AGREEMENT.

8.3 **Excluded Claims.** "**Excluded Claims**" means any claim arising from a breach of Section 1.2 (Grant of License), 1.6 (License Restrictions) or 10 (Confidential Information).

8.4 **Failure of Essential Purpose.** The parties agree that the limitations specified in this Section 8 will survive and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

9. **Indemnification.** Paxata shall defend Customer from and against any claim by a third party alleging that the Software when used as authorized under this Agreement infringes a U.S. patent, U.S. copyright, or U.S. trademark and shall indemnify and hold harmless Customer from and against any damages and costs awarded against Customer or agreed in settlement by Paxata (including reasonable attorneys' fees) resulting from such claim, provided that Paxata shall have received from Customer: (i) prompt written notice of such claim (but in any event notice in sufficient time for Paxata to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and settlement (if applicable) of such claim; and (iii) all reasonable necessary cooperation of Customer. If Customer's use of the Software is (or in Paxata's opinion is likely to be) enjoined, if required by settlement or if Paxata determines such actions are reasonably necessary to avoid material liability, Paxata may, in its sole discretion: (a) substitute for the Software substantially functionally similar programs and documentation; (b) procure for Customer the right to continue using the Software; or if (a) and (b) are not commercially reasonable, (c) terminate the Agreement and refund to Customer any fees Customer has pre-paid for use of the Software for the terminated portion of the applicable Subscription Term. The foregoing obligations of Paxata shall not apply: (1) if the Software is modified by any party other than Paxata, but solely to the extent the alleged infringement is caused by such modification; (2) if the Software is combined with products or processes not specified in the Documentation or provided by Paxata, but solely to the extent the alleged infringement is caused by such combination; (3) to any unauthorized use of the Software; (4) if Customer continues to use any unsupported release of the Software (including any version of the Software that has been replaced with a non-infringing equivalent under this Section 9); (5) to any third-party code contained within the Software; or (6) if Customer settles or makes any admissions with respect to a claim without Paxata's prior written consent. THIS SECTION 9 SETS FORTH PAXATA'S AND ITS SUPPLIERS' SOLE LIABILITY AND CUSTOMER'S SOLE AND

EXCLUSIVE REMEDY WITH RESPECT TO ANY CLAIM OF INTELLECTUAL PROPERTY INFRINGEMENT.

10. Confidential Information. Each party (“**Receiving Party**”) agrees that all code, inventions, know-how, business, technical and financial information it obtains from the disclosing party (“**Disclosing Party**”) constitute the confidential property of the Disclosing Party (“**Confidential Information**”), provided that it is identified as confidential at the time of disclosure or should be reasonably known by the Receiving Party to be confidential or proprietary due to the nature of the information disclosed and the circumstances surrounding the disclosure. Any software, documentation or technical information provided by Paxata (or its agents), performance relating to any Paxata products or services (including without limitation the Software), and the terms and conditions of this Agreement shall be deemed Confidential Information of Paxata without any marking or further designation. Except as expressly authorized herein, the Receiving Party will (1) hold in confidence and not disclose any Confidential Information to third parties and (2) not use Confidential Information for any purpose other than fulfilling its obligations and exercising its rights under this Agreement. The Receiving Party may disclose Confidential Information to its employees, agents, contractors and other representatives having a legitimate need to know, provided that such representatives are bound to confidentiality obligations no less protective of the Disclosing Party than this Section 10 and that the Receiving Party remains responsible for compliance by any such representative with the terms of this Section 10. The Receiving Party’s obligations shall not apply to information that the Receiving Party can document: (i) was rightfully in its possession or known to it prior to receipt of the Confidential Information; (ii) is or has become public knowledge through no fault of the Receiving Party; (iii) is rightfully obtained by the Receiving Party from a third party without breach of any confidentiality obligation; or (iv) is independently developed by employees of the Receiving Party who had no access to such information. The Receiving Party may make disclosures to the extent required by law or court order, provided the Receiving Party notifies the Disclosing Party in advance and cooperates in any effort to obtain confidential treatment. The Receiving Party acknowledges that disclosure of Confidential Information would cause substantial harm for which damages alone would not be a sufficient remedy, and therefore that upon any such disclosure by the Receiving Party the Disclosing Party shall be entitled to seek appropriate equitable relief in addition to whatever other remedies it might have at law.

11. Publicity. Paxata may use Customer’s name, logo and marks to identify Customer as a customer of Paxata on Paxata’s website and other marketing materials.

12. General.

12.1 Assignment. This Agreement will bind and inure to the benefit of each party’s permitted successors and assigns. Customer may not assign this Agreement (or any part thereof) without the advance written consent of Paxata. Any attempt by Customer to transfer or assign this Agreement except as expressly authorized under this Section 12.1 will be null and void. Paxata may freely assign this Agreement without Customer’s consent.

12.2 Severability. If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise

remain in effect.

12.3 Governing Law; Jurisdiction and Venue. This Agreement shall be governed by the laws of the State of California and the United States without regard to conflicts of laws provisions thereof, and without regard to the United Nations Convention on the International Sale of Goods. Except as otherwise set forth in Section 12.4 (Dispute Resolution), any suit or proceeding arising out of or relating to this Agreement will be commenced in a federal court in the Northern District of California or in state court in San Francisco County, California, and both parties hereby submit to the personal jurisdiction of such courts.

12.4 Dispute Resolution. The parties agree that in the event any dispute arising out of or related to this Agreement (a “**Dispute**”) is not resolved in the ordinary course of business, the parties may in good faith attempt to resolve the Dispute.

This Section shall not be construed to prevent a party from bringing a claim in court at any time to avoid the expiration of any applicable limitations period, preserve a superior creditor position, or seek injunctive relief to prevent irreparable harm, including without limitation, harm caused by a breach of confidentiality obligations under Section 10 or to protect a party’s intellectual property rights.

12.5 Attorneys’ Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys’ fees and costs in connection with such action.

12.6 Notices. Any notice or communication required or permitted under this Agreement shall be in writing to the parties at the addresses set forth on the Order Form or at such other address as may be given in writing by either party to the other in accordance with this Section and shall be deemed to have been

received by the addressee (i) if given by hand, immediately upon receipt; (ii) if given by overnight courier service, the first business day following dispatch or (iii) if given by registered or certified mail, postage prepaid and return receipt requested, the second business day after such notice is deposited in the mail.

12.7 Amendments; Waivers. Except as otherwise expressly provided herein, no supplement, modification, or amendment of this Agreement shall be binding, unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived. No provision of any purchase order or other business form employed by Customer will supersede the terms and conditions of this Agreement, and any such document relating to this Agreement shall be for administrative purposes only and shall have no legal effect.

12.8 Entire Agreement. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement.

12.9 Audit Rights. Upon Paxata's written request, Customer shall certify in a signed writing that Customer's use of the Software is in full compliance with the terms of this Agreement (including any copy and user limitations). With prior reasonable notice of at least 10 days, Paxata may audit the copies of the Software in use by Customer provided such audit is during regular business hours; Customer is responsible for such audit costs only in the event the audit reveals that Customer's use is not in accordance with the licensed scope of use.

12.10 Independent Contractors. The parties to this Agreement are independent contractors. There is no relationship of partnership, joint venture, employment, franchise or agency created hereby between the parties. Neither party will have the power to bind the other or incur obligations on the other party's behalf without the other party's prior written consent.

12.11 Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement (except for a failure to pay fees) if the delay or failure is due to unforeseen events that occur after signing this Agreement and that are beyond the reasonable control of such party, such as a strike, blockade, war, act of terrorism, riot, natural disaster, failure or diminishment of power or telecommunications or data networks or services, or refusal of a license by a government agency.

12.12 Government End-Users. The Software is commercial computer software. If the user or licensee of the Software is an agency, department, or other entity of the United States Government, the use, duplication, reproduction, release, modification, disclosure, or transfer of the Software, or any related documentation of any kind, including technical data and manuals, is restricted by a license agreement or by the terms of this Agreement in accordance with Federal Acquisition Regulation 12.212 for civilian purposes and Defense Federal Acquisition Regulation Supplement 227.7202 for military purposes. The Software was developed fully at private expense. All other use is prohibited.

12.13 Export Compliance. Customer acknowledges that the Software is subject to export restrictions by the United States government and import restrictions by certain foreign governments. Customer shall not and shall not allow any third-party to remove or export from the United States or any direct product thereof: (a) into (or to a national or resident of) any embargoed or terrorist-supporting country; (b) to anyone on the U.S. Commerce Department's Table of Denial Orders or U.S. Treasury Department's list of Specially Designated Nationals; (c) to any country to which such export or re-export is restricted or prohibited, or as to which the United States government or any agency thereof requires an export license or other governmental approval at the time of export or re-export without first obtaining such license or approval; or (d) otherwise in violation of any export or import restrictions, laws or regulations of any United States or foreign agency or authority. Customer agrees to the foregoing and warrants that it is not located in, under the control of, or a national or resident of any such prohibited country or on any such prohibited party list. The Software is further restricted from being used for the design or development of nuclear, chemical, or biological weapons or missile technology, or for terrorist activity, without the prior permission of the United States government.

12.14 Open Source. The Software may contain or be provided with components subject to the terms and conditions of "open source" software licenses ("**Open Source Software**"). Open Source Software may be identified in the Documentation, or Paxata shall provide a list of the Open Source Software for a particular version of the Software to Customer upon Customer's written request. To the extent required by the license that accompanies the Open Source Software, the terms of such license will apply in lieu of the terms of this Agreement with respect to such Open Source Software, including, without limitation, any provisions governing access to source code, modification or reverse engineering.

12.15 Subcontractors. Paxata may use the services of subcontractors and permit them to exercise the rights granted to Paxata in furtherance of Paxata's performance under this Agreement, provided that Paxata remains responsible for (i) compliance of any such subcontractor with the terms of this Agreement and (ii) for the overall performance of Paxata as required under this Agreement.

12.16 Purchase from Reseller. Notwithstanding anything to the contrary in this Agreement, if Customer purchased the Software through a Reseller, the following terms are applicable and shall prevail in event of any conflict with any other provisions of this Agreement.

- a) The terms of this Agreement constitute the only terms applicable to the provision of the Software to Customer and no terms between Customer and Reseller shall apply to Customer's use of the Software.
- b) Reseller has no authority to make any statements, representations, warranties or commitments on Paxata's behalf and any such statements, representations, warranties or commitments are null and void.
- c) Customer may place orders for the Software by executing an Order Form with Reseller and paying Reseller fees as specified therein.
- d) In the event Customer is entitled to a refund under this Agreement, Customer must request such refund through Reseller. Any request sent directly to Paxata may be redirected to Reseller. Paxata will refund any applicable fees to Reseller and Reseller shall be solely responsible for refunding such fees to Customer. Paxata shall have no further liability to Customer in the event Reseller fails to refund such fees to Customer.
- e) Customer may purchase renewal subscriptions or Professional Services under this Agreement directly from Paxata pursuant to an Order Form and SOW (if applicable).
- f) Customer shall receive end user support directly from Paxata during the applicable Subscription Term in accordance with the terms of this Agreement.
- g) If Reseller is providing Customer with consulting or other professional services related to the Software, such services shall be provided under the terms of a separate agreement between Reseller and Customer. For clarity, the provisions regarding Professional Services in this Agreement apply solely to services provided by Paxata.
- l) This Agreement shall survive any termination of Customer's agreement with Reseller.