

## PRAXI.AI STANDARD CONTRACT EULA

### 1. Scope.

**1.1 Terms and Conditions.** This Standard Contract (the "**Standard Contract**") sets forth the terms and conditions applicable to the licensing of Product from the licensor ("**Licensor**") by the Party (defined below) subscribing to the Product ("**Buyer**"), deployed into Buyer's Computing Environment. This Standard Contract only applies if the Product is expressly offered pursuant to the Standard Contract. The offer of Product pursuant to this Standard Contract, and Buyer's purchase of the corresponding Subscription, constitutes each Party's respective acceptance of this Standard Contract and their entry into this Agreement (defined below), and this Agreement will become effective on the date of Buyer's purchase of the corresponding Subscription. Unless defined elsewhere in this Standard Contract, terms in initial capital letters have the meanings set forth in Section 13. Buyer and Licensor may be referred to collectively as the "**Parties**" or individually as a "**Party**".

**1.2 Product Subscription.** Licensor will fulfill the Subscription to Buyer. A Subscription, as described in the applicable Product Listing and the corresponding purchase transaction, may be for Product deployed in Buyer's Computing Environment. The pricing and term of the Subscription (if not on demand) are set forth in the Product Listing. Additional information concerning the Product and included services that are included or referenced in the Product Listing are a part of the Product Listing; such information may include but is not limited to: intended geographic use of the Product, any technical requirements for use of the Product, Support Services (which may vary by geography), information regarding Open Source Software and a description of Licensor's security practices.

**1.3 Agreement.** Each Subscription is subject to and governed by this Standard Contract, the applicable Product Listing, the terms and conditions of the NDA (if any and as defined in Section 6.4), and any amendments to any of the foregoing as may be agreed upon by the Parties in accordance with Section 12.3, which together constitute the entire agreement between Buyer and Licensor (the "**Agreement**"). Each Subscription is a separate agreement between Buyer and Licensor. In the event of any conflict between the terms and conditions of the various components of this Agreement, the following order of precedence will apply: (a) any amendment agreed upon by the Parties; (b) the NDA (if any); (c) the Product Listing; and (d) this Standard Contract.

### 2. Licenses.

#### 2.1 Licensed Materials.

**2.1.1** If the Subscription is for a Product, or includes a component of a Product, deployed in Buyer's Computing Environment, Licensor hereby grants to Buyer during the term of the Subscription, subject to Section 2.1.3, a nonexclusive, worldwide (subject to Section 12.4), nontransferable (except in connection with an assignment permitted under Section 12.2), non-terminable (except as provided in Section 10) license under all Proprietary Rights in and to the Product, or the applicable Product component, to deploy, operate and use the Product in Buyer's Computing Environment and to allow its Users to access and use the Product, or the applicable Product component, as so deployed, in accordance with the Product Listing, the usage purchased in the Subscription, and the terms and conditions of the Agreement.

**2.1.2** Buyer may use the Product only: (a) in support of the internal operations of Buyer's and its Affiliates' business(es) or organization(s); (b) in connection with Buyer's and its Affiliates' products and services (but, for clarity, not as a stand-alone product or service of Buyer or its Affiliates); and/or (c) in connection with Buyer's and its Affiliate's interactions with Users.

**2.1.3** Buyer may make a reasonable number of copies of the Documentation as necessary to use such Product in accordance with the rights granted under this Agreement, provided that Buyer includes all proprietary legends and other notices on all copies. Licensor retains all rights not expressly granted to Buyer under this Agreement.

**2.2 Affiliates and Contractors.** With respect to Affiliates and Contractors that Buyer allows to use the Licensed Materials: (a) Buyer remains responsible for all obligations hereunder arising in connection with such Affiliate's or Contractor's use of the Licensed Materials; and (b) Buyer agrees to be directly liable for any act or omission by such Affiliate or Contractor to the same degree as if the act or omission were performed by Buyer such that a breach by an Affiliate or a Contractor of the provisions of this Agreement will be deemed to be a breach by Buyer. The performance of any act or omission under this Agreement by an Affiliate or a Contractor for, by or through Buyer will be deemed the act or omission of Buyer.

**2.3 Restrictions.** Except as specifically provided in this Agreement, Buyer and any other User of any Licensed Materials, in whole or in part, may not: (a) copy the Licensed Materials, in whole or in part; (b) distribute copies of Licensed Materials, in whole or in part, to any third party; (c) modify, adapt, translate, make alterations to or make derivative works based on Licensed Materials or any part thereof; (d) except as permitted by Law, decompile, reverse engineer, disassemble or otherwise attempt to derive source code, algorithms or the underlying structure of the Product; (e) use, rent, loan, sub-license, lease, distribute or attempt to grant other rights to any part of the Licensed Materials to third parties; (f) use the Licensed Materials to act as a consultant, service bureau or application service provider; or (g) permit access of any kind to the Licensed Materials to any third party.

**2.4 Open Source Software.** Subject to the requirements of Section 5.1(d), Product may contain or be provided with Open Source Software. If Buyer's use of the Product subjects Buyer to the terms of any license governing the use of Open Source Software, then information identifying such Open Source Software and the applicable license shall be incorporated or referenced in the Product Listing or Documentation. The terms of this Agreement apply to Open Source Software (i) to the extent not prohibited by the license to which the Open Source Software is subject, including without limitation, warranties and indemnification, and (ii) except to the extent required by the license to which the Open Source Software is subject, in which case the terms of such license will apply in lieu of the terms of this Agreement only with respect to such Open Source Software, and not to the entire Product, including without limitation, any provisions governing attribution, access to source code, modification and reverse-engineering.

**2.5 No Additional Terms.** No shrink-wrap, click-acceptance or other terms and conditions outside this Agreement provided with any Licensed Materials or any part thereof ("**Additional Terms**") will be binding on Buyer or its Users, even if use of the Licensed Materials, or any part thereof, requires an affirmative "acceptance" of such Additional Terms before access to or use of the Licensed Materials, or any part thereof, is permitted. All such Additional Terms will be of no force or effect and will be deemed rejected by Buyer in their entirety. For clarity, the Product Listing and or Documentation are not Additional Terms subject to this Section.

**2.6 High-Risk Activities.** The Product is not designed or developed for use in high risk, hazardous environments requiring fail-safe performance, including without limitation in the operation of nuclear facilities, aircraft navigation or control systems, air traffic control, or weapons systems, or any other application in which the failure of the Product could lead to severe physical or environmental damages ("**High Risk Activities**"). Buyer will not use the Product for any High Risk Activities.

### 3. Services.

**Support Services.** Licensor will make available to Buyer Documentation concerning the use and operation of the Product, and Licensor will provide Support Services to Buyer as described, incorporated or referenced in the Product Listing as further detailed at <https://praxidata.com/product-support/>.

### 4. Proprietary Rights.

**4.1 Licensed Materials.** Subject to the licenses granted herein, Licensor will retain all right, title and interest it may have in and to the Licensed Materials, including all Proprietary Rights therein. Nothing in this Agreement will be construed or interpreted as granting to Buyer any rights of ownership or any other proprietary rights in or to the Licensed Materials or any Proprietary Rights therein.

**4.2 Feedback.** Buyer may, at its option, provide suggestions, ideas, enhancement requests, recommendations or feedback regarding the Licensed Materials or Support Services ("**Feedback**"), provided however, that Feedback does not include any Proprietary Rights of Buyer or Buyer's Affiliates or

any Buyer Data or Buyer Materials. Licensor may use and incorporate Feedback in Licensor's products and services without compensation or accounting to Buyer, provided that neither Licensor nor its use of the Feedback identifies Buyer as the source of such Feedback. Feedback is not confidential to Buyer. Buyer will have no obligation to provide Feedback, and all Feedback is provided by Buyer "as is" and without warranty of any kind.

## 5. Warranties.

**5.1 Licensed Materials.** Licensor represents and warrants to Buyer that: (a) for Subscriptions with Entitlement Pricing, in the case of Product, or a component of a Product, deployed in the Buyer's Computing Environment, the Product or component will conform, in all material respects, to the Documentation, for 30 days after Buyer's purchase of the Subscription or the term of the Subscription, whichever is shorter; (b) a Product, or a component of a Product, provisioned for deployment in the Buyer's Computing Environment will not contain any automatic shut-down, lockout, "time bomb" or similar mechanisms that could interfere with Buyer's exercise of its rights under this Agreement (for clarity, the foregoing does not prohibit Keys that expire at the end of the Subscription); and (d) the Product, and Buyer's use thereof as permitted under this Agreement, will not be subject to any license or other terms that require that any Buyer Data, Buyer Materials or any software, documentation, information or other materials integrated, networked or used by Buyer with the Product, in whole or in part, be disclosed or distributed in source code form, be licensed for the purpose of making derivative works, or be redistributable at no charge.

**5.2 Services.** Licensor represents and warrants that any Support Services will be performed in a professional manner with a level of care, skill and diligence performed by experienced and knowledgeable professionals in the performance of similar services and in accordance with the Product Listing and Documentation.

**5.3 Remedies.** If any Product or Service fails to conform to the foregoing warranties, Licensor promptly will, at its option and expense, correct the Product and re-perform the Services as necessary to conform to the warranties. If Licensor does not correct the Product or re-perform the Services to conform to the warranties within a reasonable time, not to exceed 30 days (or such other period as may be agreed upon by the Parties) (the "**Cure Period**"), as Buyer's sole remedy and Licensor's exclusive liability (except as provided in Section 8), Buyer may for a period of 30 days following the conclusion of the Cure Period (or such other period as may be agreed upon by the Parties), elect to terminate the Subscription and this Agreement without further liability and Licensor will provide Buyer with a refund of any fees prepaid to Licensor by Buyer, prorated for the portion of the Subscription unused at the time Buyer reported the breach of warranty to Licensor, as well as, if applicable, any service credits available under Licensor's Support Services or other policies.

**5.4 Warranty Exclusions.** Licensor will have no liability or obligation with respect to any warranty to the extent attributable to any: (a) use of the Product by Buyer in violation of this Agreement or applicable Law; (b) modifications to the Licensed Materials not provided by Licensor or its Personnel; (c) use of the Product in combination with third-party equipment or software not provided or made accessible by Licensor or contemplated by the Product Listing or Documentation; or (d) use by Buyer of Product in conflict with the Documentation, to the extent that such nonconformity would not have occurred absent such use or modification by Buyer.

**5.5 Compliance with Laws.** Each Party represents and warrants to the other Party that it will comply with all applicable international, national, state and local laws, ordinances, rules, regulations and orders, as amended from time to time ("**Laws**") applicable to such Party in its performance under this Agreement.

**5.6 Power and Authority.** Each Party represents and warrants to the other Party that: (a) it has full power and authority to enter in and perform this Agreement and that the execution and delivery of this Agreement has been duly authorized; and (b) this Agreement and such Party's performance hereunder will not breach any other agreement to which the Party is a party or is bound or violate any obligation owed by such Party to any third party.

**5.7 Disclaimer.** EXCEPT FOR THE WARRANTIES SPECIFIED IN THIS AGREEMENT, NEITHER PARTY MAKES ANY WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, REGARDING THE LICENSED MATERIALS, SERVICES, BUYER MATERIALS AND BUYER DATA, AND EACH PARTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. LICENSOR DOES NOT WARRANT: (A) THAT THE LICENSED MATERIALS WILL MEET BUYER'S REQUIREMENTS; OR (B) THAT THE OPERATION OF THE PRODUCT WILL BE UNINTERRUPTED OR ERROR FREE.

## 6. Confidentiality.

**6.1 Confidential Information.** "**Confidential Information**" means any nonpublic information directly or indirectly disclosed by either Party (the "**Disclosing Party**") to the other Party (the "**Receiving Party**") or accessible to the Receiving Party pursuant to this Agreement that is designated as confidential or that, given the nature of the information or the circumstances surrounding its disclosure, reasonably should be considered as confidential, including without limitation technical data, trade secrets, know-how, research, inventions, processes, designs, drawings, strategic roadmaps, product plans, product designs and architecture, security information, marketing plans, pricing and cost information, marketing and promotional activities, business plans, customer and supplier information, employee and User information, business and marketing plans, and business processes, and other technical, financial or business information, and any third party information that the Disclosing Party is required to maintain as confidential. Confidential Information will not, however, include any information which: (a) was publicly known or made generally available to the public prior to the time of disclosure; (b) becomes publicly known or made generally available after disclosure through no fault of the Receiving Party; (c) is in the possession of the Receiving Party, without restriction as to use or disclosure, at the time of disclosure by the Disclosing Party; (d) was lawfully received, without restriction as to use or disclosure, from a third party (who does not have an obligation of confidentiality or restriction on use itself); or (e) is developed by the Receiving Party independently from this Agreement and without use of or reference to the Disclosing Party's Confidential Information or Proprietary Rights. Except for rights expressly granted in this Agreement, each Party reserves all rights in and to its Confidential Information. The Parties agree that the Licensed Materials are Confidential Information of Licensor.

**6.2 Obligations.** The Parties will maintain as confidential and will avoid disclosure and unauthorized use of Confidential Information of the other Party using reasonable precautions. Each Party will protect such Confidential Information with the same degree of care that a prudent person would exercise to protect its own confidential information of a like nature, and to prevent the unauthorized, negligent, or inadvertent use, disclosure, or publication thereof or access thereto. Each Party will restrict Confidential Information to individuals who need to know such Confidential Information and who are bound to confidentiality obligations at least as protective as the restrictions described in this Section 6. Except as otherwise permitted under this Agreement, neither Party will use Confidential Information of the other Party for any purpose except in fulfilling its obligations or exercising its rights under this Agreement or as necessary for proper use of the Product. Each Party will promptly notify the other Party if it becomes aware of any unauthorized use or disclosure of the other Party's Confidential Information, and reasonably cooperate with the other Party in attempts to limit disclosure.

**6.3 Compelled Disclosure.** If and to the extent required by applicable Law, including regulatory requirements, discovery request, subpoena, court order or governmental action, the Receiving Party may disclose or produce Confidential Information but will give reasonable prior notice (and where prior notice is not permitted by applicable Law, notice will be given as soon as the Receiving Party is legally permitted) to the Disclosing Party to permit the Disclosing Party to intervene and to request protective orders or confidential treatment therefor or other appropriate remedy regarding such disclosure. Disclosure of any Confidential Information pursuant to any legal requirement will not be deemed to render it non-confidential, and the Receiving Party's obligations with respect to Confidential Information of the Disclosing Party will not be changed or lessened by virtue of any such disclosure. Notwithstanding any provisions herein, if Buyer is a Government Entity, Buyer will comply with all Laws applicable to it with respect to disclosure of public information.

**6.4 NDA.** Buyer and Licensor may agree to a separate nondisclosure agreement between Buyer and Licensor (or the respective Affiliates of Buyer and Licensor) ("**NDA**") that applies to disclosures occurring during the term of the Subscription, in which case the terms and conditions thereof are incorporated herein by reference and will apply instead of subsections 6.1 through 6.3 of this Section 6.

## 7. Limitations of Liability.

**7.1 Disclaimer; General Cap.** SUBJECT TO SECTIONS 7.2 AND 7.3, IN NO EVENT WILL (a) EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, WHETHER SUCH DAMAGES ARE BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND (b) EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, WHETHER SUCH LIABILITY ARISES FROM CLAIMS BASED IN CONTRACT, TORT OR OTHER LEGAL THEORY, EXCEED THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE LIABILITY.

**7.2 Exceptions.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTION 7.1(a) AND (b) WILL NOT APPLY TO A PARTY'S GROSS NEGLIGENCE, WILLFUL MISCONDUCT, FRAUD, EITHER PARTY'S BREACH OF CONFIDENTIALITY OBLIGATIONS IN SECTION 6, OR BUYER'S INFRINGEMENT, MISUSE OR

MISAPPROPRIATION OF LICENSOR'S INTELLECTUAL PROPERTY IN AND TO LICENSED MATERIALS LICENSED TO BUYER UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, BUYER'S TOTAL CUMULATIVE LIABILITY REALTING TO DATA BREACHES WILL NOT EXCEED (IN LIEU OF AND NOT IN ADDITION TO THE AMOUNT SET FORTH IN SECTION 7.I) THREE TIMES THE FEES AND OTHER AMOUNTS PAID AND REQUIRED TO BE PAID UNDER THIS AGREEMENT IN THE 12 MONTHS PRECEDING THE EVENT GIVING RISE TO THE DAMAGES.

**7.3 Exception for Certain Indemnification Obligations.** THE EXCLUSIONS OF AND LIMITATIONS ON LIABILITY SET FORTH IN SECTIONS 7.I(a) AND (b) WILL NOT APPLY TO ANY COSTS OF DEFENSE AND ANY AMOUNTS AWARDED AGAINST THE INDEMNIFIED PARTY BY A COURT OF COMPETENT JURISDICTION OR AGREED UPON PURSUANT TO SETTLEMENT AGREEMENT THAT ARE SUBJECT TO SUCH PARTY'S INDEMNIFICATION AND DEFENSE OBLIGATIONS UNDER THIS AGREEMENT.

## **8. Indemnification.**

**8.1 Licensor Indemnity.** Subject to this Section 8, Licensor agrees, at its own expense, to pay all Damages (as defined below) and defend Buyer from (or at Licensor's option, settle) any claim instituted by a third party and asserted against Buyer that any Licensed Material when used in accordance with the applicable Documentation infringes any United States patent, copyright, trade secret or other proprietary right of a third party (each an "IP Claim"), provided that Buyer: (i) promptly notifies Licensor in writing of any such IP Claim; (ii) gives Licensor sole control over the investigation, defense and settlement of the IP Claim; and (iii) assists and fully cooperates with Licensor in the defense of same. Licensor agrees to pay any damages awarded by a court of competent jurisdiction against Buyer (or agreed to in a settlement by Licensor) resulting from the IP Claim, including any awarded costs and awarded attorneys' fees (collectively "Damages"). Licensor will not be responsible for any settlement (and the associated Damages agreed to in such settlement) that it does not approve in writing prior to such settlement.

**8.2 Infringement Remedy.** Following notice of an IP Claim or any facts which may give rise to such IP Claim, Licensor may, in its sole discretion and at its option: (i) procure for Buyer the right to continue to use the Licensed Material; (ii) replace the Licensed Material; (iii) modify the Licensed Material to make it non-infringing; or (iv) if Buyer's use of the Licensed Material is enjoined in a non-appealable judgment and Licensor determines that it is not commercially reasonable to perform any of alternatives (i) through (iii), Licensor may (a) terminate the license for the allegedly infringing Licensed Material and refund the pre-paid and unused Subscription fees paid by Buyer for the use of such allegedly infringing Licensed Material.

**8.3** In no event will Licensor have any obligations under this Section 8 or any liability for any IP Claim if the IP Claim is caused by, or results from: (i) Buyer's combination or use of the Licensed Material with non-Licensor software or services, or any equipment, data or other materials, if such IP Claim would have been avoided absent such combination or use; (ii) modification of the Licensed Material by anyone other than Licensor if such IP Claim would have been avoided by use of the unmodified Licensed Material; (iii) Buyer's continued allegedly infringing activity after being notified thereof or after being provided modifications that would have avoided the alleged infringement; (iv) Buyer's use of the Licensed Material in a manner not strictly in accordance with this Agreement and applicable Product Listing; (v) Licensor's modification of the Licensed Material in compliance with Buyer's written instructions, requests or specifications; (vi) use of a release other than Licensor's most current release of the Licensed Material if the IP Claim would have been avoided by use of the most current release, provided Buyer is given an opportunity to use such most current release for no additional fee, or (vii) any software made available under an open source license.

**8.4** THIS SECTION 8 STATES LICENSOR'S ENTIRE LIABILITY AND BUYER'S SOLE AND EXCLUSIVE REMEDY FOR INFRINGEMENT OR ALLEGED INFRINGEMENT OF A THIRD PARTY'S INTELLECTUAL PROPERTY RIGHTS.

## **9. Term and Termination.**

**9.1 Term.** This Agreement will continue in full force and effect until conclusion of the Subscription, unless terminated earlier by either Party as provided by this Agreement.

**9.2 Termination.** Either Party may terminate the Subscription or this Agreement if the other Party materially breaches this Agreement and does not cure the breach within 30 days following its receipt of written notice of the breach from the non-breaching Party.

### **9.3 Effect of Termination.**

**9.3.1** Upon termination or expiration of the Subscription or this Agreement, Buyer's right to use the Product licensed under such Subscription will terminate, and Buyer's access to the Product and Service provided under such Subscription may be disabled and discontinued. Termination or expiration of any Subscription purchased by Buyer from Licensor will not terminate or modify any other Subscription purchased by Buyer from Licensor.

**9.3.2** Sections 4 (Proprietary Rights), 6 (Confidentiality), 7 (Limitations of Liability), 8 (Indemnification), 9.3 (Effect of Termination), 10 (Insurance), 11 (General), and 12 (Definitions) and any perpetual license granted under this Agreement, together with all other provisions of this Agreement that may reasonably be interpreted or construed as surviving expiration or termination, will survive the expiration or termination of this Agreement for any reason; but the nonuse and nondisclosure obligations of Section 6 will expire five years following the expiration or termination of this Agreement, except with respect to, and for as long as, any Confidential Information constitutes a trade secret.

## **10. Insurance.**

**10.1 Coverages.** Each Party will obtain and maintain, throughout the term of this Agreement, commercially reasonable levels of insurance in relation to its obligations performing under this Agreement.

## **11. General.**

**11.1 Applicable Law.** This Agreement will be governed and interpreted under the laws of the State of California, excluding the principles of conflict of laws thereof and of any other jurisdiction. The Parties agree that any legal action or proceeding relating to this Agreement will be instituted solely in the state and federal courts located in Santa Clara County, California. Each Party irrevocably submits to the jurisdiction of such courts, and each Party waives any objection that it may have to the laying of the venue of any such action or proceeding in the manner provided in this Section. The Parties agree that the United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**11.2 Assignment.** Neither Party may assign or transfer this Agreement or any rights or delegate any duties herein without the prior written consent of the other Party, which will not be reasonably withheld, delayed or conditioned. Notwithstanding the foregoing, and without gaining the other Party's written consent, Licensor may assign this Agreement, in its entirety, and delegate its obligations to its Affiliates or to any entity acquiring all or substantially all of its assets, whether by sale of assets, sale of stock, merger or otherwise and Buyer may assign this Agreement, in its entirety, to any Affiliates or entity acquiring all or substantially all of its assets related to Buyer's account or the Buyer's entire business, whether by sale of assets, sale of stock, merger or otherwise. Any attempted assignment, transfer or delegation in contravention of this Section will be null and void. This Agreement will inure to the benefit of the Parties hereto and their permitted successors and assigns.

**11.3 Entire Agreement.** This Agreement constitutes the entire agreement between the Parties relating to the subject matter hereof, and there are no other representations, understandings or agreements between the Parties relating to the subject matter hereof. This Agreement is solely between Buyer and Licensor. The terms and conditions of this Agreement will not be changed, amended, modified or waived unless such change, amendment, modification or waiver is in writing and signed by authorized representatives of the Parties. NEITHER PARTY WILL BE BOUND BY, AND EACH SPECIFICALLY OBJECTS TO, ANY PROVISION THAT IS DIFFERENT FROM OR IN ADDITION TO THIS AGREEMENT (WHETHER PROFFERED ORALLY OR IN ANY QUOTATION, PURCHASE ORDER, INVOICE, SHIPPING DOCUMENT, ONLINE TERMS AND CONDITIONS, ACCEPTANCE, CONFIRMATION, CORRESPONDENCE, OR OTHERWISE), UNLESS SUCH PROVISION IS SPECIFICALLY AGREED TO IN A WRITING SIGNED BY BOTH PARTIES.

**11.4 Export Laws.** Each Party will comply with all applicable customs and export control laws and regulations of the United States and/or such other country, in the case of Buyer, where Buyer or its Users use the Product or Services, and in the case of Licensor, where Licensor provides the Product or Services. Each Party certifies that (i) it and its Personnel are not on any of the relevant U.S. Government Lists of prohibited persons, including but not limited to the Treasury Department's List of Specially Designated Nationals and the Commerce Department's list of Denied Persons and (ii) neither it nor its Personnel are the subject or target of any sanctions program, including but not limited to the sanctions programs of the U.S., the European Union, and UN Security Council. Neither Party will export, re-export, ship, or otherwise transfer the Licensed Materials, Services or Buyer Data to any country subject to an embargo or other sanction by the United States or other applicable jurisdiction.

**11.5 Force Majeure.** Neither Party will be liable hereunder for any failure or delay in the performance of its obligations in whole or in part, on account of riots, fire, flood, earthquake, explosion, epidemics, war, strike or labor disputes (not involving the Party claiming force majeure), embargo, civil or military authority, act of God, governmental action or other causes beyond its reasonable control and without the fault or negligence of such Party or its Personnel and such failure or delay could not have been prevented or circumvented by the non-performing Party through the use of alternate

sourcing, workaround plans or other reasonable precautions (a **"Force Majeure Event"**). If a Force Majeure Event continues for more than 14 days for any Subscription with Entitlement Pricing, Buyer may cancel the unperformed portion of the Subscription and receive a pro rata refund of any fees prepaid by Buyer to Licensor for such unperformed portion.

**11.6 Government Rights.** As defined in FARS §2.101, the Product and Documentation are "commercial items" and according to DFARS §252.227 and 7014(a) (1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation". Consistent with FARS §12.212 and DFARS §227.202, any use, modification, reproduction, release, performance, display or disclosure of such commercial software or commercial software documentation by the U.S. government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

**11.7 Headings.** The headings throughout this Agreement are for reference purposes only, and the words contained therein will in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**11.8 No Third-Party Beneficiaries.** The terms of this Agreement are intended to be, and are solely for the benefit of, Licensor and Buyer and do not create any right in favor of any third party.

**11.9 Notices.** To be effective, notice under this Agreement must be given in writing. Each Party consents to receiving electronic communications and notifications from the other Party in connection with this Agreement. Each Party agrees that it may receive notices from the other Party regarding this Agreement: (a) by email to the email address designated by such Party as a notice address for the Standard Contract; (b) by personal delivery; (c) by registered or certified mail, return receipt requested; or (d) by nationally recognized courier service. Notice will be deemed given upon written verification of receipt.

**11.10 Nonwaiver.** Any failure or delay by either Party to exercise or partially exercise any right, power or privilege under this Agreement will not be deemed a waiver of any such right, power or privilege under this Agreement. No waiver by either Party of a breach of any term, provision or condition of this Agreement by the other Party will constitute a waiver of any succeeding breach of the same or any other provision hereof. No such waiver will be valid unless executed in writing by the Party making the waiver.

**11.11 Publicity.** Neither Party will issue any publicity materials or press releases that refer to the other Party or its Affiliates, or use any trade name, trademark, service mark or logo of the other Party or its Affiliates in any advertising, promotions or otherwise, without the other Party's prior written consent.

**11.12 Relationship of Parties.** The relationship of the Parties will be that of independent contractors, and nothing contained in this Agreement will create or imply an agency relationship between Buyer and Licensor, nor will this Agreement be deemed to constitute a joint venture or partnership or the relationship of employer and employee between Buyer and Licensor. Each Party assumes sole and full responsibility for its acts and the acts of its Personnel. Neither Party will have the authority to make commitments or enter into contracts on behalf of, bind, or otherwise obligate the other Party.

**11.13 Severability.** If any term or condition of this Agreement is to any extent held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement will not be affected thereby, and each term and condition will be valid and enforceable to the fullest extent permitted by law.

**11.14 Subcontracting.** Licensor may use Subcontractors in its performance under this Agreement, provided that: (a) Licensor remains responsible for all its duties and obligations hereunder and the use of any Subcontractor will not relieve or reduce any liability of Licensor or cause any loss of warranty under this Agreement; and (b) Licensor agrees to be directly liable for any act or omission by such Subcontractor to the same degree as if the act or omission were performed by Licensor such that a breach by a Subcontractor of the provisions of this Agreement will be deemed to be a breach by Licensor. The performance of any act or omission under this Agreement by a Subcontractor for, by or through Licensor will be deemed the act or omission of Licensor. Upon request, Licensor will identify to Buyer any Subcontractors performing under this Agreement, including any that have access to Buyer Data, and such other information reasonably requested by Buyer about such subcontracting.

## **12. Definitions.**

**12.1 "Affiliate"** means, with respect to a Party, any entity that directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with such Party.

**12.2 "Buyer's Computing Environment"** means the Buyer computing environment in which Licensor authorizes use of the Subscription.

**12.3 "Contractor"** means any third party contractor of Buyer or other third party performing services for Buyer, including outsourcing suppliers.

**12.4 "Documentation"** means the user guides, manuals, instructions, specifications, notes, documentation, printed updates, "read-me" files, release notes and other materials related to the Product (including all information included or incorporated by reference in the applicable Product Listing), its use, operation or maintenance, together with all enhancements, modifications, derivative works, and amendments to those documents, that Licensor publishes or provides under this Agreement.

**12.6 "Entitlement Pricing"** means any Subscription pricing model where Buyer purchases a quantity of usage upfront, including prepaid and installment payment pricing models.

**12.7 "Governmental Entity"** means the government of any nation or any political subdivision thereof, whether at the national, state, territorial, provincial, municipal, or any other level, including any agency, authority, regulatory body, court, central bank, or other governmental entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of government (including any supra-national bodies such as the European Union or the European Central Bank).

**12.8 "Licensed Materials"** means the Product, Documentation and any other items, materials or deliverables that Licensor provides, or is obligated to provide, as part of a Subscription.

**12.9 "Open Source Software"** means software distributed under a licensing or distribution model that is publicly available and makes the source code to such software available to licensees for use, modification and redistribution.

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