

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.).

SOFTWARE LICENSE AGREEMENT

This Software License Agreement (this “Agreement”), is made between the Government Ordering Activity (“Licensee”), and SYNTASA, Inc., a Delaware corporation (“Licensor”). In consideration of the mutual promises contained in this Agreement, Licensee and Licensor hereby agree as follows:

1. Definitions. The following terms (whether used in the singular or plural) are used in this Agreement with the respective meanings set forth below.

1.1. “Affiliate” means with respect to either party, any entity that controls, is controlled by or is under common control with such party.

1.2. “Authorized Systems” shall mean the number of computer systems owned, operated and under the direct supervision and control of Licensee specified on an Order Form.

1.3. “Confidential Information” means any material or information relating to a Party’s research, development, products, product plans, services, Licensees, Licensee lists, markets, software, developments, inventions, processes, formulas, technologies, designs, drawings, marketing, finances, or other business information or trade secrets that such disclosing Party treats as proprietary or confidential. Without limiting the foregoing, the software and any databases (including any data models, structures, non-Licensee specific data and aggregated statistical data contained therein) of Licensor shall constitute Confidential Information of Licensor.

1.4. “Documentation” means all manuals, instructions and other documents relating to the use, operation or maintenance of the Software, together with all enhancements, modifications and amendments to those documents that are furnished to Licensee under this Agreement.

1.5. “License Term” shall have the meaning set forth in the applicable Order Form for the ordered Software; if no term is specified in an Order Form then the License Term shall be one year.

1.6. “Order Form” shall mean Licensor’s standard order form, purchase agreement or contract to purchase and/or license Syntasa software, executed by both Parties, substantially or a Licensee order form that references this Agreement and sets forth the Software and the License Term for the Software.

1.7. “Proprietary Right” means any patent, copyright, trademark, mask work, trade secret or other proprietary right.

1.8. “Software” means the computer programs listed on an Order Form, in machine readable, object code form, together with all enhancements, modifications and amendments to those computer programs that are furnished to Licensee under this Agreement as part of any maintenance and support services provided under this Agreement.

1.9. “Software Error” shall mean any material nonconformity of the Software with the Documentation.

1.10. “Source Code” means the version of the Software in human-readable language format as prepared and written by the programmer(s) who developed the applicable Software, together with any existing build tools (e.g. compilers, linkers and other related tools), compile/link scripts, program comments, installation scripts and other documentation that could enable an ordinarily skilled programmer to recompile the same into fully functioning object code of the applicable Software.

1.11. “Support Services” means the provision of responses by Licensor personnel to questions from Eligible Support Recipients related to use of the Software, including basic instruction or tutorial assistance regarding the features and functions of the Software and such other services as are set forth on Exhibit C.

1.12. “User” means an individual employee or contractor of Licensee who has been authorized to access the Software under the terms of this Agreement.

2. License.

2.1. License Grant. Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a non-exclusive, non-sublicenseable, non-transferable, license to: (i) to install and use the Software on Authorized Systems; (ii) to permit the number of Users set forth in the Order Form or Statement of Work (SOW), and paid for by Licensee, to access the features and functions of the Software through such Authorized Systems; and (iii) to make a reasonable number of copies of the Software solely for non-productive, archival purposes.

2.2. Delivery. As soon as commercially practicable after the Effective Date and an Order Form is signed by both Parties, Licensor shall deliver to Licensee one (1) copy of each of the Software and the Documentation for use by Licensee in exercising its rights under the licenses granted in Sections 2.1. Delivery shall be deemed complete upon (i) tender to a commercial carrier by Licensor of media upon which the Software and Documentation are digitally stored or (ii) delivery of an access key to Licensee allowing Licensee to download the Software. Acceptance of the delivered software and Documentation shall be in accordance with General Services Administration Acquisition Regulation 552.212-4(a) Inspection/Acceptance.

2.3. Enterprise. For the purposes of this License Agreement, an Enterprise shall be defined as a legal entity comprising the totality of wholly owned subsidiaries and affiliates of the Licensee unless otherwise defined in the Order Form as an operating unit, geographical location, individual legal corporation or other entity assigned to the specific license granted herein and in addition to definitions of an Enterprise in the Order Form.

3. Ownership Rights.

3.1. Software and Documentation. Subject to the license granted under Section 2, Licensor will retain all Proprietary Rights that it may have in the Software and Licensor expressly reserves all rights not expressly granted to Licensee in this Agreement.

3.2. Restrictions. Licensee will not use the Software or Documentation for any purposes beyond the scope of the licenses granted in this Agreement. Without limiting the generality of the foregoing, Licensee will not (i) authorize or permit use of the Software or Documentation by persons other than Users; (ii) distribute any copies of the Software or the Documentation; (iii) assign, sublicense, sell, lease or otherwise transfer or convey, or pledge as security or otherwise encumber, Licensee’s rights under the licenses granted in Sections 2.1 and 2.3; (iv) modify or create any derivative works of the

Software (or any component thereof) or Documentation, except with the prior written consent of Licensor; or (v) decompile, disassemble, reverse engineer or otherwise attempt to obtain or perceive the source code from which any component of the Software is compiled or interpreted, and Licensee hereby acknowledges that nothing in this Agreement shall be construed to grant Licensee any right to obtain or use such source code.

4. Payment Terms and Taxes.

4.1. Invoice and Payment. In connection with the license of the Software under this Agreement, Licensee will pay the fees and charges set forth on the Order Form. Licensor will submit invoices to Licensee for Software licensed and Support Services purchased hereunder. Licensee will pay Licensor the amount due and payable under each invoice within thirty (30) days following the date of such invoice unless otherwise provided and stipulated in the terms and conditions of an associated Order Form. Late payments shall accrue interest from the date due until the date payment is actually received by Licensor at the rate of one and one-half percent (1½ %) per month or the highest rate permitted under applicable law, whichever is lower. All payments under this Agreement shall be made in lawful currency of the United States of America.

4.2. Disputed Charges. Licensee must notify Licensor in writing of any dispute or disagreement with invoiced charges within thirty (30) days after the date of invoice. Absent such notice, Licensee shall be deemed to have agreed to the charges as invoiced after the expiration of such time period.

4.3. Late Charges. Licensor reserves the right to charge, and Licensee agrees to pay, a late charge equal to one and one-half percent (1½%) per month on any amount that is not the subject of a good faith dispute that is unpaid on the due date, and on any other outstanding balance.

4.4. Taxes. Licensee will pay all state or local sales or use taxes that may be imposed upon the fees invoiced to Licensee under this Agreement or on the sale of the Software hereunder, unless Licensee has furnished Licensor with a certificate of exemption prior to the date such taxes are due. Licensor will be responsible for all other taxes arising from the transactions contemplated by this Agreement.

4.5. Compliance Records; Auditing Rights.

(a) Licensee shall create and maintain complete and accurate records of all copies of the Software and/or Documentation made by or on behalf of Licensee and the number of Users, including the date such copies are made and the locations of Authorized Systems where such copies are installed. Licensee shall promptly provide a copy of such records upon request by Licensor.

(b) Throughout the License Term, Licensor will have the right, at its own expense, upon reasonable prior notice, periodically to inspect and audit Licensee's use of the Software and Documentation for purposes of determining Licensee's compliance with the terms and conditions herein. Licensee agrees to cooperate with Licensor in the performance of any such audit, and shall provide to Licensor such access to Licensee's relevant records, data, information, personnel and/or facilities as Licensor may reasonably request for such limited purposes.

5. Warranties.

5.1. Performance Warranty. Licensor represents and warrants to Licensee that the Software will conform in all material respects, for a period of thirty (30) days following delivery, to the applicable performance capabilities, characteristics, hardware and software compatibility and other descriptions and standards set forth in the Documentation delivered initially with the Software, provided that such warranty will not apply to failures to conform to the Documentation to the extent such failures arise, in whole or in part, from (i) any use of the Software other than in accordance with the Documentation, (ii) modification of the Software by Licensee or any third party or (iii) any combination of the Software with software, hardware or other technology not provided by Licensor under this Agreement. Licensor, at no charge to Licensee, will promptly correct any Software that does not conform with any of the warranties contained in this Section 5, in accordance with the procedures set forth in Exhibit C, provided that Licensor receives written notice of any alleged breach within such 30-day period.

5.2. Other Warranties. Licensor represents and warrants to Licensee that (a) the Software does not contain any copy protection, automatic shut-down, lockout, “time bomb” or similar mechanisms that could interfere with Licensee’s exercise of its respective rights hereunder; and (c) Licensor takes industry standard measures to detect and remove viruses, “trojan horses” or other harmful code from the Software.

5.3. Limitation. EXCEPT AS OTHERWISE STATED IN THIS AGREEMENT, LICENSOR MAKES NO WARRANTIES (EXPRESS OR IMPLIED) WITH RESPECT TO THE PERFORMANCE OF THE SOFTWARE OR THE DOCUMENTATION, INCLUDING IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ALL OTHER SUCH WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED.

6. Indemnification.

6.1. Indemnification. Licensor will defend, indemnify and hold harmless Licensee and its Affiliates, and each of their directors, officers, employees and agents (collectively, the “Indemnified Parties”), from and against any and all third party claims as well as any losses, liabilities, damages and expenses (including, without limitation, reasonable attorneys’ fees) awarded to such third party arising from any such claim to the extent based upon: (a) any damage to property or personal injury caused by the negligent act or willful misconduct of Licensor; or (b) the Software’s or Documentation’s actual or alleged infringement, wrongful use or misappropriation of any third-party Proprietary Right. Each party will give the other prompt written notice if it learns of any such claim, action or proceeding and will cooperate with the other at its own expense to facilitate the defense, settlement and satisfaction thereof. Licensor shall be entitled to control the defense or settlement of such claim, provided that: (aa) Licensor shall permit Licensee to participate reasonably in the defense and settlement of any such claim, at its own expense, with counsel of its choosing; (bb) Licensor shall not enter into or acquiesce to any settlement containing any admission of or stipulation to any guilt, fault, liability or wrongdoing on the part of Licensee or its Affiliates or which would otherwise materially and adversely affect Licensee or its Affiliates without Licensee’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned).

6.2. Infringement Remedy. If all or any part of the Software or Documentation is held, or Licensor determines that it could be held, to infringe, wrongfully use or misappropriate any third-party Proprietary Right, Licensor in its sole discretion and at no cost to Licensee (a) will procure for Licensee the right to continue using the item in accordance with its rights under this Agreement, or (b) replace the

item with a substantially equivalent item that does not infringe, wrongfully use or misappropriate any third-party Proprietary Right, or (c) modify the item (without material loss of functionality) so that it no longer infringes, wrongfully uses or misappropriates any third-party Proprietary Right. If Licensor is unable to successfully accomplish any of the actions described above after using its commercially reasonable best efforts to accomplish each of them, Licensor will refund to Licensee all license fees paid by Licensee hereunder in connection with the affected Software pro rated using the straight-line method over a period of thirty-six (36) months, applied to the period of actual possession.

6.3. Limitation. Licensor's obligations under Section 6.21 and 6.32 will not apply if the Software or Documentation infringes, wrongfully uses or misappropriates any third-party Proprietary Right as a result of (a) modifications made by Licensee or any third party, or (b) Licensee's use of the Software other than as contemplated by the applicable Documentation; provided that such infringement, wrongful use or misappropriation would not have occurred absent such modification or use.

7. Maintenance, Training and Support.

7.1. Subject to the payment of the applicable fees, Licensor will provide to Licensee the maintenance and support services described on Exhibit C (collectively, the "Support Services"). In consideration for Support Services rendered, Licensee will pay the fees and charges set forth in the Order Form and or SOW.

7.2. Eligible Support Recipients. Licensor shall have no obligation to provide Support Services, by any means, to any entity or individual other than Eligible Support Recipients. Licensee can designate up to two (2) persons, which designees shall be eligible to receive Support Services from Licensor ("Eligible Support Recipients"). Such designees may be changed at any time by written notice.

7.3. Cooperation. As a condition of Licensor's obligations under Section 7.1, Licensee shall provide such information and/or access to Licensee resources as Licensor may reasonably require in order to provide Support Services under this Agreement. Licensor shall be excused from any non-performance of its obligations hereunder to the extent any such non-performance is attributable to Licensee's failure to perform its obligations under this Section 7.3.

8. Limitations on Support Services. Unless otherwise agreed by the Parties, Licensor shall have no obligation to provide Support Services with respect to any Software Error resulting from (i) use of the Software other than strictly according to the terms of this Agreement; (ii) modification of the Software by Licensee or any third party; or (iii) any combination or integration of the Software with hardware, software and/or technology not provided by Licensor. Unless otherwise agreed by the Parties, Licensor shall not be required to provide Support Services regarding use of any version of the Software other than a version incorporating the most recently released Technology Update or Technology Upgrade.

9. Term and Termination.

9.1. Term. This Agreement shall become effective upon the Effective Date and shall have an initial term equal to the Initial Term indicated on the Cover Page, and shall automatically renew for successive one (1)-year terms, unless either Party provides written notice of its desire not to renew at least sixty (60) days prior to the expiration of the then-current term (the Initial Term, together with any renewal terms, collectively, the "Term") unless earlier terminated in accordance with this Section 11; provided, however, that this Agreement shall remain in full force and effect until the expiration or termination of any and all Addenda executed prior to the end of the Term, as well as any License Term for any applicable Software.

9.2. Termination for Cause. Either Licensee or Licensor may terminate this Agreement if the other party materially breaches this Agreement and does not cure the breach within thirty (30) days following its receipt of written notice of the breach from the non-breaching party.

9.3. Effect of Termination. Upon any termination of this Agreement, each Party shall (i) immediately discontinue all use of the other Party's Confidential Information; (ii) cease all use of the Software; (iii) delete the other Party's Confidential Information from its computer storage or any other media, including, but not limited to, online and off-line libraries; (iv) shall return to the other Party or, at the other Party's option, destroy, all copies of such other Party's Confidential Information then in its possession; and (v) shall promptly pay all amounts due and remaining payable hereunder.

9.4. Survival. Sections 2, 3, 5, 5, 6, 7, 8, 9 and 10 will survive for a period of one (1) year following the termination or expiration of this Agreement, except as otherwise expressly set forth herein.

9.5. No Refund. Notwithstanding anything contained herein to the contrary, no termination hereunder shall entitle Licensee to any refund of any amounts or fees paid or owed for Software once the seal on the Software package has been broken.

10. Confidential Information.

10.1 Ownership of Confidential Information. The Parties acknowledge that during the performance of this Agreement, each Party will have access to certain of the other Party's Confidential Information or Confidential Information of third parties that the disclosing Party is required to maintain as confidential. Both Parties agree that all items of Confidential Information are proprietary to the disclosing Party or such third party, as applicable, and shall remain the sole property of the disclosing Party or such third party.

10.2 Mutual Confidentiality Obligations. Each Party agrees as follows: (i) to use the Confidential Information only for the purposes described herein; (ii) that such Party will not reproduce the Confidential Information and will hold in confidence and protect the Confidential Information from dissemination to, and use by, any third party; (iii) that neither Party will create any derivative work from Confidential Information disclosed to such Party by the other Party; (iv) to restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing to treat such information in accordance with the terms of this Agreement; and (v) to return or destroy all Confidential Information of the other Party in its possession upon termination or expiration of this Agreement.

10.3 Confidentiality Exceptions. Notwithstanding the foregoing, the provisions of Sections 9.1 and 9.2 shall not apply to Confidential Information that (i) is publicly available or in the public domain at the time disclosed; (ii) is or becomes publicly available or enters the public domain through no fault of the recipient; (iii) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (iv) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (v) is independently developed by the recipient; or (vi) is approved for release or disclosure by the disclosing Party without restriction. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (x) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (y) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

11. Miscellaneous.

11.1. LIMITATION OF LIABILITY. EXCEPT TO THE EXTENT THE SAME ARE AWARDED TO A THIRD PARTY IN ANY JUDGMENT AGAINST WHICH LICENSOR IS OBLIGATED TO INDEMNIFY ANY OF THE INDEMNIFIED PARTIES PURSUANT TO SECTION 6 AND BREACHES OF CONFIDENTIALITY OBLIGATIONS, NEITHER PARTY WILL BE LIABLE FOR INCIDENTAL, SPECIAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, LOST PROFITS OR LOST DATA) ARISING OUT OF THIS AGREEMENT OR LICENSEE'S INSTALLATION OR USE OF THE SOFTWARE, EVEN IF SUCH PARTY WAS ADVISED OF THE POSSIBILITY THEREOF. EACH PARTY'S ENTIRE LIABILITY ARISING FROM THIS AGREEMENT, WHETHER IN CONTRACT OR TORT, WILL NOT EXCEED THE AGGREGATE AMOUNT OF LICENSE AND SUPPORT SERVICE FEES RECEIVED BY LICENSOR IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE ASSERTION OF THE CLAIM.

The Parties acknowledge and agree that the disclaimers, exclusions and limitations of liability set forth in this Section 10.1 form an essential basis of this Agreement, and that, absent any of such disclaimers, exclusions or limitations of liability, the terms of this Agreement, including, without limitation, the economic terms, would be substantially different.

11.2. Restricted Use; Export. Any use, duplication or disclosure by the United States Government is subject to restrictions as set forth in subdivision (c)(1)(ii) or the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and the Rights in Data-General clause at FAR 52.227-14. Use, duplication or disclosure by the governments of any other countries is subject to the restrictions of similar applicable laws. Licensee will not export any Software or other information furnished to it hereunder in any manner contrary to the export regulations of the United States.

11.3. Publicity. Licensor shall not issue any press releases, make any other disclosures regarding this Agreement or its terms or the nature or existence of any relationship between the parties, or use Licensee's trademarks, trade names or other proprietary marks in any manner without Licensee's prior written consent, which consent shall not be unreasonably withheld, delayed or conditioned.

11.4. Assignment. Either party may assign its rights and obligations hereunder to (a) any corporation resulting from any merger, consolidation or other reorganization involving such party, (b) any individual or entity to which such party may transfer substantially all of the assets and business of such party, or (c) any entity that controls, is controlled by, or is under common control with such party, or of which such party beneficially owns at least fifty percent (50%) of the equity interest therein. All the terms and provisions of this Agreement will be binding upon, will inure to the benefit of and will be enforceable by the parties and their respective successors and permitted assigns.

11.5. Notices. Any notice or other communication under this Agreement given by any party to the other party will be in writing and, to be effective, must be delivered by registered or certified letter (return receipt requested) postage prepaid, receipted commercial courier, or electronically receipted facsimile transmission (acknowledged in like manner by the intended recipient) at its address specified on the signature page to this Agreement, and if not so listed on the signature page, in the case of Licensee, with a copy to _____ and, in the case of Licensor, with a copy to: SYNTASA, Inc, 540 Herndon Parkway, Suite 240, Herndon, VA 20170, Attn: Director, Legal Affairs. Either party may from time to time change the addresses or individuals specified in this Section by giving the other party notice of such change in accordance with this Section.

11.6. Waiver; Remedies. A waiver of any breach or default under this Agreement will not constitute a waiver of any other or subsequent breach or default. The failure of either party to enforce any term of this Agreement will not constitute a waiver of such party's rights to subsequently enforce the term. The remedies specified in this Agreement are in addition to any other remedies that may be available at law or in equity.

11.7. Severability; Entire Agreement. If any term of this Agreement is held to be invalid, such invalidity will not effect the remaining terms. This Agreement, including the attached Exhibits, represents the entire agreement between the parties with respect to the subject matter hereof and supersedes any previous or contemporaneous oral or written agreements regarding such subject matter. Any modification of this Agreement must be in writing and signed by a duly authorized agent of each party.

11.8. Governing Law. This Agreement will be governed by the laws of the Commonwealth of Virginia, without reference to rules governing choice of law.

11.9. Construction. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural and vice versa, and the masculine gender shall include the feminine and neuter genders and vice versa. Each party signing this Agreement acknowledges that it has had the opportunity to review this Agreement with legal counsel of its choice, and there shall be no presumption that ambiguities shall be construed or interpreted against the drafter.

Exhibit A
Description of Software and Additional License Terms

Software

The Software and Support Services consist of the following:

[Please refer to product description]

Licensee and its Affiliates may install, operate and use the Software on the recommended number of servers, which may be networked or otherwise configured such that the Software may be downloaded, operated and/or accessed remotely. No more than twenty (20) users shall be entitled to concurrently (i.e., at any given time) use and operate the Software via remote clients. Licensee and its Affiliates may use the Documentation as necessary or desirable in connection with the installation, use and operation of the Software.

Exhibit B
Initial Order Form

Exhibit C Maintenance and Support Services

The Support Services are as follows:

Updates and Upgrades:

Promptly upon the general commercial release thereof, Licensor will provide or make available for download to Licensee, any and all patches, enhancements, updates, upgrades and new versions of the Software that Licensor makes generally commercially available. Any such version(s) shall be deemed Software within the meaning of this Agreement and shall be covered by Support Services.

Availability and Contacts:

Licensor will make technical support available to Licensee by toll-free telephone number, fax, e-mail, and voice mail between the hours of 6:00 a.m. and 8:30 p.m. Eastern Time, Monday through Friday, excluding holidays.. Licensor's support personnel will provide Licensee with remote assistance as to the use and operation of the Software and accept reports of bugs, defects or errors (collectively, "Errors") in the Software. Licensor will ensure that each of its personnel performing any Support Services are experienced, knowledgeable and qualified in the use, maintenance and support of the Software.

Contact information for technical support is as follows:

Toll-Free Telephone Number: 1-800-123-4567

E-Mail: support@syntasa.com

Licensor may change any of the foregoing contact information from time to time by delivery of prior written notice to Licensee, so long as at least one number or address is at all times available for each means of contact.

When contacting the Licensor to initiate a support call, Licensee shall provide the following information:

- Incident Number (if existing)
- Company Name
- SYNTASA Product
- Product version
- Name and contact info of the person reporting the Error
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Error Correction:

In the event that Licensee reports to Licensor any Error in the Software (the Severity Level to be mutually determined by the parties after consultation), Licensor shall respond to such reports as follows:

Severity Level 1 Problem:

“Severity Level 1 Problem” is an emergency condition which makes the use or continued use of any one or more critical functions of the Software impossible. The condition requires an immediate solution that is not already available to Licensee. Licensor will respond initially to a Licensee report of a Severity Level 1 Problem within one (1) hour of receipt of the problem report and immediately thereafter use its commercially reasonable best efforts (including by diligently performing such services as may be necessary) to: (a) promptly attempt to replicate and verify the reported problem; (b) arrive at a fix (or workaround acceptable to Licensee) as promptly as possible; and (c) provide Licensee with the final form of the fix (“Final Fix”) or work-around promptly after the fix or workaround has been developed (and, if a work-around is provided, the Final Fix shall be provided as promptly as possible thereafter).

Severity Level 2 Problem:

“Severity Level 2 Problem” is, other than any Severity Level 1 Problem, any condition which makes the use or continued use of any one or more major functions of the Software difficult and which Licensee cannot reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort. Licensor will respond initially to a Licensee call reporting a Severity Level 2 Problem within four (4) hours of receipt of the problem report and immediately thereafter use its commercially reasonable best efforts (including by diligently performing such services as may be necessary) to: (a) promptly attempt to replicate and verify the reported problem; (b) arrive at a fix (or workaround acceptable to Licensee) as promptly as possible; and (c) provide Licensee with the Final Fix or work-around promptly after the Final Fix or work-around has been developed (and, if a work-around is provided, the Final Fix shall be provided as promptly as possible thereafter).

Severity Level 3 Problem:

“Severity Level 3 Problem” is, other than any Severity Level 1 Problem or Severity Level 2 Problem, any limited problem condition which is not critical in that no loss of data occurs and which Licensee can reasonably circumvent or avoid on a temporary basis without the expenditure of significant time or effort. Licensor will respond initially to a Licensee call reporting a Severity Level 3 Problem within one (1) business day following receipt of the problem report, and immediately thereafter perform, during normal business hours, such services as may be necessary to: (a) begin work on error identification and verification; (b) provide Licensee with a work-around acceptable to Licensee as promptly as possible; and (c) and provide Licensee with a Final Fix in the next version of the Software.

Severity Level 4 Problem:

“Severity Level 4 Problem” is, other than any Severity Level 1 Problem, Severity Level 2 Problems or Severity Level 3 Problems, a minor problem condition or Documentation error which Licensee can easily circumvent or avoid. Additional requests for new feature suggestions, which are defined as new functionality in existing Software are also classified as Severity Level 4. Licensor will respond initially to a Licensee call reporting a Severity Level 4 Problem within one (1) business day of receipt of the problem report, thereafter begin work on error identification and verification within five (5) days of receipt of the problem report, and provide Licensee with a Final Fix in the next version of the Software.