Carahsoft Rider to Manufacturer End User License Agreements
(for U.S. Government End Users)

1. **Scope.** This Carahsoft Rider and the Manufacturer End User License Agreement (EULA) 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 EULA (http://www.pentaho.com/agreements/enterprise/2012052) 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 EULA are inconsistent with the Federal Law (*See* FAR 12.212(a)), they shall be deemed deleted and unenforceable under any resultant orders under Carahsoft's 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 GSA contracts as set forth in GSA ORDER 4800.2G 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 GSAR Clause 552.243-72, Modifications (Federal Supply Schedule) (July 200 0) (Deviation I 2010) (AUG 1987), and 52.212 -4 (f) Excusable delays. (JUN 2010) regarding which 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 Agreement: (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 Agreement. 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 Agreement.

(e) **Termination.** Clauses in the Manufacturer EULA referencing termination or cancellation the Manufacturer's EULA are hereby deemed to be deleted. Termination shall be governed by the FAR 52.212-4 and the Contract Disputes Act, 41 U.S.C. §§ 601-613, subject to the following exceptions:

> Carahsoft may request cancellation or termination of the License Agreement 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 will be governed by and construed in accordance with the laws of the United States. In the event the Uniform Computer Information Transactions Act (UCITA) or any similar federal laws or regulations are enacted, to the extent allowed by law, it will not apply to this Agreement, and the governing law will remain as if such law or regulation had not been enacted. All clauses in the Manufacturer EULA referencing equitable remedies are deemed not applicable to the Government order and are therefore deemed to be deleted.

(g) **Force Majeure.** Subject to FAR 52.212 -4 (f) Excusable delays. (JUN 2010). Unilateral Termination by the Contractor does not apply to a Government order and all clauses in the Manufacturer EULA referencing unilateral termination rights of the Manufacturer are hereby deemed to be deleted.

(h) **Assignment. All** clauses regarding Assignment are subject to FAR Clause 52.232-23, Assignment of Claims (JAN 1986) and FAR 42.12 Novation and Change-of-Name Agreements, and all clauses governing Assignment in the Manufacturer EULA 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 (JUL. 2002), and all clauses governing waiver of jury trial in the Manufacturer EULA are hereby deemed to be deleted.

(j) **Customer Indemnities.** All Manufacturer EULA clauses referencing Customer Indemnities are hereby deemed to be deleted.

(k) **Contractor Indemnities.** All Manufacturer EULA 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 Manufacturer EULA 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 Manufacturer EULA 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 FAR 52.212-4(k), which provides that the contract price includes all federal, state, local taxes and duties.

(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 EULA, 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 EULA and to this Rider shall be resolved in accordance with the FAR, and the Contract Disputes Act, 41 U.S.C. §§ 7101-7109. The Ordering Activity expressly acknowledges that Carahsoft, on behalf of the Manufacturer, shall have standing to bring such claim under the Contract Disputes Act.

(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 EULA and this Rider contain no confidential or proprietary information and acknowledges the EULA 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.

Master License and Services Agreement

PLEASE READ THIS MASTER SOFTWARE LICENSE AND SERVICES AGREEMENT BEFORE PURCHASING OR USING THE PRODUCTS OR SERVICES. BY USING OR PURCHASING THE PRODUCTS OR SERVICES, CUSTOMER SIGNIFIES ITS ASSENT TO THIS AGREEMENT. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, THEN YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT ON BEHALF OF THAT ENTITY. IF CUSTOMER DOES NOT ACCEPT THE TERMS OF THIS AGREEMENT, THEN IT MUST NOT PURCHASE OR USE THE PRODUCTS OR SERVICES.

This Master Software License and Services Agreement, including all exhibits ('Agreement'), is between Pentaho Corporation ('Pentaho') and the purchaser or user of Pentaho product and/or services that accepts the terms of this Agreement ('Customer'). The effective date of this Agreement ('Effective Date') is the earliest of the date that Customer accepts this Agreement, the date Customer enters into an Order Form or the date that Customer uses Pentaho products or services.

1. LICENSE.

   1.1 **License Grant.** Subject to the terms and conditions of this Agreement, Pentaho agrees to grant, and does hereby grant to Customer, during the time Customer has a valid Subscription in place for the Software Products, a limited, non-exclusive, non-transferable right and license, solely to the object code version of the Software Products and without the right to grant or authorize sublicenses or to further distribute the Software Products, to install the Software Products on the number of Cores specified in the Order Form and to use the Software solely for Customer's internal business operations and to provide the output generated by the Software Products by Customer, including reports, dashboards, data analysis and data mining to Customer's clients. Pentaho will issue Customer a sixty (60) day Software Product key upon the Effective Date of the applicable Order Form. Upon full payment of the amount set forth in the applicable Order Form, Customer will receive a second set of Software Product keys that will be effective through the renewal date of the Subscription start date as set forth in the applicable Order Form. Customer may make up to two copies of the Software Products for backup and/or archival purposes.

   1.2 **License Restrictions.** Customer shall not itself, or through any parent, subsidiary, affiliate, agent or other third party:

   1.2.1 sell, lease, license, distribute, sublicense or otherwise transfer in whole or in part, any Software Products or the Documentation to a third party; or

1.2.2 decompile, disassemble, translate, reverse engineer or otherwise attempt to derive source code from the Software Products, in whole or in part, nor will Customer use any mechanical, electronic or other method to trace, decompile, disassemble, or identify the source code of the Software Products or encourage others to do so, except to the limited extent, if any, that applicable law permits such acts notwithstanding any contractual prohibitions, provided, however, before Customer exercises any rights that Customer believes to be entitled to based on mandatory law, Customer shall provide Pentaho with thirty (30) days prior written notice and provide all reasonably requested information to allow Pentaho to assess Customer's claim and, at Pentaho's sole discretion, to provide alternatives that reduce any adverse impact on Pentaho's intellectual property or other rights; or

1.2.3 allow access or permit use of the Software Products by any users other than Customer's employees, or authorized third-party contractors who are providing services to Customer and agree in writing to abide by the terms of this Agreement, provided further that Customer shall be liable for any failure by such employees and third-party contractors to comply with the terms of this Agreement; or

1.2.4 create, develop, license, install, use, or deploy any third party software or services to circumvent, enable, modify or provide access, permissions or rights which violate the technical restrictions of the Software Products; or

1.2.5 modify or create derivative works based upon the Software Products; or

1.2.6 disclose the results of any benchmark test of the Software Products to any third party without Pentaho's prior written approval, unless otherwise expressly permitted herein, provided, however, that the foregoing restriction shall apply to Customer only if Customer is a software or hardware vendor, or Customer is performing testing or benchmarking on the Software Products at the direction of, or on behalf of, a software or hardware vendor.

1.3 **Audit Rights.** Customer will maintain accurate records as to its use of the Software Products as authorized by this Agreement, for at least two (2) years from the last day on which Support Services expired for the applicable Software Products. Pentaho, or persons designated by Pentaho, will, at any time during the period when Customer is obliged to maintain such records, be entitled to audit such records and to ascertain completeness and accuracy, in order to verify that the Software Products are used by Customer in accordance with the terms of this Agreement and that Customer has paid the applicable license fees and Support Services fees for the Software Products, provided that: (a) Pentaho may conduct no more than one (1) audit in any twelve (12) month period; (b) any such audit shall be subject to a mutually agreed upon non-disclosure agreement negotiated in good faith and entered into by the parties (including any third party agent Pentaho may use in connection with such audit); (c) the audit will be conducted during normal business hours; and (d) Pentaho shall use commercially reasonable efforts to minimize the disruption of Customer's normal business activities in connection with any such audit. Pentaho, or persons designated by Pentaho, shall not have physical access to Customer's computing devices in connection with any such audit, without Customer's prior written consent. Customer shall promptly pay to Pentaho any underpayments revealed by any such audit. Any such audit will be performed at Pentaho's expense, provided, however, that Customer shall promptly reimburse Pentaho for the cost of such audit and any applicable fees if such audit reveals an underpayment by Customer of more than five percent (5%) of the license amounts payable by Customer to Pentaho for the period audited.

1.4 **Open Source Software.** The Open Source Software is licensed to Customer under the terms of the applicable open source license conditions and/or copyright notices that can be found in the open_source_licenses file, the documentation or other materials

accompanying the Software Products. Copyrights to the Open Source Software are held by copyright holders indicated in the copyright notices in the corresponding source files, in licenses file or other materials accompanying the Software Products.

2. **SUPPORT SERVICES.** During the time that Customer has paid the applicable annual fees for Support Services, Pentaho will provide Customer with the Support Services for the Software Products and for the Open Source Software made available through the Pentaho Support Portal as listed on an Order Form. Services are provided to Customer solely for Customer's internal use, and Customer may not use the Software Products or Support Services to supply any consulting, support or training services to any third party.

3. SERVICES

3.1 **Services.** Pentaho will provide Customer with the Services specified in an applicable Order Form. Services are provided to Customer solely for Customer's internal use, and Customer may not use the Services to supply any consulting, support or training services to any third party. In the event that in the future Customer desires to obtain from Pentaho additional Services, the parties may execute one or more additional Order Forms, setting forth the additional Services to be provided by Pentaho to Customer, along with the applicable additional fees to be paid by Customer to Pentaho.

3.2 **Customer Obligations.**

3.2.1 **Cooperation.** Customer agrees to provide Pentaho with such cooperation, materials, information, access and support which Pentaho is reasonably required to allow Pentaho to successfully provide the Services.

3.2.2 **Third Party Products.** Customer acknowledges that in order for Pentaho to provide the Services, Customer may be required to license and install certain third party software and provide certain third party hardware that are not provided or licensed by Pentaho ("Third Party Products"). Pentaho may provide Customer with links and instructions for obtaining Third Party Products, but it is Customer's responsibility to properly license and install any required Third Party Products from the relevant third party providers. Pentaho will have no liability with respect to any Third Party Products.

4. OWNERSHIP.

4.1 **Software Products.** The Software Products, Services and Pentaho materials are, and shall remain the sole property of Pentaho and its licensors, and, except as expressly provided herein, Pentaho and its licensors retain all right, title and interest in and to the Software Products, including all intellectual property rights therein and thereto.

4.2 **Work Product and Other Materials.**

4.2.1 **Work Product.** Customer acknowledges that in the course of performing any Services for Customer, Pentaho may create software or other works of authorship (collectively "Deliverables"). Subject to Customer's rights in the Customer Confidential Information, Pentaho shall own all right title and interest in such Deliverables, including all intellectual property rights therein and thereto. Pentaho hereby grants to Customer a license to such Deliverable under the same terms and conditions Customer's license to Software Product set forth in Section 1.1 above.

4.2.2 **Other Materials.** Customer agrees and acknowledges that Customer is not obtaining any intellectual property right in or to any materials provided by Pentaho to Customer in connection with the provision to Customer of Support Services or Training Services ("Materials"), other than the rights of use specifically granted in this Agreement. Subject to the terms of this Agreement, Customer will be entitled to keep and use all Materials

provided by Pentaho to Customer. Materials may not be copied electronically or otherwise whether or not for archival purposes, modified including translated, re-distributed, disclosed to third parties, lent, hired out, made available to the public, sold, offered for sale, shared, or transferred in any other way. All Pentaho trademarks, trade names, logos and notices present on the Materials will be preserved and not deliberately defaced, modified or obliterated except by normal wear and tear. Customer shall not use any Pentaho trademarks without Pentaho's express written authorization. The use of the Pentaho trademarks are governed by the Pentaho Trademark Standards for Use at www.pentaho.com/endusertrademarks. Any use by Customer of Pentaho trademarks will inure to the benefit of Pentaho.

5. **PAYMENT.** Customer agrees to pay Pentaho the fees stated on the Order Form. Customer will pay all sales, use, and excise taxes levied upon the delivery or use of the taxable Software Products and Support Services described in this Agreement. Customer will pay all import or export, value added or other tax or duty, and all government permit, withholding or license fees, and custom or similar fees, levied upon the delivery or use of Software Products and Support Services described in this Agreement. If Customer is required to pay any withholding tax, charge or levy in respect of any payments due to Pentaho hereunder, Customer agrees to gross up payments actually made such that Pentaho shall receive sums due hereunder in full and free of any deduction for any such withholding tax, charge or levy. All Pentaho supplied Software Products and Services will only be delivered to Customer electronically through the Internet. Unless otherwise specified on an Order Form, all invoices will be paid within thirty (30) days from the date of the invoice. Fees for Services are non-refundable upon payment. Payments will be made without right of set-off or chargeback. If Customer does not pay the invoices when due, Pentaho may charge interest at one percent (1%) per month on the unpaid balance. If payment of any fee is overdue, Pentaho may also suspend the license granted hereunder, the provision of Services, and/or the provision of the Support Services until such delinquency is corrected.

6. **LIMITED WARRANTY AND LIMITATION OF LIABILITY.**

6.1 **Software Products.** Pentaho warrants to Customer only that, for a period of thirty (30) days following the date the Software Products are initially licensed by Customer, the Software Products will substantially conform to the description contained in the applicable Documentation ("Warranty Period"). If during the Warranty Period the Software Products do not substantially conform to the description contained in the applicable Documentation, Pentaho shall, at its option, correct the defects in the Software Products.

6.2 **Services.** Pentaho warrants to Customer only that, for a period of thirty (30) days following the date of delivery, the Services to be performed hereunder will be done in a workmanlike manner and shall conform to standards of the industry. If the Services are not performed as set forth above, Pentaho will re-perform the applicable Services.

6.3 The remedies in Section 6.1 and 6.2 are Customer's sole and exclusive remedies for breach of warranty and Pentaho's sole and exclusive liability for breach of warranty.

6.4 The warranties in Sections 6.1 and 6.2 are made to and for the benefit of Customer only. The warranties will apply only if:

6.4.1 the Software Products have been properly installed and used at all times and in accordance with the instructions in the applicable Documentation;

6.4.2 no modification, alteration or addition has been made to the Software Products; and

6.4.3 Pentaho receives written notification of the breach, in the case of the warranty in

Section 6.1, within thirty (30) days following the date the Software Products were initially licensed by Customer, and in the case of the warranty in Section 6.2, within three (3) days following the performance of the relevant Services or Support Service.

6.5 **Disclaimer.** EXCEPT AS SET FORTH IN SECTION 6.1 AND 6.2 ABOVE, THE SOFTWARE PRODUCT AND SERVICES ARE PROVIDED "AS IS" AND PENTAHO AND ITS LICENSORS MAKE NO WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY REGARDING OR RELATING TO THE SERVICES, DELIVERABLES, WORK PRODUCT, SOFTWARE PRODUCTS, THE DOCUMENTATION OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT. PENTAHO AND ITS LICENSORS DO NOT WARRANT THAT THE SERVICES, DELIVERABLES, WORK PRODUCT, SOFTWARE PRODUCTS, THE DOCUMENTATION OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT WILL OPERATE UNINTERRUPTED OR THAT THEY WILL BE FREE FROM DEFECTS OR THAT THE SOFTWARE PRODUCTS ARE DESIGNED TO MEET CUSTOMER'S BUSINESS REQUIREMENTS. PENTAHO AND ITS LICENSORS HEREBY DISCLAIM ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGMENT WITH RESPECT TO THE SERVICES, DELIVERABLES, WORK PRODUCT, SOFTWARE PRODUCTS, THE DOCUMENTATION OR ANY MATERIALS FURNISHED OR PROVIDED TO CUSTOMER UNDER THIS AGREEMENT.

6.6 **Limitation of Liability.**

6.6.1 PENTAHO AND ITS LICENSORS SHALL NOT HAVE LIABILITY FOR ANY SPECIAL, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, PUNITIVE, OR INDIRECT DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF PROFITS, REVENUES, DATA AND/OR USE), EVEN IF ADVISED OF THE POSSIBILITY THEREOF. NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, PENTAHO'S AND ITS LICENSORS' TOTAL AGGREGATE LIABILITY, REGARDLESS OF THE FORM OF THE CAUSE OF ACTION, WHETHER IN CONTRACT,TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), STATUTE OR OTHERWISE, AND CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, SHALL BE LIMITED TO PROVEN DIRECT DAMAGES CAUSED BY PENTAHO IN AN AMOUNT NOT TO EXCEED THE PRICE PAID BY CUSTOMER TO PENTAHO UNDER THIS AGREEMENT DURING THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE OF THE CLAIM.

6.6.2 The provisions of this Section 6.6 allocate risks under this Agreement between Customer and Pentaho. Pentaho's fees for the Software Products and Support Services reflect this allocation of risks and limitation of liability. The foregoing limitations, exclusions and disclaimers apply to the maximum extent permitted by applicable law, even if any remedy fails in its essential purpose.

7. **INDEMNIFICATION.**

7.1 **Indemnity by Pentaho.**

7.1.1 **Indemnity.** Subject to the remainder of Section 7.1, Pentaho shall defend Customer against any third party claim that the Software Products infringe such third party's U.S. patent or copyright ("Infringement Claim"), and indemnify Customer from the resulting costs and damages awarded against Customer to the third party making such Infringement Claim, by a court of competent jurisdiction or agreed to in settlement ; provided that Customer (i) notifies Pentaho promptly in writing of such Infringement Claim, (ii) grants Pentaho sole control over the defense and settlement thereof, and (iii) reasonably cooperates in response to a Pentaho request for assistance. Pentaho will have the exclusive right to defend any such Infringement Claim and make settlements thereof at its own discretion, and Customer may not settle or compromise such Infringement Claim,

except with prior written consent of Pentaho.

7.1.2 **Options.** Should any Software Products become, or in Pentaho's opinion be likely to become, the subject of such an Infringement Claim, Pentaho shall, at its option and expense, (a) procure for Customer the right to make continued use thereof, (b) replace or modify such so that it becomes non-infringing, or (c) request return of the Software Products and, upon receipt thereof, the corresponding licenses are terminated and Pentaho shall refund the prepaid but unused annual Subscription fees paid for the infringing Software Products.

7.1.3 **Exclusions.** Pentaho shall have no liability if the alleged infringement is based on (1) combination with non-Pentaho products data or business processes, (2) use for a purpose or in a manner for which the Software Products were not designed, (3) use of any older Release of the Software Products when use of a newer Pentaho revision would have avoided the infringement, (4) any modification or alteration of the Software Product, (5) any intellectual property right owned or licensed by Customer, excluding the Software Products, (6) Pentaho's compliance with any materials, designs, specifications or instructions provided by Customer, or (7) Customer running the Software Products after Pentaho notifies Customer to discontinue running due to such a claim.

7.1.4 **Limitation.** THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND PENTAHO'S ENTIRE LIABILITY FOR INFRINGEMENT CLAIMS.

8. **TERM AND TERMINATION.** The term of this Agreement shall commence on the Effective Date and shall continue until terminated as provided in this Agreement ("Term"). Either party may terminate this Agreement immediately upon giving notice in writing to the other party if (a) the other party ceases to do business, or otherwise terminates its business operations; (b) the non-terminating party commits a breach of this Agreement and has failed to cure such breach within thirty (30) days following a request in writing from the notifying party to do so; or (c) if there are no Order Forms in effect. Upon the expiration or termination of this Agreement, (i) Customer will immediately return to Pentaho all Confidential Information in its possession, custody or control in whichever form held (including all copies or embodiments of the Confidential Information) and will cease using any trademarks, service marks and other designations of Pentaho, (ii) all licenses granted hereunder shall terminate, (iii) Customer shall have no further rights to receive Support Services; and (iv) Sections 3, 4, 5, 6, 7, 8, 9 and 10 will survive.

9. **MISCELLANEOUS.**

9.1 **No Assignment.** This Agreement and any rights or obligations of Customer under it may not be assigned, subcontracted or otherwise transferred by Customer, in whole or in part, whether voluntary or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Pentaho, and any attempt to assign this Agreement by Customer without such consent shall be null and void and of no force and effect. For purposes of this paragraph: (a) the acquisition by any Affiliate; or (b) any merger, consolidation, change of control or similar transaction by the Customer with or into any person or entity (even if the Customer is the surviving entity) other than in a transaction in which the holders of a majority of the outstanding voting stock prior to such transaction continue to hold majority of the outstanding voting stock of the surviving or continuing entity following such transaction, shall each constitute an assignment for which the prior written consent of Pentaho is required. Subject to the foregoing, this Agreement will be binding upon and will inure to the benefit of the parties and their respective successors and assigns.

9.2 **Notices.** Any notice required or permitted under the terms of this Agreement or required by law must be in writing and must be (a) delivered in person, (b) sent by first

class registered mail, or air mail, as appropriate, or (c) sent by overnight air courier, in each case properly posted and fully prepaid to the appropriate address set forth below. Either party may change its address for notice by notice to the other party given in accordance with this Section. Notices will be considered to have been given at the time of actual delivery in person, five (5) business days after deposit in the mail as set forth above, or two (2) days after delivery to an overnight air courier service. Notices shall be sent to:

If to Pentaho:

Pentaho Corporation

5950 Hazeltine National Drive, Suite 340, Orlando, FL 32822

Attn: Chief Operations Officer

Fax: 1 407 358-5020

With a copy sent to the same location to the attention of General Counsel.

If to Customer:

To the address on the latest Order Form or to Customer's corporate headquarters

Attn: Contracts Manager

9.3 **No Warranties.** No employee, agent, representative or affiliate of Pentaho has authority to bind Pentaho to any oral representations or warranty concerning the Software Products. Any written representation or warranty not expressly contained in this Agreement will not be enforceable.

9.4 **Force Majeure.** Neither party will incur any liability to the other party on account of any loss or damage resulting from any delay or failure to perform all or any part of this Agreement if such delay or failure is caused, in whole or in part, by events, occurrences, or causes beyond the control and without negligence of the parties. Such events, occurrences, or causes will include, without limitation, acts of God, strikes, lockouts, riots, acts of war, earthquake, fire and explosions, but the inability to meet financial obligations is expressly excluded.

9.5 **Waiver.** Any waiver of the provisions of this Agreement or of a party's rights or remedies under this Agreement must be in writing to be effective. Failure or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time, will not be construed and will not be deemed to be a waiver of such party's rights under this Agreement and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action.

9.6 **Severability.** If any provision in this Agreement (including, without limitation, the prohibition on de-compiling or reverse engineering) is held to be illegal, invalid, or unenforceable, the provision will be enforced to the maximum extent possible so as to effect the intent of the parties, and the remaining provisions of this Agreement will remain in full force and effect.

9.7 **Order Forms.** In the event of a conflict between the terms of this Agreement and the terms of the applicable Order Form, the terms in the Order Form will prevail.

9.8 **Government Regulations.** Customer may not export or re-export the Software Products except in compliance with the United States Export Administration Act and the related rules and regulations and similar non-U.S. government restrictions, if applicable. The Software Products and accompanying Documentation are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227.7202 and FAR Section 12.212(b), as applicable. Any use, modification, reproduction, release, performing, displaying or disclosing of the Software

Products and Documentation by the U.S. Government shall be governed solely by the terms of this Agreement.

9.9 **Currency.** All license and Support Services fees shall be remitted in the currency specified in the applicable invoice.

9.10 **Language.** This Agreement is in the English language only, which shall be controlling in all respects. Any versions of this Agreement in any other language shall be for accommodation only and shall not be binding upon either party. All communications, notices, and documentation to be furnished hereunder shall be in the English language only.

9.11 **Independent Contractors.** The relationship of Pentaho and Customer established by this Agreement is that of independent contractors. Nothing contained herein shall constitute either party the agent of the other party, or otherwise grant either party the authority to bind the other party to any obligation, or constitute the parties as partners or joint venturers and neither party shall hold itself out as being an agent having such authority. Customer shall make no representations or warranties on behalf of Pentaho with respect to the Software Products.

9.12 **Publicity.** Customer agrees that Pentaho may reference Customer as a customer of Pentaho, subject to Customer's trademark and logo usage guidelines provided by Customer.

9.13 **Confidential Information.** The receiving party shall not: (i) disclose any Confidential Information to any third party, except as otherwise expressly permitted herein; (ii) make any use of Confidential Information except: (a) to exercise its rights and perform its obligations under this Agreement; or (b) in connection with the parties' ongoing business relationship; or (iii) make Confidential Information available to any of its employees or consultants except those that have agreed to obligations of confidentiality at least as restrictive as those set forth herein and have a "need to know" such Confidential Information. The receiving party shall be held to the same standard of care as it applies to its own information and materials of a similar nature, and no less than reasonable care. The receiving party may disclose the other party's Confidential Information to the extent such disclosure is required by order or requirement of a court, administrative agency, or other governmental body, but only if the receiving party provides prompt written notice thereof to the disclosing party to enable the disclosing party to seek a protective order or otherwise prevent or restrict such disclosure. The receiving party shall protect Confidential Information in the manner provided herein for five (5) years after receipt thereof, unless such obligation ceases earlier pursuant to this Section. Notwithstanding anything to the contrary herein, neither party shall disclose the terms and conditions of this Agreement to any third party, without the prior written consent of the other party. Notwithstanding the foregoing each party may disclose the terms and conditions of this Agreement without the prior written consent of the other party: (a) as required by any court or other governmental body; (b) as otherwise required by law; (c) to legal counsel of the parties; (d) in confidence, to accountants, banks, and financing sources and their advisors; (e) in connection with the enforcement of this Agreement or rights under this Agreement; or (f) in confidence, in connection with an actual or proposed merger, acquisition, or similar transaction.

9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which so executed will be deemed to be an original and such counterparts together will constitute one and the same agreement. Neither party is bound until both parties have signed the agreement and have delivered a signed copy of the agreement to the other party. This Agreement may be executed and delivered by facsimile and the parties agree that such facsimile execution and delivery shall have the same force and effect as delivery of an original document with original signatures, and that each party may use such facsimile signatures as evidence of the execution and delivery of this Agreement by all parties to the

same extent that an original signature could be used.

9.15 **Governing Law.** This Agreement will governed by the laws of the State of New York and the United States of America, without regard to conflict of law principles. The parties hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts located in New York, New York for resolution of any disputes arising out of this Agreement and waive all objections thereto. The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods nor the Uniform Computer Information Transactions Act (UCITA) will apply in any respect to this Agreement.

9.16 **Headings.** The headings in this Agreement are for purposes of reference only and will not in any way limit or affect the meaning or interpretation of any of the terms hereof.

9.17 **Complete Agreement.** This Agreement (including any amendments hereto) and Order Forms placed hereunder contain the entire agreement of the parties with respect to the subject matter of this Agreement and supersedes all previous or contemporaneous communications, representations, proposals, commitments, understandings and agreements, whether written or oral, between the parties on the subject matter hereof. Purchase orders will be for the sole purpose of defining quantities, prices and describing the Software Products and Services to be provided under this Agreement, and to this extent only are incorporated as a part of this Agreement and all other terms in purchase orders are rejected. This Agreement shall not be amended, except by a writing signed by authorized representatives of both parties.

9.18 **Non-Solicitation.** During the term of this Agreement and for a period of one (1) year thereafter, Customer will not, directly or indirectly, either alone or in association with others, (a) solicit, or permit any of its Affiliates to solicit, any employee of Pentaho to leave the employ of Pentaho, or (b) solicit for employment, hire, or engage as an independent contractor, or permit any of its Affiliates to solicit for employment, hire, or engage as an independent contractor, any person who was employed by Pentaho; provided, that this clause (b) will not apply to any individual whose employment with the other party or any of its Affiliates has been terminated for a period of one (1) year or longer.

10. DEFINITIONS.

"**Affiliate**" means an entity that a party, directly or indirectly, controls, an entity that controls a party or an entity that is under common control with a party. For purposes of this provision, control means ownership of at least fifty percent (50%) of the outstanding voting shares of the entity.

"**Confidential Information**" means information or materials provided by one party to the other which are in tangible form and labeled "confidential" or the like, or, if disclosed orally, are identified as being confidential at the time of disclosure and, within two (2) weeks thereafter, are summarized, appropriately labeled and provided in tangible form. The following information shall be considered Confidential Information whether or not marked or identified as such: information regarding Pentaho pricing, product roadmaps and strategic marketing plans. Confidential Information excludes information that: (i) was in the public domain at the time it was disclosed or has become in the public domain through no fault of the receiving party; (ii) was known to the receiving party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure; (iii) is disclosed with the prior written approval of the disclosing party; (iv) was independently developed by the receiving party without any use of Confidential Information of the disclosing party; or (v) becomes known to the receiving party, without restriction, from a source other than the disclosing party.

"**Consulting Checkpoint**" refers to consulting checkpoint services with a fixed scope that specifically address Customer systems, data and/or applications. Consulting Checkpoints

are up to four (4) hours in length each, performed remotely and requires preparation work by Customer to collect and provide the necessary information and documentation so that Pentaho can allocate and prepare of the right domain expert.

"**Consulting Services**" means the consulting services, if any, set forth on an applicable Order Form and on an applicable Statement of Work

"**Core**" means an individual processor and associated cache memory that is capable of executing a single Software Product code thread at a time. Subscriptions include the support of Software Products running on a specific number of Core(s).

"**Documentation**" means any end user manuals or documentation related to the Software Products that Pentaho delivers to Customer or is made available on Pentaho's website.

"**Error**" means a failure of a Software Product to conform in all material respects with the applicable Documentation.

"**Maintenance Fix**" means a later version of the Software Product, designated by Pentaho by means of a change in the digit to the right of the Version number (e.g. x.x.1, x.x.2.

"**Named Contacts**" mean means an employee of Customer who has received training and certification from Pentaho on the Software Products.

"**Order Form**" " is the document executed by Pentaho and Customer defining the Software Products, Open Source Software and Support Services.

"**Open Source Software**" means various open source software components licensed under the terms of applicable open source license agreements included in the materials relating to such software. Open Source Software is composed of individual software components, each of which has its own copyright and its own applicable license conditions.

"**Pentaho Knowledge Base**" means to the online repository of technical manuals, how-to documents, support articles and other items associated with deploying, configuring utilizing, and/or maintaining Pentaho technologies.

"**Pentaho Support Portal**" means the portion of the Pentaho website through which Pentaho offers Support Services.

"**Production Environment**" means any computer system running one or more Pentaho components that: a) is being actively used to process data or provide information to end-users, and b) is not being simultaneously used for development or test purposes.

"**Production Support**" means support for the Software Product in a Production Environment.

"**Release**" means a change in the first digit of the Software Product version (e.g. 2.x, 3.x, 4.x).

"**Services**" means collectively, Consulting Services, Training Services and Support Services.

"**Software Products**" means the Pentaho Software Products licensed under this Agreement, as listed in the applicable Order Form.

"**Subscription Services**" mean the subscription services for the Software Products described in this Agreement and on an Order Form.

"**Subscription**" means a license for the Software Products and Support Services.

"**Support Services**" " means the Support Services described in Appendix A.

"**Term**" shall have the meaning set forth in Section 8.

"**Training Services**" means the training services, if any, set forth on an applicable Order From.

"**Update**" means a Release, Version, or Maintenance Fix of the Software Product.

"**Version**" means generally commercially released code corrections, patches, and minor version releases of the same Software Product as designated by a change in the number to the right of the decimal in the version number (e.g. x.4, x.5, x.6).

EXHIBIT A
Support Services

Support Services.

This Exhibit describes Support Services offered by Pentaho. The Support Services are intended only for the internal use of Customer (including through its contractors and agents) and for the benefit of the Customer and may not be used in support of any third-party. All Support Services will be provided in the English language, only. Only Customer's registered Named Contact(s) can place Support Services inquiries through Pentaho Customer Support Portal. Pentaho will provide Support Services for the number of Named Contacts as set forth in the Order Form. The Named Contact may be changed by providing Pentaho with at least fifteen (15) days prior written notice. Additional Named Contacts can be purchased for the fee as set forth in the applicable Order Form.

Table 1:

Support Plan Features	Limited	Standard	Premium
Named Support Contacts (Primary/Backup)	1/1	1/1	2/1
Support Cases	12	Unlimited	Unlimited
Support Communication Method	Support Portal Only	Support Portal Only	Support Portal Email Phone
24x7x365 Production Incident Response for Severity 1 Errors	No	No	Yes
Severity 1 Response Time	4 Business Hours	4 Business Hours	1 Hour
Severity 2 Response Time	1 Business Day	1 Business Day	2 Business Hours

Support Plan Features	Limited	Standard	Premium
Severity 3 or 4 Response Time	2 Business Days	2 Business Days	4 Business Hours
Pentaho Knowledge Base Users	5	5	20

Production Support

Pentaho offers Production Support to Customer's Named Support Contact(s) to fix Errors in the Software Products. The target response time listed above is the time in which Pentaho will attempt to respond to a Customer service request delivered by a Customer's Named Contact to Pentaho, but does not mean the time by which an Error is fixed or the assistance is completed. This initial response may include questions seeking to clarify the problem or gather information on why the problem occurred and Pentaho may be unable to start resolving the problem without the additional requested information.

Support Services Prerequisites

Customer agrees to appoint a specific individual for each Named Support Contact and iwill notify Pentaho in the event of any change. Named Support Contacts will be enabled to use the Pentaho support portal through a specific login which may not be shared with other individuals in the Customer's organization. Named Support Contacts may not automatically forward requests from other individuals who are not also Named Support Contacts. Each contact must have full administrative access to all files, file systems and databases required for troubleshooting and proper operation of the Software Product(s). Named Support Contacts must communicate with Pentaho in English.

Customer will cooperate with and provide assistance to Pentaho as Pentaho may reasonably request in order to assist Pentaho in the performance of Support Services, including, without limitation, providing all necessary assistance and information (according to the formats and templates specified by Pentaho) to Pentaho' support personnel reasonably required to enable such personnel to determine if a problem is related to an Error or is due to some other issue.

Customer will use its best efforts to provide Pentaho functioning test code which reproduces and isolates the Error. The test code will have extraneous comments and code removed and to the extent possible, will be fully self-contained and automated, and will demonstrate the precise Error reported rather than other possible problems. The test code must be reproducible on Pentaho's test systems. If Customer finds it necessary or expedient to include third party code or libraries in the test code submitted to Pentaho, Customer is responsible for obtaining permission from the applicable third party for such submission. Pentaho undertakes no support obligations whatsoever with respect to any products other than the Software Product. If Customer cannot provide test code which reproduces the problem, Pentaho may be unable to resolve the Error, but will be available to work with Customer to assist in the

development of a test case. Customer will use its best efforts to provide Pentaho with access (via remote telecommunications and, if applicable, on-site access at Customer's premises) to the extent reasonably necessary to allow Pentaho to provide the Support Services. If Customer cannot provide remote access, Pentaho may be unable to fix the Error.

In the event that an Error is discovered in the Software Products, Customer may notify Pentaho via email, phone or support portal of the Error, providing the standard problem description information as defined by Pentaho's support group. Response delivery is as set forth below. Customer must provide Pentaho with a continually-available engineer who will promptly assist the support and development organizations with data gathering, testing, and applying all fixes to the applicable environment for Severity Level 1 (Critical) or Severity Level 2 (Serious) Errors. If Pentaho cannot duplicate the Error in-house, then Pentaho may request, and Customer will promptly provide, reasonable access to the computing environment in which the Error occurs.

Table 2: Severity Definitions

Severity Level	Definition
1 – Critical	Proven Error of the Software Product in a Production Environment. The Software Product is unusable, resulting in a critical impact on the operation. No workaround is available.
2 – Serious	The Software Product will operate but due to an Error in a Production Environment, its operation is severely restricted. No workaround is available.
3 – Moderate	The Software Product will operate with limitations due to an Error in a Production Environment that is not critical to the overall operation. For example, a workaround forces a user and/or a systems operator to use a time consuming procedure to operate the system; or removes a non-essential feature.
4 – Low	Due to an Error in a Production Environment, the Software Product can be used with only slight inconvenience. In addition, all Software Product feature requests fall into this support level.

Support Services Escalation

Customer may escalate a Support Services issue if Pentaho does not respond to any of Customer's support request(s) in a manner required under this Agreement or if Customer is concerned with the progress or resolution of a reported Support Services issue. In the event that Customer needs to escalate a Support Services issue, the Customer should contact the Pentaho Director of Support Services directly at 407-812-OPEN (6736), email Pentaho Support Services at escalation@pentaho.com or contact Pentaho via the toll-free hotline at 866-435-0931.

Pentaho representatives are available 9:00 AM - 5:00 PM Monday through Friday excluding

Pentaho holidays.

Exclusions

Pentaho will not be responsible to provide any Support Services arising out of any of the following events and in no event will Pentaho be liable for any failure to meet the Target Services Level set forth in Table 2 for any issues arising out of the following events:

Support Services that becomes necessary due to:

* A failure of hardware, equipment or programs not covered by this Agreement;
* Pentaho only provides support for Software Product versions obtained via the Pentaho Customer Support Portal.
* Use in a Production Environment of any release of the Software Products not marked as 'Generally Available';
* Any cause or causes beyond the reasonable control of Pentaho (e.g. floods, fires, loss of electricity or other utilities), errors arising from anything other than Software, such as databases, web-servers or hardware;
* Customer's failure to comply with operating instructions contained in the Documentation;
* Any modification, enhancement or customization of the Software Products by anyone other than Pentaho;
* Installation, configuration, management and operation of the Customer's applications; or
* APIs, interfaces, web services or data formats other than those included with the Software Product;
* Any third-party products except to that the extent that they are provided by Pentaho, and then only in support of the specific interface or functionality that is intended by Pentaho

Pentaho will have no obligation to provide Support Services if Customer has not paid all applicable Support Services fees and other amounts payable pursuant to this Agreement, or is otherwise not in compliance with the terms of this Agreement.

Miscellaneous

* During the time Customer has paid the applicable Support Services fees, Pentaho will: (i) provide Customer with the most recent Version of the Software Product and, (ii) provide Support for each Version of the Software Product for two (2) years from the date of its general availability.
* Customer's Named Contacts will be notified of Updates through official release notification e-mails.
* Pentaho reserves the right, at any time, to withdraw the availability of Support for a Software Product with twelve (12) months prior written notice.

EXHIBIT B

SERVICES

The following terms are applicable to any Training Services that Customer purchases:

1. "Training Services" means Pentaho's training courses purchased under this Agreement, including Pentaho's publicly available courses (classroom or web-based) ('Public Courses') and courses provided at a site designated by Customer ('On-site Courses').
2. Expenses. Unless otherwise specified in the Order Form, instructor travel and expenses are not included in the Fees for On-site Courses and will be paid by Customer.
3. Equipment and Facilities. For Public Courses, Pentaho agrees to provide appropriate training facilities, a software image and course books. Each student must apply a workstation Customer will be liable for any loss or destruction of equipment caused by Customer personnel. For On-site Courses, Customer will supply facility and equipment for on-site training with one workstation per student and instructor and one workstation for testing.
4. Customer Responsibilities. Customer is responsible for assessing the participants' suitability for the Training Services and enrollment in the appropriate courses. Customer is responsible for its participants' attendance at scheduled courses.
5. Pentaho Training Materials. Pentaho Training Materials are owned solely by Pentaho and provided solely for the use of the participants during the provision of the Training Services and may not be copied or transferred without the prior written consent of Pentaho.
6. Delivery Date and Cancellation. Unless otherwise agreed in writing by Pentaho, On-Site Courses are restricted to a maximum of 12 students per class. If Customer or Pentaho cancels or reschedules an On-site Course or a Public Course, the parties will work together to reschedule the Training Services. Pentaho reserves the right to cancel a Public Course for any reason no later than 10 business days prior to the start date of the course. Pentaho assumes no liability for lost time, wages or travel costs associated with a cancelled Public Course.
7. Payment Policy for Public Courses. Customer must pay for training at least two (2) weeks prior to the start date of the Public Course.
8. Training and consulting days not used within one (1) year of the date of purchase will expire.

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