RStudio End User License Agreement

This End User License Agreement and all Order Forms entered into between the parties hereunder (collectively, this "Agreement") is a legal agreement between you and RStudio, Inc., a Delaware corporation with its principal place of business at 250 Northern Avenue Suite 410 Boston, Massachusetts 02210 ("RStudio"), that governs your acquisition and use of RStudio's proprietary Software directly from RStudio or indirectly through an RStudio authorized reseller or distributor (a "Reseller"). It is effective between you and RStudio as of the date you download the Software.

*** IMPORTANT –

PLEASE READ CAREFULLY BEFORE YOU DOWNLOAD OR USE THE SOFTWARE ***

By clicking on the "accept" button at the end of this document or by accessing, executing or otherwise using the Software, you acknowledge that you have read this Agreement, understand it and agree to be bound by its terms and conditions. If you are not willing to be bound by the terms of this Agreement, do *not* access or use the Software.

If you are using the Software in your capacity as employee or agent of a company or organization, then any references to "you" in this agreement shall refer to such entity and not to you in your personal capacity. You warrant that you are authorized to legally bind the company or organization on whose behalf you are accessing the Software. If you are not so authorized, then neither you nor your company or organization may use the Software in any manner whatsoever.

1. **Definitions**

1.1 "Affiliate" means any entity which directly or indirectly controls, is controlled by, or is under common control with the subject entity. "Control," for purposes hereof, means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

1.2 "Customer Application" means software programs created and/or deployed by you or your Users using the Software.

1.3 "Documentation" means the published and generally available on-line user and administrator materials RStudio delivers or makes available with the Software, including on-line help, as updated from time to time.

1.4 "Order Form" means RStudio's global order form or other RStudio ordering document, including a signed quote, which is entered into between you and RStudio and identifies the Software ordered by you, including the license type, quantity, access information and any other restrictions or use limitations. Order Forms shall reference this Agreement and be deemed incorporated herein by reference.

1.5 "Software" means the RStudio software program(s), including any Staging Software, set forth on an Order Form and all Updates and Documentation provided to you by RStudio.

1.6 "Staging Software" means Software to be used only for testing changes to your computing environment or for testing Customer Applications, scripts, or documents before deploying them to your Users.

1.7 "Subscription Term" means the period of time set forth in the Order Form during which you are permitted to use the Software as licensed hereunder.

1.8 "Support Services" mean those services provided to you by RStudio pursuant to Section 4 hereof.

1.9 "Update" means any subsequent release of the Software that RStudio generally provides to its customers at no additional charge pursuant to Support Services. Updates do not include any Software that is marketed and priced separately by RStudio.

1.10 "User" means an individual who is authorized by you or your Affiliates to use the Software in accordance with this Agreement and the applicable license type set forth herein, and who has been supplied credentials by you. A User may include but is not limited to your and your Affiliates' employees and those of your and your Affiliates' consultants and contractors who use the Software on your behalf and who are bound by enforceable terms at least as protective of the Software and the RStudio Confidential Information as this Agreement.

2. **Free Trial**

If you either register on the RStudio Web site for a free trial or otherwise order a free trial version, RStudio will make certain Software available to you on a trial basis (the "Trial Version") free of charge until the end of the free trial period for which you registered or ordered the applicable Software. The Trial Version may be used only to review, demonstrate and evaluate the Software and may have limited features. The Trial Version may cease operating after the applicable time period or number of uses based on an internal metering mechanism within the Trial Version itself.

Regardless of any such metering, you must stop use at the end of such period or number of uses. Additional trial terms and conditions may appear on the trial registration web page or Order Form. Any such additional terms and conditions are incorporated into this Agreement by reference and are legally binding. Review the Documentation during the free trial so that you are familiar with the features and functions of the Software before you license the applicable Software.

You shall not (A) in the aggregate, install or use more than one copy of the Trial Version of the Software or use the Trial Version of the Software on more than one computer except, if necessary, for the sole purpose of evaluating load balancing features, (B) download the Trial Version of the Software under more than one username, (C) alter the contents of a hard drive or computer system to enable the use of the Trial Version of the Software for an aggregate period in excess of the trial period for one license to such Trial Version, (D) disclose the results of software performance benchmarks obtained using the Trial Version to any third party without RStudio's prior written consent, (E) use the Trial Version of the Software to update Software that is no longer eligible for Support Services or (F) use the Trial Version of the Software for a purpose other than the sole purpose of determining whether to purchase a license to the Software.

NOTWITHSTANDING SECTION 9 (LIMITED WARRANTY AND DISCLAIMER), DURING A FREE TRIAL, THE SOFTWARE AND ANY APPLICABLE SERVICES ARE PROVIDED "AS-IS" WITHOUT WARRANTY OF ANY KIND.

3. **License Grant**

3.1 **License Grant.** Subject to all terms and conditions set forth in this Agreement and the applicable Order Form, RStudio grants you a limited, worldwide, royalty-free, non-assignable (except upon a permitted assignment of this Agreement in accordance with Section 13.2), non-transferable (except upon a permitted assignment of this Agreement in accordance with Section 13.2), non-sublicensable and non-exclusive license pursuant to this Agreement for the Subscription Term set forth on the Order Form to install and use the Software in accordance with the Documentation and in accordance with the License Type applicable to the Software set forth on the Order Form. Certain Software may be used to deploy Customer Applications for use with "R", the open source programming language and software environment for statistical computing and graphics (referred to as "R") and you acknowledge and agree you must separately license "R" and any components of "R" from the licensor of such products, which is not RStudio. Notwithstanding anything to the contrary herein, you may make a reasonable number of copies of the Software for the sole purpose of backing-up and archiving the Software, but not for use in production or for a live back up site. Each copy of the Software is subject to all terms and conditions of this Agreement and must contain the same titles, trademarks, and copyrights as the original. You are responsible for the compliance of your Users with the terms and conditions of this Agreement, including their compliance with the License Type applicable to the Software licensed, and shall be liable for any breach of this Agreement by your Users.

3.2 **License Types**

The Software set forth in an Order Form may be subject to one or more of the following license types ("License Type") as and to the extent described in the Order Form.

3.2.1 **Concurrent User License:** Under the terms of a Concurrent User License, the Software may only be used to serve an aggregate specified maximum number of individual end users of your Customer Applications at any one time.

3.2.2 **Education License**: Under the terms of an Education License, the Software may only be used by a student or a faculty/staff member for educational purposes while actively studying or teaching at an educational institution and for no other purpose. An Educational License may not be shared or used at the same time on different devices.

3.2.3 **Named User License for Server Software**: Under the terms of a Named User License, the Software is licensed for use by a particular individual as the User. You must pay a license fee for each separate User that you wish to access and use the Software. A Named User License for the Software may not be shared or re-assigned. Notwithstanding the foregoing, you may permanently terminate a named User and assign the named User's license to a new named User. For example, if a named User ceases to be employed by you, you may re-assign his or her access credentials to a new named User.

3.2.4 **Named User License for Desktop Software**: Under the terms of a Named User License for RStudio Desktop Pro, the Software is licensed for use by a particular individual as the User on up to five devices. You must acquire and dedicate a license for each separate User that you wish to access and use the Software. A Named User License for the Software may not be shared.

3.2.5 **Server License**: Under the terms of a Server License, the Software is licensed for use on a single physical or virtual computer server.

3.2.6 **Subscription or Term License:** Under the terms of a Subscription or Term License, the Software is licensed only for the Subscription Term set forth in the Order Form. A Subscription or Term License is in combination with the other license types set forth herein thereby limiting the use of the Software to such applicable license type for the applicable Subscription Term. A Subscription or Term License begins on the date the Software is delivered and continues for the Subscription Term specified in the Order Form. If the Subscription Term is not specified in the Order Form then the Subscription Term is twelve (12) months. Software that is licensed pursuant to a Subscription or Term License may contain a mechanism that limits Software usage in accordance with the Subscription Term.

3.3 **Delivery**. Delivery of the Software shall be made by electronic means and such delivery shall be deemed to have been made upon RStudio or its Reseller, as the case may be, making the Software available to you for download or by providing you with a license key for such usage.

Notwithstanding the foregoing, where the Order Form provides for physical delivery or where electronic delivery is not possible given the nature of the requirements, delivery shall be deemed to have been made upon the transfer of the Software by RStudio or its Reseller to its shipping agent. RStudio's Software (other than Trial Versions) may transmit license-related data at the time of license activation to a RStudio license server in order to activate your license, provide you with update notifications, and to protect you and RStudio against unlicensed or illegal use of the Software; provided, however, that you may elect to use the off-line activation mechanism as provided in the Software, in which case license-related data will not be transmitted. You acknowledge that the Software may include licensing technology, anticopying subroutines and other security measures designed to limit usage of the Software to that which is licensed hereunder. Such measures are not intended to interfere with your normal and permitted operation of the Software as licensed hereunder.

3.4 **Virtualization Technology; Non-Human Devices**. The Software may be installed within a virtual (or otherwise emulated) hardware system so long as the use of the Software meets the terms of the license type and these virtual machines are run on hardware owned or leased by you, including, provided that you maintain compliance with this Agreement, remote cloud based hosting services, such as Amazon Web Services. Virtualization technology may not be used to circumvent other licensing terms or restrictions. Non-human devices that use the Software without interaction are counted as Users. Each device that runs the Software must be properly licensed to use the Software with one of the license types described herein. Examples of non-human devices include, but are not limited to, virtual PCs, build servers, unattended PCs for batch jobs, or similar.

3.5 **Usage Verification**. At RStudio's written request, and no more than once every twelve (12) months (or more frequently if a previous violation has taken place), you will certify to RStudio that you are in compliance with this Agreement and the restrictions set forth on the Order Form.

3.6 **Restrictions**. Your use of the Software is limited by the usage restrictions as are set forth on an Order Form and as set forth herein. RStudio and its suppliers reserve any and all rights, implied or otherwise, which are not expressly granted to you hereunder, and retain all rights, title and interest in and to the Software. Except as otherwise expressly permitted herein or in an Order Form, you shall not and shall not permit any third party to: (a) copy (except for a reasonable number of backup and archival copies as permitted herein), modify, adapt, transfer, distribute, resell, rent, lease, sublicense or loan the Software or create or prepare derivative works based upon the Software or any part thereof, (b) use the Software in a service bureau, or application service provider environment, or in any commercial time share arrangement or otherwise use or make available the Software or any party of the Software for the benefit of any third party, or make the Software or any part of the Software publicly available for download or use via an internet website, (c) combine all or any part of the Software with other software or use all or part the Software to create a new product or application; provided, that, for the purposes of clarity, your Authorized Users may use the Software to create Customer Applications, (d) distribute any software or device incorporating all or part of the Software, (e) use the Software except on your own internal computer networks, (f) otherwise use the Software on any computer that you do not own or control, (g) use the Software in contravention to any applicable laws or government regulations, or (h) decompile, disassemble or otherwise reverse engineer the Software. If 3.6(h) is prohibited by applicable law, you shall provide RStudio with a detailed prior written notice of any such intention to reverse engineer the Software and shall provide RStudio with a right of first refusal to perform such work at rates equal to those proposed by a recognized third-party software services provider for such work. You shall take all reasonable precautions to prevent unauthorized or improper use or disclosure of the Software. RStudio and other trademarks contained in the Software are trademarks or registered trademarks of RStudio Software Inc. in the United States and/or other countries. You may not remove or alter any trademark, trade names, product names, logo, copyright or other proprietary notices, legends, symbols or labels in the Software. You may not export the Software into any country prohibited by the United States Export Administration Act and the regulations thereunder. You acknowledge that the export of any Software is subject to export or import control and you agree that any Software or the direct or indirect product thereof will not be imported or exported (or re-exported from a country of installation) directly or indirectly, unless you obtain all necessary licenses from the U.S. Department of Commerce or other applicable agency or governmental body as required under applicable law. You shall comply with the export laws and regulations of the United States and other applicable jurisdictions in using the Software. Without limiting the foregoing, (i) you represent that you are not named on any U.S. government list of persons or entities prohibited from receiving exports, and (ii) you shall not permit Users to access or use the Software in violation of any U.S. export embargo, prohibition or restriction. You acknowledge and agree that the Software is prohibited for export or re-export to Cuba, North Korea, Iran, Libya, Syria and Sudan or to any person or entity on the U.S. Department of Commerce Denied Persons List or on the U.S. Department of Treasury's lists of Specially Designated Nationals, Specially Designated Narcotics Traffickers or Specially Designated Terrorists, as such is changed from time to time.

3.7 **Third Party Applications for the RStudio Software.**

The Software is intended for use with "R", the open source programming language and software environment, and, as such, interoperates with certain open source components, including without limitation open source R packages, as part of its basic functionality. RStudio may make certain third party components and packages (also referred to as "applications") available to you for download via RStudio's website or may provide links to third party websites where you may purchase and/or download or access third party components, packages, applications, services, data, content or resources.

If you use the Software with "R" and/or any open source components, R packages or any applications or services developed by a third party, whether or not made available to you by RStudio, or if you use the Software to access data, content or resources provided by a third party, you agree that RStudio is not responsible for such use or for "R", any open source components, R packages or other third party applications, services, data, content, or resources and makes no representations or warranties with respect thereto, all of which are provided "as is", and RStudio assumes no liability or other obligations with respect thereto. Further, you understand that all data, content or resources which you may access

through such third party applications and/or services are the sole responsibility of the person from which they originated and that RStudio has no obligations or liabilities to you with respect thereto and, without limiting the foregoing, is not liable for any loss or damage that you may experience as a result of the use or access thereof. You further acknowledge and agree that the third party open source components, R packages and other third party applications and services, and any data, content, and resources presented to you and your Users through the foregoing or your use thereof may be protected by intellectual property rights which are owned by the providers (or by other persons or companies on their behalf) and not RStudio. You acknowledge and agree that any use of "R" and any third party components, packages, applications, services, data, content, or resources may be subject to separate terms between you and the relevant third party, including any open source licenses referenced or provided with the foregoing.

3.8 **Open Source Software**. You acknowledge that certain third party software incorporated in the Software requires that RStudio provide copyright notices and/or additional terms and conditions to you, which copyright notices and additional terms and conditions may be accessed by you at https://www.rstudio.com/about/opensourcelicenses/ are made a part of, and are incorporated by reference into this Agreement. Use, reproduction and distribution of those components of the Software that are licensed under an open source software license are governed solely by the terms of that open source software license and not this Agreement.

4. **Support Services**

During a Support Services Period, RStudio will provide you with Support Services, including Updates, all in accordance with RStudio's standardized Product Support Program as it exists from time to time as set forth at https://www.rstudio.com/about/support-agreement/ . Support Services are provided to your designated representatives. RStudio may use technical information provided by you relating to the Software as part of the Support Services, including for product support and development. If RStudio provides support for earlier versions of the Software, such support will be treated, billed, and paid for, as professional services. RStudio makes no representation or warranty that all bugs will be fixed or all Software will be updated. In addition, as part of the Support Services, RStudio may make available bug lists, planned feature lists, and other supplemental materials. RStudio makes no representations or warranties of any kind for these materials.

5. **Fees and Payments**

You shall pay RStudio, or its Reseller, as the case may be, the fees, charges and other amounts specified in an Order Form in accordance with the terms of such Order Form. In the event the Order Form or Reseller paperwork does not provide for the terms for the payment of such fees, you shall pay RStudio the fees, charges and other amounts set forth in the applicable Order Form within forty-five (45) days of the date of invoice. RStudio is expressly authorized by you to deliver the Software upon execution of the applicable Order Form and, to the extent applicable, to invoice any applicable fees, charges or other amounts upon delivery. To the extent such fees are not required to be paid up front, you shall provide a purchase order or notice that a purchase order is not required for purchase or payment prior to the shipment of any Software or the provision of any Support Services. If your internal procedures require that an invoice be submitted against a purchase order before payment can be made, you shall be responsible for issuing such purchase order to RStudio in a timely fashion and your failure to do so will not extend or obviate its responsibilities to pay all fees and other charges in accordance with this Agreement. All fees and other charges are quoted in United States dollars. Other than as specifically provided herein, you will not be entitled to a refund of amounts paid for the license to use the Software or services provided, or any other amounts for any reason. You shall be responsible for taxes levied on any transaction under this Agreement, including all federal, state, and local taxes, levies and assessments, excluding any tax based on RStudio's net income.

6. **Confidentiality**

6.1 **Confidential Information.** During the term of this Agreement, each party will regard any information provided to it by the other party and designated in writing as proprietary or confidential to be confidential ("Confidential Information"). Confidential Information shall also include information which, to a reasonable person familiar with the disclosing party's business and the industry in which it operates, is of a confidential or proprietary nature. A party will not disclose the other party's Confidential Information to any third party without the prior written consent of the other party, nor make use of any of the other party's Confidential Information except in its performance under this Agreement. Each party accepts responsibility for the actions of its agents or employees and shall protect the other party's Confidential Information in the same manner as it protects its own valuable confidential information, but in no event shall less than reasonable care be used. The parties expressly agree that the Software and the terms and pricing of this Agreement are the Confidential Information of RStudio. A receiving party shall promptly notify the disclosing party upon becoming aware of a breach or threatened breach hereunder, and shall cooperate with any reasonable request of the disclosing party in enforcing its rights.

6.2 **Exclusions.** Information will not be deemed Confidential Information hereunder if such information: (i) is known prior to receipt from the disclosing party, without any obligation of confidentiality; (ii) becomes known to the receiving party from a source other than one having an obligation of confidentiality, directly or indirectly, to the disclosing party; (iii) becomes publicly known or otherwise publicly available, except through a breach of this Agreement; or (iv) is independently developed by the receiving party without use of or reference to the disclosing party's Confidential Information. The receiving party may disclose Confidential Information pursuant to the requirements of applicable law (including without limitation applicable state or federal regulations which may require you to make disclosure pursuant to and as limited by such regulations, such as freedom of information regulations), legal process or government regulation, provided that it gives the disclosing party reasonable prior written notice to permit the disclosing party to contest such disclosure, and such disclosure is otherwise limited to the required disclosure.

6.3 **Specific Performance**. If the receiving party discloses or uses (or threatens to disclose or use) any Confidential Information in breach of this Section 6, the disclosing party shall have the right, in addition to any other remedies available to it, to seek injunctive relief to enjoin such acts, without the posting of a bond or other security, it being specifically acknowledged by the parties that any other available remedies are inadequate.

7. Ownership; Feedback

7.1   Except as expressly provided in this Agreement, RStudio and its suppliers retain all right, title and interest, including all copyright and intellectual property rights, in and to, the Software, including without limitation all enhancements, improvements, bug fixes, updates, upgrades, modifications and derivative works thereof, as an independent work and as an underlying work serving as a basis for any improvements, modifications, derivative works, and applications you may develop, and all copies thereof. All rights not specifically granted in this Agreement, including Federal and international copyrights, are reserved by RStudio and its suppliers. RStudio agrees that it obtains no right, title or interest from you and your users (or your licensors) under this Agreement in or to any Customer Applications you use with the Professional Server Products. If the Software was acquired outside the United States, then you agree and assent to the adherence to all applicable international treaties regarding copyright and intellectual property rights which shall also apply. In addition, you agree that any local laws to the benefit and protection of RStudio's ownership of, and interest in, its intellectual property and rights of recovery for damages thereto will also apply.

7.2 You and you Users may, from time to time, make known to RStudio suggestions, enhancement requests, techniques, know-how, comments, feedback or other input to RStudio with respect to the Software (collectively, "Suggestions"). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, RStudio shall have a royalty-free, worldwide, irrevocable, perpetual license to use, disclose, reproduce, license, distribute and exploit any Suggestion without restriction or obligation of any kind, on account of confidential information, intellectual property rights or otherwise, and may, in its sole discretion, incorporate into its services any service, product, technology, enhancement, documentation or other development ("Improvement") incorporating or derived from any Suggestion.

8. Limited Warranty

8.1 Except with respect to the Trial Version of the Software for which RStudio provides no remedies or warranties, RStudio warrants that (a) during the term of your Subscription or Term License, the Software will perform in all material respects in conformity with its Documentation; and (b) any Support Services will be provided with reasonable skill and care conforming to generally accepted software industry standards. Your exclusive remedy for RStudio's breach of the foregoing warranties is that RStudio will, at its option and at no additional charge to you, (a) provide remedial services necessary to enable the Software or Support Services to conform to the warranty, or (b) replace any defective Software or media. RStudio's warranty obligations will only extend (i) to material errors that can be demonstrated to exist in an unmodified version of the Software except where the modifications were carried out by RStudio or with to its written specifications and subject to its written approval. You will provide RStudio with a reasonable opportunity to remedy any breach and reasonable assistance in remedying any defects.

8.2 RStudio represents and warrants, as of the date of delivery of the Software to you, that RStudio has used commercially available virus scanning software to scan the Software for known viruses and RStudio has removed from the Software any known viruses identified by such scans.

8.3 EXCEPT AS SET FORTH IN THIS SECTION 8, THE SOFTWARE IS PROVIDED "AS IS" AND RSTUDIO AND ITS SUPPLIERS DISCLAIM ALL OTHER WARRANTIES AND REPRESENTATIONS, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMTATION EXPRESSLY DISCLAIMING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND TITLE. RSTUDIO DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE IS ERROR FREE OR THAT ALL ERRORS CAN BE CORRECTED. THE SOFTWARE IS NOT DESIGNED, INTENDED OR LICENSED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE CONTROLS, INCLUDING WITHOUT LIMITATION, THE DESIGN, CONSTRUCTION, MAINTENANCE OR OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, AND LIFE SUPPORT OR WEAPONS SYSTEMS. RSTUDIO SPECIFICALLY DISCLAIMS ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES. No oral or written information or advice given by RStudio, its Resellers, dealers, distributors, agents, representatives or employees shall create any warranty or in any way increase any warranty provided herein.

8.4 If applicable law requires any warranties other than the foregoing, all such warranties are limited in duration to ninety (90) days from the date of delivery. Some jurisdictions do not allow the exclusion of implied warranties, so the above exclusion may not apply to you. The warranty provided herein gives you specific legal rights and you may also have other legal rights that vary from jurisdiction to jurisdiction. The limitations or exclusions of warranties, remedies or liability contained in this Agreement shall apply to you only to the extent such limitations or exclusions are permitted under the laws of the jurisdiction where you are located.

9. Indemnity

9.1 RStudio agrees to defend (at RStudio's expense) you and your Affiliates and your respective officers, directors and employees from and against any and all third party claims asserted against you by a third party ("Third Party Claims") alleging infringement by the Software of the third party's intellectual property rights arising under United States law or the laws of a country party to the Berne Convention and RStudio shall indemnify and hold you harmless from all damages finally awarded by a court of competent jurisdiction or pursuant to binding arbitration or agreed to by RStudio in settlement with respect to such Third Party Claims. Notwithstanding the foregoing, RStudio shall have no obligation with respect to Third Party Claims or demands arising from (i) an allegation that does not state with specificity that the Software is the basis of the Third Party Claims; (ii) the use or combination of the Software or any part thereof with software, hardware, or other materials not developed by RStudio if the Software or use thereof would not infringe without such combination, (iii) modification of the Software by a party other than RStudio or its authorized contractors, if the use of unmodified Software would not constitute infringement, (iv) your products or applications, including without limitation your Customer Applications, other than Third Party Claims related to the Software for which RStudio is obligated to indemnify you under this Section 9.1, (v) your use of the Software not in accordance with this Agreement or the Documentation, (vi) an allegation of infringement or misappropriation deriving from "R", packages developed for "R", or other open source software, or (vii) an allegation made against you prior to the execution of this Agreement.   This Section 9.1 states RStudio's sole liability and your exclusive remedy for claims of infringement or misappropriation of third party intellectual property rights.

9.2 You agree to defend (at your expense) RStudio and its officers, directors and employees from and against any and all third party claims asserted against any or all of them, and you shall indemnify and hold RStudio harmless from all losses, costs and expenses incurred by RStudio, damages finally awarded by a court of competent jurisdiction or binding arbitration, and amounts agreed to by you in settlement with respect to such claims, which claims arise out of or relate to (a) your or your Users use of the Software that is not in compliance with this Agreement or the Documentation, or (b) your Customer Applications, including without limitation any claim that your Customer Applications infringe any intellectual property rights of a third party arising under United States law or the laws of a country party to the Berne Convention or defames any third party or violates their rights of publicity or privacy.

9.3 Each party's obligations under this Section 9 are conditioned on the indemnified party (i) providing the indemnifying party with written notice promptly upon learning of any claim for which it seeks indemnification (provided, that any failure to provide prompt notice shall not relieve the indemnifying party of its obligations except to the extent the indemnifying party was prejudiced by such failure); (ii) providing the indemnifying party sole control over the defense and settlement of the claim, provided the indemnifying party may not settle the claim in a manner adverse to the indemnified party or which would impose liability on the indemnified party without the indemnified party's prior written consent (which will not be unreasonably withheld or delayed); and (iii) providing the indemnifying party with assistance in the defense and settlement of the claim at the indemnifying party's expense. The indemnified may (at its own cost) engage its own counsel to participate in the defense and settlement of the claim.

10.   **LIMITATION OF LIABILITY**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, PUNITIVE, COVER OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR THE INABILITY TO USE EQUIPMENT, SOFTWARE OR ACCESS DATA, LOSS OF BUSINESS, LOSS OF PROFITS, LOSS OF USE, LOSS OR CORRUPTION OF DATA, PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, BUSINESS INTERRUPTION OR THE LIKE), ARISING OUT OF THIS AGREEMENT OR THE USE OF, OR INABILITY TO USE, THE SOFTWARE AND BASED ON ANY THEORY OF LIABILITY INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY OR ITS REPRESENTATIVES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF A REMEDY SET FORTH HEREIN IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH PARTY'S TOTAL LIABILITY TO THE OTHER PARTY FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU OR RESELLER, IF ORDERED THROUGH A RESELLER, FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE.

The foregoing limitations shall not apply, and a party's liability shall be unlimited for, damages arising from (i) such party's gross negligence, willful misconduct or fraud, (ii) breach of the obligations of confidentiality set forth in Section 6, or (iii) breach of the license granted pursuant to Section 3.1 or the restrictions set forth in Section 3.6.

Further, the foregoing limitations shall not apply to a party's indemnification obligations in Section 9 for which a party's total aggregate liability shall be limited to (x) three times (3x) the fees you paid by you (whether directly or through a Reseller) to RStudio under such Orders in the twelve months immediately preceding the date the claim arose or (y) $100,000, whichever is greater.

The Disclaimer set forth in Section 8.3 and Limitation of Liability set forth above are fundamental elements of the basis of the agreement between RStudio and you. RStudio and its suppliers would not be able to provide the Software on an economic basis without such limitations.

11. **Term and Termination**

11.1 This Agreement shall remain in full force and effect until all Order Forms entered into hereunder have terminated or expired or until earlier terminated in accordance herewith. Each Order Form shall commence on the Subscription Start Date set forth in the Order Form and shall continue for the Subscription Term set forth therein unless earlier terminated in accordance herewith. Unless either party provides the other party of written notice of termination at least 30 days prior to the end of the then current Subscription Term, the Subscription Term will be extended for an additional twelve months on each anniversary of the Subscription Start Date provided that Licensee either submits a purchase order or makes payment in full of the applicable annual license fees for such renewal Subscription Term prior to the commencement of the renewal Subscription Term. If Licensee does not submit a purchase order or make payment in full on or before the commencement of the renewal Subscription Term, the Subscription Term will immediately terminate without further action by the parties.

11.2 This Agreement or an individual Order Form may be terminated (a) in the case of RStudio, if you fail to pay any amount due to RStudio within ten (10) days after written demand by RStudio for payment thereof, (b) by either party if the other party becomes insolvent, resolves to file bankruptcy, or if a petition in bankruptcy is filed against the other party and such petition is not discharged within sixty (60) days of such filing, (c) by mutual written agreement of the parties, or (d) by either party if the other party materially breaches this Agreement and fails to cure such breach to such party's reasonable satisfaction within thirty (30) days following receipt of written notice thereof.

11.3 Upon any termination of this Agreement or the affected Order Form, you and your Users shall immediately cease all use of the Software and certify in writing to RStudio within thirty (30) days after termination that such Software and all copies thereof have been destroyed, purged or returned to RStudio. Termination of this Agreement or an Order Form shall not limit either party from pursuing any remedies available to it, including injunctive relief, or relieve you of your obligation to pay all fees that have accrued, have been paid, or have become payable to RStudio. All provisions of this Agreement which by their nature are intended to survive the termination of this Agreement (including, without limitation, the provisions of Sections 1, 6, 7, 8.3, 8.4, 9, 10, 11.3 and 13) shall survive such termination.

12. **U.S. GOVERNMENT RESTRICTED RIGHTS LEGEND**

This Section 12 applies to all acquisitions of the Software by or for the federal government, or by any prime contractor or subcontractor (at any tier) under any contract, grant, cooperative agreement or other activity with the federal government. The Software was developed at private expense and is Commercial Computer Software, as defined in Section 12.212 of the Federal Acquisition Regulation (48 CFR 12.212 (October 1995)) and Sections 227.7202-1 and 227.7202-3 of the Defense Federal Acquisition Regulation Supplement (48 CFR 227.7202-1, 227.7202-3 (June 1995)). Accordingly, any use, duplication or disclosure by the Government or any of its authorized users is subject to restrictions as set forth in this standard license agreement for the Software. If for any reason, Sections 12.212, 227.7202-1 or 227.7202-3 are deemed not applicable, then the Government's rights to use, duplicate or disclose the Software are limited to "Restricted Rights" as defined in 48 CFR Section 52.227-19(c)(1) and (2) (June 1987), or DFARS 252.227-7014(a)(14) (June 1995), as applicable. If this Agreement fails to meet the government's needs or is inconsistent in any respect with Federal law, the government agrees to return the Software, unused, to RStudio at the address set forth above.

13. **General**

13.1 This Agreement shall be governed by the internal laws of the Commonwealth of Massachusetts, U.S.A., without giving effect to principles of conflict of laws. You hereby consent to the exclusive jurisdiction and venue of the state courts sitting in the Commonwealth of Massachusetts or the federal courts in the Commonwealth of Massachusetts to resolve any disputes arising under this Agreement. In each case this Agreement shall be construed and enforced without regard to the United Nations Convention on the International Sale of Goods.

13.2 Neither party may assign or allow the assumption of any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its Affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, stock or business to which this Agreement relates to the third party purchasing such stock or assets who agrees in writing to be bound hereby. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

13.3 This Agreement, all documents referenced herein, and the Order Form(s) entered into by the parties contains the complete agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements or understandings, whether oral or written. You agree that any varying or additional terms contained in any purchase order or other written notification or document issued by you in relation to the Software licensed hereunder shall be of no effect and all such terms or conditions shall be null and void. You acknowledge and agree that your agreement hereunder is not contingent upon the delivery of any future functionality or features not specified herein or in an Order Form or dependent upon any oral or written, public or private comments made by RStudio or any Reseller, dealer or agent with respect to future functionality or features for the Software. In the event of any conflict between the provisions in this Agreement and any Order Form, the terms of such Order Form shall prevail. The failure or delay of RStudio to exercise any of its rights under this Agreement or upon any breach of this Agreement shall not be deemed a waiver of those rights or of the breach. No Reseller or RStudio dealer or agent is authorized to make any amendment to this Agreement. The parties may amend this Agreement by mutual written agreement executed by duly authorized representatives of the parties. The parties agree that there are no third party beneficiaries to this Agreement. Neither party shall be deemed to be an employee, agent or other legal representative of the other party for any purpose whatsoever, or have the right or authority to assume or otherwise create any obligation or responsibility, express or implied on behalf of the other party or to bind the other party in any manner whatsoever.

13.4 If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law that provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach thereof.

13.5 This Agreement may be executed in counterparts (including counterparts delivered by facsimile or other electronic means), which taken together shall form one legal instrument. The titles of the sections of this Agreement are for convenience of reference only and are not to be considered in construing this Agreement. Unless the context of this Agreement clearly requires otherwise: (i) references to the plural include the singular, the singular the plural, and the part the whole, (ii) "or" has the inclusive meaning frequently identified with the phrase "and/or," (iii) "including" has the inclusive meaning frequently identified with the phrase "including but not limited to" or "including without limitation," and (iv) references to "hereunder," "herein" or "hereof" relate to this Agreement as a whole. Any reference in this Agreement to any statute, rule, regulation or agreement, including this Agreement, shall be deemed to include such statute, rule, regulation or agreement as it may be modified, varied, amended or supplemented from time to time. The parties agree that this Agreement shall be fairly interpreted in accordance with its terms without any strict construction in favor of or against either party and that ambiguities shall not be interpreted against the drafting party.

13.6   This Agreement is a click-wrap agreement that will be made available on the website where the Software will be available for download (the "Website"). RStudio may make changes to this Agreement from time to time without further notice. When these changes are made, RStudio will make a new version of the Agreement available on the Website. Continued use of the Software by you and your Users after any such changes constitutes your acceptance of the new License Agreement. If you and your Users do not agree to abide by these or any future Agreement, do not use (or continue to use) the Software.