

Terms and Conditions

PAX8 PROFESSIONAL SERVICES

This Agreement sets forth the terms and conditions that govern your access to and use of the Pax8 Professional Services, as defined herein. This Agreement is between Pax8, Inc. (“Pax8,” “we,” “us,” or “our”) and you or the entity you represent and all of the End Users using the Services under your account (“you”).

By accepting this Agreement, you agree to be legally bound by the terms and conditions of this Agreement. If you are entering into this Agreement on behalf of a company or other legal entity, you represent that you have the authority to bind that entity.

Definitions

“End User” means any individual or entity that directly or indirectly through another user accesses the Services under your account.

“Pax8 Portal” is the technology platform developed by Pax8 for the ordering, provisioning, managing, and billing of Pax8 Products.

“Pax8 Products” are technology products and services sold by Pax8 through the Pax8 Portal.

“Service Description” means the description of the applicable Professional Services item set forth in the Pax8 Portal, plus any supplemental documentation prepared by Pax8 and agreed to by the parties in writing.

“Services” means the professional services provided to you by Pax8 pursuant to this Agreement.

“Supported Products” means the subset of Pax8 Products for which Pax8 offers professional services pursuant to this Agreement. Each Service Description specifies the Pax8 Product(s) to which it applies.

Agreement

1. **Services.** Pax8 will provide the Services that you ordered in accordance with the applicable Service Description. Services will be performed in accordance with any timeline included in the Services Description.

2. **Products Supported.** Only Supported Products are eligible for Services. Services will not be provided where the Pax8 Product is used with less than the recommended minimum system configuration.

3. **Provision of Information.** You agree to provide us with complete and accurate information concerning your (or the applicable) computer system(s) and network(s) if asked to do so. Pax8 reserves the right to refuse to provide services to you at any time if:

- We determine that your computer and network configuration are not supportable by us; or
- You fail to provide the requested information; or
- You have provided insufficient information for us to proceed with the Services.

4. **Out of Scope.** Pax8 will have no obligation to provide service that is outside the scope of this Agreement, including requests:

- Outside the scope of any applicable Statement of Work;
- Made outside the designated hours of the ordered Services, if applicable;
- Made by you on behalf of another entity;
- Made by an individual that is not on the list of your designated representatives;
- Concerning a product or service other than the Supported Products;
- Concerning a Supported Product that has been modified by other than Pax8 or its authorized affiliates, or which has been combined, integrated or bundled with non-Supported Products; or
- For problems caused, directly or indirectly, by negligence, abuse or misapplication, use of the Supported Product other than as is specified in the applicable documentation, or other causes beyond the control of Pax8 including, without limitation, damage caused by fire, lightning, accident, flood, or other similar causes, unsuitable physical environment and improper service by someone other than Pax8 or a Pax8 authorized contractor, reseller or distributor.

If Pax8 determines, at its sole discretion, that a service request made by you may be outside the scope of the Services, Pax8 shall so notify you, and you may (a) request Pax8 in writing to proceed with the requested service at your expense, as further provided below; or (b) advise Pax8 in writing that you do not wish Pax8 to proceed with the service request at your expense. If you do not advise Pax8 of either (a) or (b) within ten (10) business days of Pax8's notification, you will be deemed to have advised Pax8 not to pursue the service request. Pax8 shall have no liability to you for any problem which is outside the scope of the Services, or any service request that you advise, or are deemed to have advised, Pax8 not to pursue.

If you request that Pax8 proceed with a service request at your possible expense, you must provide authorization to Pax8 in writing. If you authorize Pax8 to proceed and Pax8 subsequently determines that the service request is outside the scope of the Services, you will compensate Pax8 for all work performed in connection with such determination on a time and materials basis, plus reasonable related expenses incurred therewith, at Pax8's then-current rate for such services.

5. **Pricing.** Fees for the Services are set forth in the Pax8 Portal.

6. **Taxes.** You will bear and be responsible for (a) the payment of all taxes, duties and like charges (collectively "Taxes") associated with the Services (other than taxes based on Pax8's net income) however designated, including value added and withholding taxes and/or the like, which are levied or based upon the fees payable for the Services or otherwise upon this Agreement, and (b) keeping all records and/or impounding or paying all Taxes and any other charges required by and imposed by any authority resulting from this Agreement.

7. **Ownership.** You acknowledge that Pax8 provides services to other partners and customers of Pax8 and agree that nothing in this Agreement will be deemed or construed to prevent Pax8 from carrying on such business. All right, title and interest in and to all work product created by Pax8 under the terms of this Agreement, including without limitation, all enhancements, fixes, workarounds, releases, updates, custom solutions, modifications, improvements, changes, know-how, methodologies, and all other work product and all intellectual property rights therein and thereto, however discovered, will be the sole and

exclusive property of Pax8. You may, from time to time, make known to Pax8 suggestions, techniques, support requests, problems, know-how, comments, feedback or other input to Pax8 with respect to the Supported Products and/or the Services (collectively, "Suggestions"). Unless otherwise agreed to in writing by the parties with respect to any Suggestion, Pax8 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 incorporate into its software or a new product or service any work product or other development incorporating or derived from any Suggestion.

8. Term. The term of this Agreement commences on the date you accept it and continues until completion of the Services or termination of this Agreement.

9. Termination for Convenience. You may terminate this Agreement at any time by cancelling the Services; provided, however, that all fees paid are nonrefundable. Pax8 may terminate this Agreement without cause by providing you 30 days' notice.

10. Termination for Cause.

(a) **By Either Party.** Either party may terminate this Agreement for cause upon 30 days' advance notice to the other party if there is any material default or breach of this Agreement by the other party, unless the defaulting party has cured the material default or breach within the 30-day notice period.

(b) **By Pax8.** Pax8 may also terminate this Agreement immediately upon notice to you (i) for cause, if you are in breach of this Agreement, (ii) if our relationship with a third party partner who provides software or other technology we use to provide the Services expires, terminates or requires us to change the way we provide the Services, (iii) in order to comply with the law or requests of governmental entities, or (iv) if we determine use of the Services by you or our provision of any of the Services to you has become impractical or unfeasible for any reason.

11. Effect of Termination. Upon termination of this Agreement, Pax8's obligation to provide the Services immediately ceases. You remain responsible for all fees and charges you have incurred through the date of termination. Rights and obligations that are of a continuing nature shall survive, including without limitation, obligations related to proprietary information, indemnification, and limitation of liability.

12. Trademarks. No rights or licenses are granted by this Agreement, expressly or by implication, to use any Pax8 or third-party trademarks or trade names, or any similar name or mark.

13. Confidential Information.

(a) "Confidential Information" means information that is disclosed or otherwise made available by either party under this Agreement, that the receiving party knows or should reasonably be expected to know is proprietary or confidential. Confidential information does not include: information that later becomes publicly available through no fault of the receiving party; information that is rightfully developed or obtained by the receiving party from independent sources free of any duty of confidentiality.

(b) Use of Confidential Information. A party receiving Confidential Information will restrict its use to purposes necessary for the performance of its obligations under this Agreement. During the term of this Agreement and thereafter, the receiving party will safeguard against the disclosure of Confidential Information to third parties using the same degree of care to prevent disclosure as it uses to protect its own information of like importance, but at least reasonable care. The receiving party will limit disclosures of Confidential Information to its employees and professional advisors to those necessary to carry out this Agreement.

Receiving party will immediately notify disclosing party upon learning of or having reason to suspect any breach of this Section 13. In the event the receiving party is legally required to disclose Confidential Information, it will, to the extent permissible by law, notify disclosing party with sufficient time for disclosing party to seek relief.

14. Disclaimers. THE SERVICES ARE PROVIDED “AS IS.” WE AND OUR AFFILIATIES AND LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE SERVICE OFFERINGS OR THE THIRD-PARTY CONTENT, INCLUDING ANY WARRANTY THAT THE SERVICE OFFERINGS OR THIRD-PARTY CONTENT WILL BE UNINTERRUPTED, ERROR-FREE OR FREE OF HARMFUL COMPONENTS, OR THAT ANY CONTENT, INCLUDING YOUR CONTENT OR THIRD-PARTY CONTENT, WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. EXCEPT TO THE EXTENT PROHIBITED BY LAW OR AS OTHERWISE SET FORTH HEREIN, WE AND OUR AFFILIATES AND LICENSORS DISCLAIM ALL WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT, OR QUIET ENJOYMENT, AND ANY WARRANTIES ARISING OUT OF ANY COURSE OF DEALING OR USAGE OF TRADE. IN ADDITION, SERVICES ARE LIMITED TO CURRENT PRODUCTION SUPPORTED PRODUCTS.

15. Indemnification

15.1 General. You will defend, indemnify, and hold harmless Pax8, our affiliates and licensors, and each of their respective employees, officers, directors, and representatives from and against any claims, damages, losses, liabilities, costs, and expenses (including reasonable attorneys’ fees) arising out of or relating to any third-party claim concerning: (a) your use of the Services; or (b) breach of this Agreement or violation of applicable law by you. If we or our affiliates are obligated to respond to a third-party subpoena or other compulsory legal order or process described above, you will also reimburse us for reasonable attorneys’ fees, as well as our employees’ and contractors’ time and materials spent responding to the third-party subpoena or other compulsory legal order or process at our then-current hourly rates.

15.2 Process. We will promptly notify you of any claim subject to Section 15.1, but our failure to promptly notify you will only affect your obligations under Section 15.1 to the extent that our failure prejudices your ability to defend the claim. You may: (a) use counsel of your choice with our written consent; and (b) settle any claim as you deem appropriate; provided that you obtain our written consent before entering into any settlement. We may also assume control of the defense and settlement of the claim at any time.

16. Limitations of Liability. WE AND OUR AFFILIATES OR LICENSORS WILL NOT BE LIABLE TO YOU FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES (INCLUDING DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, OR DATA), EVEN IF A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. FURTHER, NEITHER WE NOR ANY OF OUR AFFILIATES OR LICENSORS WILL BE RESPONSIBLE FOR ANY COMPENSATION, REIMBURSEMENT, OR DAMAGES ARISING IN CONNECTION WITH: (a) YOUR INABILITY TO USE THE SERVICES, INCLUDING AS A RESULT OF ANY (i) TERMINATION OR SUSPENSION OF THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES, (ii) OUR DISCONTINUATION OF ANY OR ALL OF THE SERVICES, OR, WITHOUT LIMITING ANY OBLIGATIONS UNDER THE SERVICE LEVEL AGREEMENT, ANY UNANTICIPATED OR UNSCHEDULED DOWNTIME OF ALL OR A PORTION OF THE SERVICES FOR ANY REASON, INCLUDING AS A RESULT OF POWER OUTAGES, SYSTEM FAILURES OR OTHER INTERRUPTIONS; (b) THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES; (c) ANY INVESTMENTS, EXPENDITURES, OR COMMITMENTS BY YOU IN CONNECTION WITH THIS AGREEMENT OR YOUR USE OF OR ACCESS TO THE SERVICES; OR (d) ANY UNAUTHORIZED ACCESS TO, ALTERATION OF, OR THE DELETION, DESTRUCTION, DAMAGE, LOSS OR FAILURE TO STORE ANY OF YOUR CONTENT OR OTHER DATA. TO THE MAXIMUM EXTENT PERMITTED BY LAW, PAX8'S TOTAL LIABILITY TO YOU FOR ACTUAL DAMAGES FOR ANY CAUSE WHATSOEVER WILL BE LIMITED TO THE AMOUNT PAID BY YOU TO PAX8, OR PAX8 PARTNER IF PAID TO A PAX8 PARTNER, FOR THE SERVICES THAT CAUSED SUCH DAMAGE IN THE TWELVE MONTHS IMMEDIATELY PRIOR TO THE DATE THE CAUSE OF ACTION AROSE. The limitation of liability set forth above is a fundamental element of the basis of this Agreement between Pax8 and you. Pax8 would not be able to provide the Services on an economic basis without such limitations.

17. Miscellaneous.

17.1 Force Majeure. We and our affiliates shall not be liable for any breach of this Agreement caused by matters beyond our reasonable control, including without limitation, acts of God, fire, lightning, explosion, war, disorder, flood, weather of exceptional severity, terrorist attacks, or acts of Government or other authorities or regulatory bodies.

17.2 Jurisdiction; Governing Law. Jurisdiction and venue for any legal dispute arising from this Agreement will be the Colorado state courts located in Denver, Colorado, or the United States Federal Court for the District of Colorado. State law issues concerning the construction, interpretation, and performance of these terms and conditions shall be governed by the substantive laws of the State of Colorado without reference to its choice of law rules.

17.3 Attorney and Expert Fees. The prevailing party in any litigation or arbitration arising out of this Agreement will be entitled to recover its reasonable attorney and expert fees, costs and related expenses.

17.4 Notices.

(a) **To You.** We may provide any notice to you under this Agreement by sending a message to the email address then associated with your account. Notices we provide by email will be effective when we send the email. It is your responsibility to keep your email address current. You will be deemed to have received any email sent to the email address then associated with your account when we send the email, whether or not you actually receive the email.

(b) **To Us.** All notices and communications pursuant to this Agreement must be in writing and in the English language and must be delivered: (i) by email to legal@pax8.com; (ii) in person; (iii) by a nationally recognized next day courier service; or (iv) by first class registered or certified mail, postage prepaid. Our current address is: Pax8, Inc., 6400 South Fiddlers Green Circle, Suite 1500, Greenwood Village, CO 80111.

17.5 No Waivers. Our failure to enforce any term of this Agreement will neither constitute a waiver of that term, nor limit our right to insist on strict adherence to that term or any other term. Any waiver must be in writing.

17.6 Severability. If any portion of this Agreement is held to be or becomes invalid or unenforceable, the remaining portions of this Agreement will remain in full force and effect. Any invalid or unenforceable provisions shall be modified to the minimum extent necessary to best accomplish the original objectives of the provision within the limits of applicable law.

17.7 Entire Agreement. The provisions of this Agreement constitute the entire Agreement between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous agreements, understandings or representations, oral or written, regarding the subject matter hereof. Pax8 Partners do not have the right to make modifications to this Agreement or to make any additional representations, commitments or warranties binding on Pax8.