Software License and Support Agreement

1. SCOPE: This Software License and Support Agreement (this "Agreement") is made and entered into this ____ day of _____, 20___ and establishes the terms and conditions to which Embarcadero Technologies, Inc., a Delaware corporation with offices at 100 California Street, 12th Floor, San Francisco, California 94111, including its affiliates (the "LICENSOR") and the General Services Administration_____, _____[insert US Govt Contracting Entity] with offices at_____("LICENSEE") have agreed for the licensing of LICENSOR software products, accompanying documentation, and support. This Agreement contemplates the contemporaneous and future execution by the parties of one or more ordering documents ("Purchase Order"), which shall be attached hereto and incorporated herein by this reference. Each Purchase Order shall be considered a separate license conferring upon LICENSEE permission to use the product(s) as specified therein ("Product" or "Products"). In the event of a conflict between the terms of this Agreement and any Purchase Order or the terms that accompany the Products, the terms of this Agreement will govern and control unless the parties expressly agrees in writing otherwise. LICENSOR shall be under no obligation to issue or accept any Purchase Order under this Agreement. No Products shall be furnished to LICENSEE by virtue of this Agreement alone but shall require the issuance of a Purchase Order or such other mutually acceptable order documentation. Delivery if made by any means other than electronic delivery, shall be made *FCA* (Incoterms 2000) LICENSOR's shipping point. All deliveries of Product shall be deemed accepted upon delivery.

2. GRANT: LICENSOR grants to LICENSEE a non-exclusive, nontransferable, perpetual license (the "License") to install this Product within the country (or in the case of a country within the European Union within the European Union) specified by LICENSEE's ship to address provided by LICENSEE in the ordering documentation for the Product at the time of purchase ("Licensed Country") and solely for the development of software programs and/or management of its internal systems and data in the following manner:

(a)   If LICENSEE has purchased a Single Seat License (also called a Workstation License), LICENSEE may install the Product on one computer for use by one end user within the Licensed Country.

(b)   If LICENSEE has purchased a Concurrent Users License, LICENSEE may install the Product on a network within the Licensed Country to be used concurrently on different computers by up to the authorized number of users for which LICENSEE has purchased a license provided that the Product is accessed and used only in the Territory. "Territory" means the geographical area in which the Product may be accessed and used. The use in the Territory shall be subject to the export restrictions set forth below. Territory may be any one, and only one, of the following three geographic areas: Americas Territory, EMEA Territory or AsiaPac Territory each as defined below.

The geographic Territories are:

'Americas Territory' including and limited to those geographical areas found within the boundaries of North and South America (but excluding Cuba).

'Europe, Middle East and Africa Territory' or 'EMEA Territory' including and limited to those geographical areas found within the boundaries of Europe, Middle East and Africa, including countries in the former Soviet Union (but excluding Syria, Iran and Sudan);

 'Asia Pacific Territory' or 'AsiaPac Territory' including and limited to those geographical areas found within the boundaries of Asia and Australia/Pacific (but excluding North Korea).

(c)   If LICENSEE has purchased a Network Named User or Named User License, LICENSEE may designate one person in LICENSEE's organization ("Named User") the right to install the Product on one or more computers and use the Product within the Licensed Country, provided that only the Named User uses the Product.

(d)   If LICENSEE has purchased a CPU License, LICENSEE may use the Product on any number of computers within the Licensed Country, provided that at no time may the Product be used to monitor more than the authorized number of CPUs for which LICENSEE has purchased a license.

Except where prohibited by applicable law, transfer of the Product into a country (or in the case of the European Union, outside the EU) not identified on the ordering documentation at the time of purchase is prohibited and will void the license. Temporary usage of a Product outside the Licensed Country or Territory not to exceed 30 days while a user is traveling, is permitted.

3. TERM: Upon acceptance by LICENSOR, this Agreement shall be effective on the date first written above. Each License for a Product shall become effective on the date set forth in the Purchase Order, or if not provided, the date of execution of the Purchase Order, and shall continue for the term(s) set forth therein.

4. TERMINATION FOR BREACH: Provisions for breach of the Agreement will be as set forth in the then current Federal Acquisition Regulations. Claims shall be addressed in accordance with the Contract Disputes Act.

5. TITLE AND PROPRIETARY INFORMATION

5.1 TITLE AND COPYRIGHT: LICENSOR represents and warrants that it has the full rights to license the Products to LICENSEE and to perform its obligations under this Agreement. All title and copyrights and other industrial, intellectual and marketing rights in and to the Product(s), including but not limited to all modifications thereto made by or for any person, are owned by LICENSOR and/or its affiliates and licensors, and are protected by both United States copyright law and applicable international copyright treaties. LICENSEE agrees not to claim or assert title to or ownership of the Products. LICENSEE may copy the Products only for backup or archival and disaster recovery purposes, but for no other purpose. LICENSEE will not remove or alter any copyright or proprietary notice from copies of the Products, and copies made by or for LICENSEE shall bear all copyright, trade secret, trademark and any other intellectual property right notices on the original copies.

5.2 RESTRICTIONS: LICENSEE acknowledges and agrees that the Products contain valuable trade secrets of LICENSOR and/or its affiliates and licensors, and that this Agreement establishes a confidential relationship between the parties with respect to this information. Subject to applicable law, LICENSEE agrees (a) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Products' source code from object code except to the extent expressly permitted by applicable law or treaty despite this limitation; (b) not to sell, rent, lease, license, sublicense, display, modify, time share, outsource or otherwise transfer the Products to, or permit the use of the Products by, any third party; and (c) to preserve the confidential nature of the proprietary and trade secret information by retaining and using the Products in trust and confidence, solely for its internal use, and using the degree of care and protection that LICENSEE would use for its own information of similar importance, but in no event less than a reasonable degree of care and protection, to prevent the unauthorized use, copying, publication or dissemination of the Product and LICENSOR's confidential information learned from LICENSEE's use of the Product. LICENSEE will not export or re-export any Products without both the written consent of LICENSOR and the appropriate U.S. and/ or foreign government license(s) or license exception(s). Additional restrictions may apply to certain files, programs or data supplied by third parties and embedded in the Products; consult the Products' installation instructions or release notes for details. LICENSEE agrees to promptly report to LICENSOR any violations of these provisions by LICENSEE's employees, consultants or agents of which LICENSEE is aware.

6. SUPPORT, MAINTENANCE AND ENHANCEMENTS ("Support"): LICENSEE is entitled to the support services defined below as part of an annual Support fee.

6.1 ELECTRONIC SERVICES: To the extent that electronic services are available, LICENSEE may electronically access Support services which will be available twenty four (24) hours a day, seven (7) days per week. Such electronic services may include user forums, Product-specific information, hints and tips, bug fix retrieval via the Internet or World Wide Web access, Product maintenance and demonstration code retrieval via a WAN-accessible FTP server, and access to a problem resolution database via the LICENSOR customer support system.

6.2 SUPPORT: Support shall be applicable only to the Products licensed or sold under this Agreement for which Support fees have been paid. In the United States and Canada, Support is provided from 6:00 AM through 6:00 PM PST Monday through Friday for DataBase Gear products, and 7:00 AM through 5:00 PM PST Monday through Friday for CodeGear products, excluding United States federal holidays.

Support shall consist of both services and products:

(a) Supplying telephone or other electronic support to LICENSEE in order to help LICENSEE locate and, on its own, correct problems with the Products. Upon mutual agreement by both parties, LICENSOR shall: (i) supply code corrections to LICENSEE to correct Product malfunctions in order to bring such Product into substantial conformity with the published operating specifications for the most current version of the Product unless LICENSEE's unauthorized modifications prohibit or hamper such corrections or cause the malfunction; or (ii) supply code corrections to correct insubstantial problems at the next general release of the Product; and

(b) Supplying all extensions, enhancements and other changes that LICENSOR, at its sole discretion, makes or adds to the Products and which LICENSOR furnishes, without charge, to other licensees generally of the Products that are enrolled in Support.

7. PAYMENT SCHEDULE AND FEES

7.1 PAYMENT SCHEDULE: Payment for all License and Support fees shall be due thirty (30) days following receipt by LICENSEE of an invoice by LICENSOR specifying the amounts due unless otherwise set forth in an ordering document accepted by LICENSOR in writing. LICENSOR shall invoice LICENSEE for the initial Support charges upon the initial order of the licensed Products (the "Support Anniversary Date"). Sixty (60) days prior to each annual Support Anniversary Date of the licensed Products, LICENSOR shall quote LICENSEE the then-current GSA support fees for the next year of Support. Support shall not be automatically renewed but rather the LICENSEE must place an order with LICENSOR to renew support.

7.2 SUPPORT FEE: Annual Support fees shall be set forth in a Purchase Order, are payable in advance and are nonrefundable.

TERMINATION OF SUPPORT: Licensee's termination rights shall be governed by FAR 52.212-4(l) and (m) and Licensor's termination rights shall be governed by the FAR 52.212-4(d).

LICENSEE agrees not to modify the Products without the prior written approval of LICENSOR. Unapproved alterations to the Products shall void any obligation by LICENSOR to provide Support for the Products, pursuant to Section 6, during the warranty period and any subsequent period in which LICENSEE is enrolled in Support.

7.3 CHANGE OF SUPPORT FEES: LICENSOR reserves the right to change its then-current published list prices for the Products and its charge for Support at any time upon thirty (30) days written notice to LICENSEE. However, any increase in GSA fees will require approval by GSA. Any such change to Support shall not take effect until the completion of the then-current GSA support term.

8. LIMITED WARRANTY AND CONDITIONS: LICENSOR warrants and conditions for a period of sixty (60) days from the shipment date that (i) the media on which the Product is furnished will be, under normal use, free from defects in material and workmanship; and (ii) the Products will perform in all material respects with the operating specifications contained in the accompanying Product documentation, which is most current at the time of acceptance of any Purchase Order ordering such Products. Other than with respect to any indemnification hereunder, LICENSOR's entire liability and LICENSEE's exclusive remedy under this provision will be for LICENSOR to use commercially reasonable efforts to remedy defects covered by this warranty and condition within a reasonable period of time or, at LICENSOR's option, either to replace the defective Product or to refund the amount paid by LICENSEE to license the use of the Products. LICENSOR does not warrant or condition that the operation of the Products will be uninterrupted or error free or that all software defects can be corrected. This warranty and condition shall not apply if (i) the Product is not used in accordance with applicable documentation; (ii) the Product defect has been caused by LICENSEE's malfunctioning equipment; or (iii) LICENSEE has made modifications to the Product not expressly authorized in writing by LICENSOR. No employee, agent, or representative of LICENSOR has the authority to bind LICENSOR to any oral representations, warranties or conditions concerning the Products. Any written representation, warranty or condition not expressly contained in this Agreement shall not be enforceable.

1.1 THIS WARRANTY AND CONDITION IS IN LIEU OF ALL OTHER WARRANTIES AND CONDITIONS. THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION THOSE OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, REGARDING THIS AGREEMENT OR ANY PRODUCTS LICENSED HEREUNDER.

LIMITATION OF LIABILITY: Neither LICENSOR nor LICENSEE shall be liable to the other party for consequential, indirect, incidental, exemplary, special or punitive damages from any cause, whether in contract, tort (including negligence) or otherwise, arising out of or in any way connected with the design, manufacture, sale, support or use of the Products. Except as provided in Section 10 below, in no event shall LICENSOR's or LICENSEE's liability for direct damages resulting from the use of a Product exceed the amount paid by the LICENSEE to license the use of that Product. The foregoing exclusion/limitation of liability shall not apply to (1) personal injury or death resulting from LICENSOR's negligence; (2) for fraud; (3) for any other matter for which liability cannot be excluded by law or (4) express remedies provided under any FAR, GSAR or Schedule 70 solicitation clauses incorporated into the contract.

9.

10. INDEMNIFICATION FOR INFRINGEMENT: LICENSOR will defend or settle, at its own expense, any claim against LICENSEE asserting a patent, copyright, trademark, trade secret or proprietary right violation which concerns any Product used within the scope of the License hereunder. However with respect to an agency or instrumentality of the US Government, to the extent this Section 10 conflicts with 28 USC 516 and 28 USC 1498 then such sections shall apply to extent necessary to resolve any conflict.. LICENSOR shall indemnify LICENSEE against any loss, expense or liability including reasonable attorney's fees from any damages alleged against LICENSEE. LICENSOR shall have no obligation under this Section 10 unless (i) LICENSEE notifies LICENSOR in writing within ten (10) days after LICENSEE first receives notice of any such claim, action or allegation of infringement; and (ii) LICENSEE cooperates with LICENSOR to the extent practicable in the defense and no settlement is entered into by LICENSEE which would bind LICENSOR without LICENSOR's written permission. LICENSOR shall not be liable for any costs or

expenditures incurred by LICENSEE without LICENSOR's prior written consent. If an injunction or order is obtained against LICENSEE's use of any Product by reason of the allegations of infringement, or if in LICENSOR's or LICENSEE's opinion the Product is likely to become the subject of a claim of infringement, LICENSOR shall, at its expense:

    (a) Procure for LICENSEE the right to continue using the Product; or

(b) Modify or replace the Product with a compatible, functionally equivalent, non-infringing Product; or

(c) If neither (a) nor (b) is reasonably practical in LICENSOR's judgment, remove the Product and issue LICENSEE a pro rata credit based upon the License fees paid for the Product prorated over a thirty-six (36) month period from the date of shipment of the Product. Thereafter, termination shall proceed in accordance with the terms of Section 4.

This Section 10 is LICENSOR's sole liability and LICENSEE's exclusive remedy in the event of intellectual property infringement of any kind.

11. VERIFICATION: LICENSOR may, at its expense, audit the number of copies of the Products in use by LICENSEE and the designated CPU(s) on which the Products) are installed. Any such audit shall be conducted during regular business hours at LICENSEE'S facilities and shall not unreasonably interfere with LICENSEE's business activities. If an audit reveals that LICENSEE has underpaid fees to LICENSOR, LICENSEE shall be invoiced for such underpaid fees (based on the list prices in effect at the time the audit is completed).

12. ASSIGNMENT: Neither this Agreement nor any of LICENSEE's rights, licenses or obligations hereunder may be assigned or delegated by LICENSEE to any third party, including without limitation in connection with a merger, acquisition, reorganization, outsourcing, change of control or under any other circumstance. Any such purported assignment or delegation shall be void and of no effect and shall constitute an incurable breach of this Agreement resulting in the automatic termination of this Agreement and all rights and licenses granted to LICENSEE hereunder.

13. U.S. GOVERNMENT RESTRICTED RIGHTS; EXPORT COMPLIANCE: Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in FAR Section 52.227-14 Alt. III (g)(3), FAR Section 52.227-19, DFARS 252.227-7014 (b) or DFARS 227.7202, as amended from time to time. Contractor/Manufacturer is Embarcadero Technologies, Inc., 100 California Street, 12th Floor, San Francisco, CA 94111. Any contract notices should be sent to this address. LICENSEE may not download, use, transfer, export or re-export any Product except as authorized by United States law and the laws of the jurisdiction in which the Product was obtained. In particular, but without limitation, Products may not be, downloaded, used, exported or re-exported (a) in or to (or by or to a national or resident of) any country then under U.S. economic embargo, or (b) to any person or entity on the U.S. Treasury Department's list of Specially Designated Nationals or on the U.S. Department of Commerce's Denied Persons List or Entity List. By downloading or using Products, LICENSEE represents and warrants that it is not located in, under control of, or a national or resident of any such country or on any such list.

14. SEVERABILITY: Should any provision of this Agreement be determined to be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

15. NOTICE: Notices to either party shall be in writing to the address indicated in this Agreement (or as later amended) and deemed effective when received, or twenty-four (24) hours following the date of the postmark, if sent by prepaid certified mail, return receipt requested or by express courier.

16. REFERENCING: LICENSEE agrees that LICENSOR may refer to the corporate name of LICENSEE as a customer of LICENSOR, both internally and in externally published media; any additional disclosure by LICENSOR with respect to LICENSEE shall be subject to the prior written approval of LICENSEE.

17. FORCE MAJEURE: Excusable delays shall be governed by FAR 52.212-4(f).

18. WAIVER: The waiver by a party of one breach or default by another party under this Agreement will not constitute the waiver of any subsequent breach or default. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

19. SURVIVAL: In the event of expiration or termination of this Agreement for any reason, the provisions of Sections 1, 4, 5, 9-12 and 14-21 shall survive in accordance with their respective terms.

20. ENTIRE AGREEMENT: LICENSEE acknowledges it has read this Agreementand agrees it in addition to the Licensor's Federal Supply Schedule Contract, Price List and any subsequent purchase order is the complete and exclusive statement of the agreement between the parties, and supersedes all prior proposals and understandings, oral and written, relating to the subject matter of this Agreement. This Agreement shall not be modified or rescinded by the LICENSOR except in writing signed by the parties. The terms and conditions of any present of future documents submitted by LICENSEE which conflicts with, or in any way purports to amend this Agreement, are specifically objected to by LICENSOR (unless expressly agreed to by LICENSOR in writing), and shall be of no force or effect.

21. GOVERNING LAW: This Agreement shall be governed by and construed in accordance with the laws of the United States without regard to conflicts of law principles. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

IN WITNESS WHEREOF, LICENSOR and LICENSEE represent, warrant and covenant that this Agreement constitutes a legal, valid and binding agreement upon proper execution by duly authorized representatives' from each of the above-referenced parties on the dates specified herein.

Accepted by:

"LICENSOR": Embarcadero Technologies, Inc.

By: _____

Name: _____

Title: _____

Date: _____

Accepted by:

"LICENSEE": _____

By: _____

Name: _____

Title: _____

Date: _____

Address: _____

                _____

                _____

Fax: _____

Additional Terms Applicable to RAD Studio Products

2.2. GENERAL TERMS THAT APPLY TO COMPILED PROGRAMS AND REDISTRIBUTABLES.

2.2.1 Redistributables. The Product may include certain files, libraries and/or source code specifically designated as "redistributables" by Licensor in the accompanying printed or on-line documentation ("Redistributables") that are necessary to use works ("Works") created using the Product. From time to time, Licensor may designate other files as Redistributables. Licensee should refer to the documentation, including any "readme" or "deploy" files provided with the Product, for additional information regarding Redistributables. Unless otherwise indicated in a "readme" or "deploy" file, Redistributables may only be distributed as part of Licensee's Works, in executable, non-source form. Subject to the terms and conditions of this Agreement, Licensee may freely redistribute source code or compiled code that is entirely Licensee's own and does not contain any Redistributables.

2.2.2 Licensing of Redistributables. Subject to the terms and conditions of this Agreement including the restrictions of Section 2.2.3, Licensor grants Licensee the personal, nonexclusive, nontransferable, and limited license to: (a) make exact copies of the Redistributables and distribute those copies solely as components of Licensee's Works and solely as required for permitting end users of the Works ("End Users") to install and execute the Works; (b) install and execute Redistributables, without modification, on computers that Licensee owns or possesses solely for Licensee's own internal use; and (c) sublicense to Licensee's End Users the personal, nonexclusive, nontransferable right to install and execute Redistributables, without modification, solely as components of Works and solely for such End Users' own internal use, subject to End Users' compliance with the restrictions in Section 5 as to Redistributables. Notwithstanding the foregoing, Licensee may modify Redistributables that are provided to Licensee in source form, subject to all the terms of this Section 2.2 and provided that the modified Redistributables are distributed (i) only as part of Licensee's larger Work (ii) the Redistributable file is renamed and (iii) only executable, non source Redistributables may be distributed. The rights granted to Licensee under this Section 2.2.2 may not be exercised by others, including co-developers, regardless of how Licensee might compile, link, or package Licensee's Works. These rights apply only to Redistributables and to no other file, library, source code or other component or derivative work of the Product. They may be exercised only with respect to Works created by Licensee using a duly licensed, properly registered copy of the Product.

2.2.3 Certain Restrictions. Regardless of any modifications that Licensee makes and regardless of how Licensee might compile, link, or package Licensee's Works: (a) except as provided in Section 2.2.6, Licensee may not permit Licensee's End Users to modify or further distribute Redistributables or use Redistributables in any program that they create; (b) Licensee may not use Licensor's or any of its suppliers' names, logos, or trademarks to market Licensee's Works, except to state descriptively that Licensee's Work was written using the Product; (c) all copies of the Works Licensee create must bear a valid copyright notice, either Licensee's own or the Licensor copyright notice that appears on the Product, and Licensee may not remove or alter any Licensor copyright, trademark or other proprietary rights notice contained in any portion of the Redistributables; and (d) Licensee may only distribute Redistributables with Works that add primary and substantial functionality to the Redistributables and are not merely a set or subset of any of the Redistributables, and that are created in accordance with the terms of this Agreement. Licensee shall not modify or distribute the Redistributables so that any part of it becomes, or could be interpreted or asserted to be, subject to an Excluded License. An "Excluded License" is one that requires, as a condition of use, modification or distribution, that (a) the code be disclosed or distributed in source code form; or (b) others have the right to modify it.

2.2.4 Relationship with End Users. Except as set forth in Section 2.3, there are no third party beneficiaries to this Agreement. Consequently, Licensor provides no warranty at all to any person, other than the limited warranty provided to Licensee the original purchaser of the Product, as set forth herein, and Licensee will be solely responsible to Licensee's End Users (or anyone else who uses or acquires Works) for support, service, upgrades, or technical or other assistance (including with respect to any Redistributables included therein), and such persons will have no right to contact Licensor for any services or assistance. Licensee will indemnify, defend and hold Licensor, its licensors, its suppliers and each of their respective employees, officers, directors and affiliates, harmless from and against any claims or liabilities arising out of or related to the use, procurement, reproduction or distribution of Licensee's Works by third parties.

2.2.5 Third Party Software. The Product, including Redistributables, may include source code, redistributable files, and/or other files provided by a third party vendor ("Third Party Product"). Since use of Third Party Product might be subject to license restrictions imposed by the third party vendor, Licensee should refer to the on-line documentation (if any) provided with Third Party Product for any license restrictions imposed by the third party vendor. In any event, any license restrictions imposed by a third party vendor are in addition to, not in lieu of, the terms and conditions of this Agreement.

2.2.6 Provisions Applicable to Component Developers. For the purpose of this Section 2.2.6, the following terms have the following meanings:

"Component" means a program module or object, developed by Licensee using the Product, that is designed to interoperate with other program modules/objects developed by others using a different development environment.

"Component Customer" means an individual or entity that procures Components from Licensee for the purposes of: (i) integrating such Components with program modules/objects developed using a different development environment; and (ii) distributing such integrated products to their End Users.

"Component Developer" means an individual or entity that uses the Product to develop Components for distribution to Component Customers.

If Licensee is a Component Developer, Licensee may (i) distribute copies of the Redistributables to Licensee's Component Customers, and (ii) grant them the right to distribute copies of the Redistributables along with both Licensee's Components and their Works to their End Users only if Licensee have first entered into an agreement with each such Component Customer that conforms to this Section 2.2.6 and contains the following provisions (enumerated as appropriate to the context):

2.2.6.1 Sublicensing of Redistributables. Subject to the terms and conditions of this section, including the restrictions of Section 2.2.6.2, [insert Component Developer name] grants you the personal, nonexclusive, nontransferable, and limited sublicense to: (a) make exact copies of the Redistributables and distribute those copies solely in conjunction with your works that embody components procured from [insert Component Developer name] ("Works"), solely as required for permitting end users of the Works ("End Users") to install and execute the Works; (b) install and execute Redistributables, without modification, on computers that you own or possess solely for your own internal development use; and (c) further sublicense to your End Users the personal, nonexclusive, nontransferable right to install and execute Redistributables, without modification, solely as components of your Works and solely for such End Users' own internal use, subject to End Users' compliance with the restrictions in Section 2.2.6.4 as to Redistributables.

2.2.6.2 Certain Restrictions. Regardless of any modifications that you make and regardless of how you might compile, link, or package your Works: (a) you may not permit your End Users to modify or further distribute Redistributables or use Redistributables in any program that they create; (b) you may not use Licensor's or any of its suppliers' names, logos, or trademarks to market your Works, except to state descriptively that your Work was written using the Product; (c) all copies of the Works you create must bear a valid copyright notice, either your own or the Licensor copyright notice that appears on the Product, and you may not remove or alter any Licensor copyright, trademark or other proprietary rights notice contained in any portion of the Redistributables; and (d) you may only distribute Redistributables with Works that add primary and substantial functionality to the

Redistributables and are   not merely a set or subset of any of the Redistributables.

No Warranties. Licensor warrants that it will repair or replace defective items discovered within a reasonable sixty (60) days after acceptance; beyond that, Licensor provides no warranty at all to you or to any other person. You will be solely responsible to your End Users (or anyone else who uses or acquires Works) for support, service, upgrades, or technical or other assistance (including with respect to any Redistributables included therein), and such persons will have no right to contact Licensor for any services or assistance

    2.2.6.3 Restrictions. You may not: (a) modify, adapt, alter, translate, or create derivative works of the Redistributables; (b) lease, rent or loan the Redistributables to any third party; (c) sublicense, distribute or otherwise transfer the Redistributables or any component thereof to any third party except as expressly authorized in this section; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Redistributables; (e) remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of Licensor or its suppliers on the Redistributables; (f) allow third parties to access or use the Redistributables such as in a time-sharing arrangement or use the Redistributables as part of a service bureau or otherwise for the use or benefit of third parties; or(g) reproduce or use the Redistributables except as expressly authorized under this section. Furthermore, you may not permit your End Users to conduct the restricted activities limited by items (a) through (e) and (g) above insofar as they apply to Redistributables, and such End User's sublicense rights to the Redistributables are conditioned upon compliance with such limitations. The limitations in this Section apply equally to your use of the Redistributables, in whole or in part, including any component or Redistributables.

    2.2.7 Restrictions. You shall not and you shall not permit your End Users to (a) modify, adapt, alter, translate, or create derivative works of the Redistributables or merge the Redistributables with other software other than as described in the Product's accompanying documentation or as approved of in writing by Embarcadero; (b) lease, rent or loan the Redistributables to any third party; (c) sublicense, distribute or otherwise transfer the Redistributables or any component thereof to any third party except as expressly authorized in this Agreement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Redistributables; (e) remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of Embarcadero or its suppliers on the Redistributables; or (f) reproduce or use the Redistributables except as expressly authorized under herein. End User's sublicense rights to the Redistributables are conditioned upon compliance with such limitations.

    2.2.8 Other Rights. Contact Licensor for the applicable royalties due and other licensing terms for all other uses or distribution of the Redistributables.

    2.3 PROGRAM NOTES. The following terms and conditions ("Program Notes") are specific to certain editions, versions and components of the Product and are in addition to the provisions of Sections 2.1 and 2.2. If any provision of the Program Notes applicable to the Product conflicts with any other provision of this Agreement, then the provision of the Program Notes will supersede and control.

ADDITIONAL LICENSE TERMS APPLICABLE TO STARTER EDITION
In the event Licensee has obtained a Starter Edition license the following terms hereby apply. To the extent they conflict with the license grant in Section 2.1, these terms shall control. Licensee may use the Product to develop software (i) for which Licensee does not charge directly or indirectly a fee or receive other consideration including but not limited a license fee, a service fee, a development fee, a consulting fee, a subscription fee, a support fee, a hosting fee or the like and (ii) for which Licensee only charges fees (including but not limited a license fee, a service fee, a development fee, a consulting fee, a subscription fee, a support fee, a hosting fee or the like) that cumulatively, on an annual basis, do not exceed USD$1000. In the event any (for profit or non-profit) company elects to license the software then (i) the total company revenues may not exceed USD$1000 and (ii) the total number of Starter Edition licenses deployed may not exceed 5.

ADDITIONAL LICENSE TERMS APPLICABLE TO SOFTWARE LICENSED FOR EDUCATIONAL USE

Subject to the terms and conditions of this Agreement, Licensee may exercise Licensee's rights under this Agreement to use the Product and to create Works solely for Licensee's own personal use in providing or receiving instruction within the limited scope of guided computer programming and/or software training courses in which Licensee are a direct and personal participant, either as student or instructor ("Courses"). Licensee may only reproduce, distribute and use Works, in source or object code form, to other participants of the Courses and then only for educational or training purposes. Licensee may not use the Products or Works created with the products for any commercial, business, governmental or institutional purpose of any kind, except to the extent Licensee are an instructor teaching a Course. All rights not specifically granted to Licensee herein are retained by Licensor.

ADDITIONAL LICENSE TERMS APPLICABLE TO DELPHI, C++ BUILDER AND EMBARCADERO PRISM, STARTER PROFESSIONAL AND PROFESSIONAL ACADEMIC EDITIONS

Subject to the terms and conditions of this Agreement, Licensor grants to Licensee as the licensed user of the Product the limited right to use that portion of the Product identified as "dbExpress", in executable form only, to access a local database installed on the same machine as the Work. Licensee may not use that portion of the Product identified as "dbExpress" in association with a database located on a different machine other than the machine on which the Works are installed.

ADDITIONAL LICENSE TERMS APPLICABLE TO THIRD PARTY SOFTWARE

Certain components of the Product use or incorporate third-party software programs and/or libraries (but excluding Separately Licensed Code) ("Third-Party Software"). Licensee agree that Licensor's third- party licensors and suppliers are intended third party beneficiaries of all terms and conditions of this Agreement intended to protect intellectual property rights in the Product (including the Third-Party Software) and limit certain uses thereof.

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