FREEWARE EDITION SOFTWARE LICENSE AGREEMENT
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THIS SOFTWARE LICENSE AGREEMENT, dated as of the date of Customer's installation of the Licensed Software, between Embarcadero Technologies, Inc., a Delaware corporation ("Embarcadero"), and the person installing or using the Licensed Software or for whose benefit the Licensed Software is being installed or used ("Customer"), sets forth the terms and conditions whereby Embarcadero agrees to provide to Customer and Customer agrees to acquire from Embarcadero one or more limited licenses to use certain software and documentation in which this Agreement is embedded. In consideration of the mutual promises and agreements contained herein, the parties hereto also agree as follows:

GENERAL TERMS AND CONDITIONS

1. **Definitions –**

   (a) "Agreement" means this Freeware Edition software license agreement.

   (b) "Confidential Information" means all technical and non-technical information in both tangible and intangible form, including, but not limited to, product design information, software code, technical information, customer information, cost and pricing information, financial information, the terms of this Agreement and the results derived from or methodology employed by Customer in conducting any benchmark testing of the Licensed Software; provided that the term "Confidential Information" shall not include information which the recipient can show by reasonable proof (i) to have been known by the recipient prior to the time of disclosure by the disclosing party, (ii) to have become part of the public domain through no fault or breach of this Agreement by the recipient, (iii) to have been disclosed to the recipient in good faith by a third party who is not under any obligation of confidence or secrecy to the disclosing party at the time such third party discloses the information to the recipient or (iv) to have been compelled to be produced by a court of competent jurisdiction, provided that the recipient shall first give notice to the disclosing party of any such request or order of the court to give the disclosing party an opportunity to contest or limit said request or order of the court.

   (c) "Customer" means the person installing or using the Licensed Material or for whose benefit the Licensed Material is being installed or used.

   (d) "Effective Date" means the date upon which Customer installs the Licensed Software.

   (e) "Licensed Documentation" means the published user manual that Embarcadero makes generally available for the License Software.

   (f) "Licensed Material" means the Licensed Software and the Licensed Documentation.

   (g) "Licensed Software" means the machine-readable object code version of (i) the software specified on each Purchase Order, whether embedded on disc, tape, internet download site or other media and (ii) all Updates, revisions, enhancements, improvements and modifications to and programming fix for the Licensed Software that Customer is entitled to receive.

   (h) "Redistributable" means the file intended for distribution by Customer to users of programs created by Customer.

2. **LICENSE –**Subject to the terms and conditions of this Agreement and Customer's full compliance herewith and according to the scope, time period and other terms indicated herein, Embarcadero hereby grants Customer during the Term (as defined in Section 8 below) and Customer hereby accepts from Embarcadero, a limited, non-exclusive and non-transferable right and license to install and use the Licensed Material on computer hardware that is owned or operated by or on behalf of Customer solely for Customer's internal business use and to copy the Licensed Material as permitted by this Agreement. Customer may install and use one copy of the Licensed Software per user. Customer's right to use the Licensed Material shall extend to use by third parties under contract with Customer to provide outsourcing services for Customer's own internal business use; provided, such third parties have agreed to abide by the terms of this Agreement, including the confidentiality provisions contained herein. Customer shall reproduce all confidentiality and proprietary notices on each of the copies permitted hereunder and maintain an accurate record of the location of each of the copies. Customer shall not otherwise copy or duplicate the Licensed Material. Customer shall not reverse engineer, disassemble, translate, modify, adapt, or decompile the Licensed Material or apply any procedure or process to the Licensed Material in order to ascertain, derive, and/or appropriate the source code or source listings for the Licensed Software or any trade secret or other proprietary information contained in the Licensed Software. Customer acknowledges that all use of the Licensed Material by Customer is restricted to "internal business use" only. The term "internal business use" means that the Licensed Material only be licensed to and used by and for the benefit of Customer on computer hardware that is owned or operated by or on behalf of Customer and may not be used for the benefit of or in connection with any other person, corporation, partnership, limited liability company or other business entity.

3. **ADDITIONAL LICENSE TERMS FOR EMBARCADERO C++ COMPILER** – Subject to the terms and conditions of this Agreement and Customer's full compliance herewith and according to the scope, time period and other terms indicated herein, Embarcadero grants Customer during the term (as defined in Section 8 below) a personal, nonexclusive license to install and use the Licensed Software for the purposes of designing, developing, testing, and deploying application programs created by Customer. Customer may install a copy of the Licensed Software on a computer and freely move the Licensed Software from one computer to another, provided that Customer is an individual using the Licensed Software for personal use. If Customer is an entity, Embarcadero grants Customer the right to designate one individual within Customer's organization ("Named User") to have the right to use the Licensed Software in the manner provided above. Use, duplication, or disclosure of the Licensed Software by the any government entity or agency is subject to restriction as set forth in FAR 52.227-19(c)(2) or subparagraph (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 and/or in similar or successor clauses in the FAR, or the DOD or NASA FAR Supplement. Unpublished

rights are reserved under the Copyright Laws of the United States. Contractors/Manufacturers are Embarcadero, Inc., 10801 North Mopac Expressway, Building 1, Suite 100, Austin, Texas 78759 and, in the case of Embarcadero C++ Compiler, Dinkumware, Ltd., 398 Main Street, Concord MA 01742.

4. GENERAL TERMS THAT APPLY TO COMPILED PROGRAMS AND REDISTRIBUTABLES – Customer may write and compile (including byte-code compile) its own software application programs using the Licensed Software, including any libraries and source code included for such purpose with the Licensed Software. Customer may reproduce and distribute programs which Customer creates using the Licensed Software without additional license or fees, subject to all of the conditions in the Agreement. Embarcadero products may include Redistributables intended for distribution by Customer to the users of software programs created by Customer. Redistributables include, for example, those files identified in the accompanying printed or on-line documentation as redistributable files or those files preselected for deployment by an install utility provided with the Software (if any). In any event, the Redistributables for the Software are only those files specifically designated as such by Embarcadero. From time to time, Embarcadero may designate other files as Redistributables. Customer should refer to the documentation, including any "readme" or "deploy" files included with the Software, for additional information. Subject to all of the conditions in this License Agreement, Customer may reproduce and distribute exact copies of the Redistributables, provided that such copies are made from the original copy of the Software or the copy transferred to the single hard disk. Copies of Redistributables may only be distributed with and for the sole purpose of executing application programs permitted under this Agreement that Customer has created using the Licensed Software. Under no circumstances may any copies of Redistributables be distributed separately. Regardless of any modifications which Customer makes and regardless of how Customer might compile, link, and/or package Customer programs, under no circumstances may the libraries (including runtime libraries), code, Redistributables, and/or other files of the Licensed Software (including any portions thereof) be used for developing programs by anyone other than Customer. Only Customer as the licensed user (or the Named User) has the right to use the libraries (including runtime libraries), code, Redistributables, or other files of the Licensed Software (or any portions thereof) for developing programs created with the Software. In particular, Customer may not share copies of the Redistributables with other co-developers. Customer may not reproduce or distribute any Embarcadero documentation without Embarcadero's permission. 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Nothing in the Agreement permits Customer to derive the source code of files that Embarcadero has provided to Customer in executable form only, or to reproduce, modify, use, or distribute the source code of such files. Source code that Customer generates with an Embarcadero source code generator, such as an Application Wizard, is considered by Embarcadero to be Customer code. Contact Embarcadero for the applicable royalties due and other licensing terms for all other uses and/or distribution of the Redistributables.

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6. NO WARRANTY

(a) **WARRANTY – CUSTOMER ACKNOWLEDGES AND AGREES THAT THE LICENSED MATERIALS ARE PROVIDED ON AN "AS IS" BASIS WITHOUT ANY WARRANTIES OF ANY KIND. EMBARCADERO MAKES NO WARRANTIES THAT THE USE OF THE LICENSED MATERIAL WILL BE ERROR-FREE OR UNINTERRUPTED, OR ANY OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY WARRANTIES OF NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.**

(b) **NO CONSEQUENTIAL DAMAGES - UNDER NO CIRCUMSTANCES WILL EMBARCADERO OR ITS AUTHORIZED REPRESENTATIVES BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, EXEMPLARY OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS BY CUSTOMER OR ANY THIRD PARTY (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, PROFITS, USE OF MONEY OR USE OF THE PRODUCTS, INTERRUPTION IN USE OR AVAIL-ABILITY OF DATA, STOPPAGE OF OTHER WORK OR IMPAIRMENT OF OTHER ASSETS), ARISING OUT OF BREACH OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, BREACH OF ANY INTELLECTUAL PROPERTY RIGHT, MISREPRESENTATION, NEGLIGENCE, STRICT LIABILITY IN TORT OR OTHERWISE. IN NO EVENT WILL THE AGGREGATE LIABILITY INCURRED IN ANY ACTION OR PROCEEDING BY EMBARCADERO OR ITS AUTHORIZED REPRESENTATIVE EXCEED ONE HUNDRED DOLLARS.**

7. CONFIDENTIALITY – Customer acknowledges that the Products incorporate confidential and proprietary information developed or acquired by or licensed to Embarcadero and that all results of testing of the Products, whether performed by Customer or another third party, are

confidential. In no event will Customer publish or disclose the results of any testing or performance specifications of the Product without Embarcadero's express prior written consent. Each party shall take all reasonable precautions necessary to safeguard the confidentiality of all Confidential Information disclosed by the other party, including those precautions (i) taken by the disclosing party to protect its own Confidential Information and (ii) which the disclosing party or its authorized representative may reasonably request from time to time. Neither party shall allow the removal or defacement of any confidentiality or proprietary notice placed on the Confidential Information disclosed by the disclosing party. The placement of copyright notices on Confidential Information shall not constitute publication or otherwise impair their confidential nature of such information. If an unauthorized use or disclosure of the disclosing party's Confidential Information occurs within the recipient party's enterprise, the recipient party will immediately notify the disclosing party or its authorized representative and take, at recipient party's expense, all steps which may be available to recover such Confidential Information and to prevent its subsequent unauthorized use or dissemination.

8.   TERMINATION – This Agreement and all licenses granted hereunder shall commence upon the Effective date and terminate immediately upon the earliest of (i) the date upon which Customer violates or breaches any term or condition of this Agreement and (ii) the date upon which either party notifies the other party of its termination of this Agreement (the "Term"). This Agreement will terminate automatically if Customer becomes insolvent, goes or is put into receivership or liquidation, makes an arrangement for the benefit of his creditors or enters into bankruptcy, suspension of payments, moratorium, reorganization or any other proceeding that relates to insolvency or protection of creditors' rights or takes or suffers any similar action in consequence of debt. Upon the termination of this Agreement for any reason, all rights granted to Customer hereunder will cease, and Customer will promptly purge the Licensed Software from all of Customer's computer systems, storage media and other files and destroy the Licensed Material and all copies thereof.

9.   U.S. EXPORT RESTRICTIONS - Customer acknowledges that the Licensed Materials and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Customer covenants and agrees to comply with all import and export control regulations of the United States with respect to the Licensed Material. Customer acknowledges that it may not re-export or divert the Licensed Material or any related technical information, document or material, or direct derivatives thereof, to any country set forth on the U.S. Department of Commerce's list of T-5 countries (currently, Cuba, Iran, North Korea, Sudan and Syria), including any future changes to the government's list of T-5 countries.

10.   EQUITABLE RELIEF – The parties recognize that Sections 5 and 7 are necessary for the protection of the business and goodwill of the parties and are considered by the parties to be reasonable for such purpose. The parties agree that any breach of such Sections would cause the other party substantial and irreparable damage and therefore, in the event of any such breach, in addition to other remedies which may be available, the non-breaching party shall have the right to seek specific performance and other injunctive and equitable relief in a court of law.

11.   ENFORCEABILITY - If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable, void, invalid or illegal, that provision shall be enforced to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement shall continue in full force and effect.

12.   ENTIRE AGREEMENT – Customer acknowledges that it has read this Agreement, understands it and agrees to be bound by its terms. Customer and Embarcadero further agree that this Agreement is the complete and exclusive statement of the agreement between Customer and Embarcadero and supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. This Agreement may not be amended, modified, supplemented or altered except by a written agreement that is signed by

both parties.

13.   MISCELLANEOUS – This Agreement is not intended to be nor shall it be construed as a joint venture, association, partnership or other form of business organization or agency relationship. Headings used in this Agreement are for reference purposes only and shall not be used to modify the meaning of the terms and conditions of this Agreement. Customer may not assign, delegate or otherwise transfer this Agreement or any of its rights or obligations hereunder to any other person or entity without Embarcadero's prior written consent. This Agreement shall be binding upon the parties hereto and shall inure to the benefit of the parties hereto and their respective permitted successors and assigns. The waiver of compliance with or breach of any term or condition of this Agreement or the failure of a party to exercise any right under this Agreement shall in no event constitute a waiver as to any other failure to comply or breach, whether similar or dissimilar in nature, or prevent the exercise of any right under this Agreement. **THIS AGREEMENT WILL BE GOVERNED BY AND INTERPRETED IN ACCORDANCE WITH THE LAWS OF THE STATE OF TEXAS WITHOUT GIVING EFFECT TO ANY CHOICE OF LAW RULES. EMBARCADERO AND CUSTOMER HEREBY AGREE ON BEHALF OF THEMSELVES THAT THE SOLE AND EXCLUSIVE JURISDICTION AND VENUE FOR ANY LITIGATION ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUBJECT MATTER HEREOF SHALL BE IN AN APPROPRIATE FEDERAL OR STATE COURT IN THE STATE OF TEXAS LOCATED IN HARRIS COUNTY**.