

RAD Server Software Deployment License and Support Agreement

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6. SUPPORT AND MAINTENANCE ("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, at no charge, Support services which will be available twenty four (24) hours a day, seven (7) days per week. Such electronic services may include, but are not limited to: incident submission, case management and Product Releases.

6.2 SUPPORT. Support shall be applicable only to the Product licensed or sold under this Agreement for which Support fees have been paid. Support will not cover any adaptation or modification of the Product made by Licensee or any third party. The email and phone support hours shall be as identified on the Embarcadero support website.

Support shall consist of:

(a) Make available a regional telephone number or other electronic support to Licensee in order for the Licensee to report Product issues and to receive assistance. Licensors will analyze the incident and verify the existence of the problem and provide direction and assistance in resolving the incident; and

(b) Make available all updates, upgrades and other changes ("Releases") that Licensors, at its sole discretion, makes or adds to the Product and which Licensors furnishes, without charge, to other licensees of the Product that are enrolled in Support. Requests for Releases will only be honored during the support term. Physical media requires an additional charge.

6.3 TERMINATION OF SUPPORT. Licensee may cancel enrollment in Support upon written notice to Licensors at least thirty (30) days prior to the next Support Anniversary Date. If Licensee has failed to renew or terminated its enrollment in Support, for a period of up to six months from the Support expiration date, Licensee may re-enroll in Support by paying a reinstatement fee to be calculated based on Licensors's then current reinstatement policy and due for the period during which Licensee was not enrolled in Support. In addition, Licensee must pay the annual charge for Support for the next year in advance. Such reinstatement date shall then be considered the Support Anniversary Date. For the avoidance of doubt, Support reinstatement will not be permitted after six

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6.4 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 prior to renewal. Any such change to Support shall not take effect until the completion of the then current support term.

6.5 SERVICES; UPDATES; PRODUCT CHANGES. Licensor is not required under this Agreement to provide any installation, training or other services to licensee. Such services, if available, must be purchased separately. If Licensee purchases support and Licensor provides licensee with a new release, error correction, update, upgrade or other modification to the Product, or Licensee separately purchases an upgrade such modification or upgrade will be deemed part of the Product, and subject to the terms of this Agreement, unless the modification is expressly provided subject to a separate license agreement. If licensee have acquired an upgrade version of the Product (whether through support or purchase of a separate upgrade), such upgrade constitutes a single Product together with the copy of the Product that licensee upgraded. This means that, although Licensee may have two sets of Product media and/or two license keys, licensee still has only one license. Therefore, licensee may not transfer the original copy of the Product or license key to any other party or user. Licensor reserves the right at any time not to release or to discontinue release of any Product and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Product. If licensee acquires a Network Named upgrade or Concurrent upgrade license which includes rights to older product versions, then Licensee must deactivate the upgraded license upon installation of the upgrade license provided that the product version(s) of the upgraded license are also included in the upgrade license.

7. PAYMENT SCHEDULE. Payment for all License and Support fees shall be due thirty (30) 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. All fees are nonrefundable. Licensor shall invoice Licensee for the initial Support fees upon

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- (b) Modify or replace the Product with a compatible, functionally equivalent, non-infringing Product(s); or
- (c) If neither (a) nor (b) is reasonably practical in Licensors' 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.

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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.

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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.

16. REFERENCING. If applicable, 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. Neither party will be in default of its obligations under this Agreement to the extent its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, earthquake, flood, embargo, riots, sabotage, utility or transmission failures, fire or labor disturbances. The party facing an event of force majeure shall use its commercially reasonable efforts in order to remedy that situation as well as to mitigate its effects.

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, 7-9, 12-21 and 23 shall survive in accordance with their respective terms.

20. ENTIRE AGREEMENT. Licensee agrees that this 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.

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

22. EVALUATION LICENSE. Licensor is the owner and provider of certain proprietary software and documentation that Licensee desires to have tested and evaluated on the terms and conditions of this Section 22 ("Software"). For a term not to exceed fourteen (14) days ("Evaluation Period") without Licensor's written authorization, the Software will be provided solely for evaluation purposes for Licensee's own internal use ("Evaluation") and Licensee is hereby granted a nontransferable, nonexclusive, limited license to operate and use the Software for such Evaluation. The Evaluation Period begins on the date Licensee downloads or unseals the Software. At the end of the Evaluation Period, Licensee shall cease using and shall remove the Software from its systems. This requirement applies to copies of the Software in all forms (partial and complete) on all types of media and computer memory and whether or not merged into other materials. Licensee agrees not to cause or permit the reverse engineering, disassembly, modification, translation or decompilation of the Software. Licensee shall not copy the Software, or write or develop any derivative software. Licensee shall not release the results of any Evaluation testing or other performance results of the Software conducted under this Section 22 to any third party without Licensor's prior written consent for each such release.

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