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*Applies to:*

**RAD Studio 12**

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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 – users who have not purchased and paid for Support are not entitled to the services set forth in this Section 6.2. 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) Making available a regional telephone number or other electronic support to Licensee in order for the Licensee to report Product issues and to receive assistance. Licensor will analyze the incident and verify the existence of the problem and provide direction and assistance in resolving the incident; and

(b) Making available all updates, upgrades and other changes ("Releases") that Licensor, at its sole discretion, makes or adds to the Product and which Licensor 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.

(c) Making available or modifying license keys as required for additional permitted installations of properly licensed software (up to the authorized number of users) or transfers to new users, servers, or companies, as permitted under the terms of your license.

**6.3 TERMINATION OF SUPPORT.** Licensee may cancel enrollment in Support upon written notice to Licensor 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 Licensor'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 months of lapsed Support. Licensee agrees not to modify the Product without the prior written approval of Licensor. Unapproved alterations to the Product shall void any obligation by Licensor to provide Support for the Product, pursuant to this Section 6, during the warranty period and any subsequent period in which Licensee is enrolled in Support. Licensor may elect to cease offering support services at any time (i) for a particular Product version in the case where it has been replaced by newer release(s) and (ii) in the case where a particular Product has reached its end of life.

**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

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**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 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 invoice Licensee the then-current fee for the next year of Support.

**8. LIMITED WARRANTY AND CONDITIONS.** Licensor warrants and conditions for a period of sixty (60) days that the media on which the Product is furnished will be, under normal use, free from defects in material and workmanship. Licensor also warrants that the Product will perform in all material respects with the operating specifications contained in the accompanying Product documentation, for a period of sixty (60) days from the date of shipment. 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 Product. Licensor does not warrant or condition that the operation of the Product will be uninterrupted or error free or that all software defects can be corrected. This warranty and condition shall not apply if (a) the Product is not used in accordance with applicable documentation; (b) Product defect has been caused by Licensee's malfunctioning equipment; or (c) 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 Product. Any written representation, warranty or condition not expressly contained in this Agreement shall not be enforceable.

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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 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.

Licensor shall have no obligation under this Section to the extent the alleged infringement results from (i) modification of the Product other than by Licensor; (ii) the combination of the Product with products not provided by Licensor; or (iii) use of any

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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, 7-10 and 13-20 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 California without regard to conflicts of law principles. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply.

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