InterBase ToGo Software Subscription License and Support Agreement

1. SCOPE

This Software Subscription License and Support Agreement (this "Agreement") is a legal agreement between you, either an individual or an entity, as applicable ("Licensee"), and Embarcadero Technologies, Inc., a Delaware corporation with offices at 4001 W. Parmer Lane, Suite 125, Austin, TX, 78727 ("Licensor"). By downloading, installing, operating, or unsealing Licensor's software and/or documentation ("Products"), Licensee is agreeing to be bound by the terms of this Agreement. In the event of a conflict between the terms of this Agreement and any ordering document (an "Order Form"), the terms of this Agreement will govern and control. Delivery if made by any means other than electronic delivery, shall be made FCA (Incoterms 2010) Licensor's shipping point. If Licensee is evaluating Licensor software, only the provisions of Section 21 below will govern such evaluation.

2. LICENSE

2.1 LICENSE GRANT

Licensor grants to Licensee a non-exclusive, non-transferable, limited license during the License Term as defined in Section 3.1 below (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 Order Form for the Product at the time of purchase ("Licensed Country") in accordance with the license type for the ToGo edition of the Product as described in Section 24, provided that in no event shall Licensee create any Work (as defined in Section 2.2.1 below) that is competitive with or offers substantially the same functionality as the Product or any other product or software application commercially offered by Embarcadero. 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 Order Form at the time of purchase is prohibited and will void the license. Temporary usage of a Product outside the Licensed Country or Territory while a user is travelling, is permitted. Certain editions of the Product may include AppWave, ToolCloud and/or InstantOn features. Additional restrictions applicable to those features may be found in supplemental terms accompanying them.

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 expressly specified in writing 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, during the License Term (as defined in Section 3.1 below), 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 during the License Term (as defined in Section 3.1 below) 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.
- 2.2.3 CERTAIN RESTRICTIONS. Licensee may not (a) permit Licensee's End Users to modify or further distribute Redistributables or use Redistributables in any program that they create; (b) 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. 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. 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 expressly set forth otherwise in this Agreement, 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, libraries or components provided by third party vendors and/or open source projects ("Third Party Product"). Use of such Third Party Products is subject to license restrictions imposed by the copyright owner of such Third Party Products ("Third Party Vendor"). Licensee is solely responsible for ensuring full compliance with the license terms for such Third Party Products. Licensee should refer to the on-line documentation (if any) provided with Third Party Products for any license restrictions imposed by the Third Party Vendor. In any event, any license restrictions imposed by the Third Party Vendor are in addition to, not in lieu of, the terms and conditions of this Agreement.
- 2.2.6 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.
- 2.2.7 OTHER RIGHTS. Contact Licensor for the applicable royalties due and other licensing terms for all other uses or distribution of the Redistributables.

3. TERM

3.1 LICENSE TERM

A "License Term" means (A) the initial period of time (the "Initial Term") (i) specified on the Order Form pursuant to which Customer agreed to lease the Licensed Material or (ii) to the extent no such initial period is specified on the Order Form, a one-year period of time, in each case commencing on the Effective Date and (B) all subsequent renewals and extensions thereof effected in accordance with the terms of this Agreement (each, a "Renewal Term").

3.2 RENEWAL OF TERM

Upon expiration of the Initial Term and each Renewal Term, all subscription licenses granted under this Agreement shall automatically renew for an additional 12-month Renewal Term and Licensor will invoice Licensee at the then-current subscription-based list price for such additional License Term unless Licensor or its authorized representatives are notified by Licensee in writing at least thirty (30) days prior to the expiration of the Initial Term or then-current Renewal Term, as applicable, that Licensee will not renew the subscription licenses granted hereunder for another Renewal Term.

4. TERMINATION

Licensor may immediately terminate this Agreement without further obligation or liability: (a) with respect to a License, if Licensee fails to pay the subscription license fee due for the License hereunder and continues to be delinquent for a period of thirty (30) days after the last day on which payment is due, (b) if a petition alleging insolvency is filed by or against Licensee and not stayed within 60 days, or a receiver is appointed for any part of Licensee's business, or its assets are assigned for the benefit of creditors; or (c) if Licensee commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Licensor of such breach. The termination of this Agreement shall not affect: (i) the obligation of either party pursuant to any License which has not been terminated, and which shall therefore remain in effect in accordance with its terms; or (ii) the survival of the representations and warranties contained herein. Upon termination for any reason, all licenses and other rights granted to Licensee under this Agreement will cease except for Redistributables distributed as components of Licensee's Works to End Users prior to termination of the Agreement which shall survive subject to the terms and conditions set forth in Section 2.2 above. Within 60 days of the termination of any License, Licensee shall return to Licensor the terminated Product and all related documentation, and copies thereof. Licensee shall promptly certify in writing to Licensor that all copies of the Product have been removed from each computer upon which the Product was installed, and that any copies not returned have been destroyed. In the event of Licensee's failure to pay any fees set forth in this Agreement or any applicable Order Form, Licensor shall be entitled to recover its costs and expenses, including but not limited to reasonable attorneys' fees, incurred in any collection efforts or legal action.

5. TITLE AND PROPRIETARY INFORMATION

5.1 TITLE AND COPYRIGHT

Licensor represents and warrants that it has the full rights to license the Product 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, 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 Product. Except as expressly set forth herein, Licensee may copy the Product during the License Term only for backup or archival purposes, and for no other purpose. Licensee will not remove or alter any copyright or proprietary notice from copies of the Product, 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. All rights not specifically granted to licensee herein are retained by Licensor.

5.2 RESTRICTIONS

Licensee acknowledges and agrees that the Product contains 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 Product 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 Product to, or permit the use of the Product by, any third party; and (c) to preserve the confidential nature of the proprietary and trade secret information by retaining and using the Product 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 the Product without both the written consent of Licensor and the appropriate U.S. and/or foreign government license(s) or license exception(s). Licensor shall have the right to seek injunctive relief against any actual or threatened violation of these restrictions, in addition to any other available remedies. Additional restrictions may apply to certain files, programs or data supplied by third parties and embedded in the Product; consult the Product 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 during the License Term for no additional 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 subscription license 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 Licensor 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. Support will include providing licensing assistance. Licensor 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 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.

6.3 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 Licensor provides Licensee with a new release, error correction, update, upgrade or other modification to the Product, such modification 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. 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.

7. PAYMENT TERMS

Upon delivery of a Order Form by Licensee, Licensor shall deliver an invoice to Licensee specifying the subscription license fees payable for the Initial Term. Each year thereafter during the License Term Licensor shall invoice Licensee for all renewal subscription fees due in respect of each Renewal Term. Licensee shall pay all license fees specified in each invoice within thirty (30) days of Licensee's receipt of such invoice, unless otherwise set forth in an ordering document accepted by Licensor in writing. All fees are non-refundable. In the event that Licensee elects to pay any fees due hereunder with a credit card, (i) Licensee is required to provide Licensor with a valid form of credit card payment and to keep all such credit card information current and accurate in respect of all renewal fees, (ii) Licensee shall promptly notify Licensor if its credit card has changed or has been declined and (iii) Licensee hereby consents to Licensor automatically processing and charging all fees due by Licensee hereunder, including all renewal subscription fees, to the credit card submitted by Licensee.

8. LIMITED WARRANTY AND CONDITIONS

8.1 WARRANTY 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 (the "Warranty Period").

8.2 REMEDIES. If (i) at any time during the License Term the Product contains errors which make the Product unable to perform substantially as described in the accompany Product documentation, or (ii) during the Warranty Period, Licensor breaches a warranty set forth in Section 7.1 above, 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 to Licensee the pro rata portion of all pre-paid subscription license fees actually paid in respect of the remaining portion of the License Term. 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.

8.3 DISCLAIMER. 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 PRODUCT (S) LICENSED HEREUNDER.

9. LIMITATION OF LIABILITY

In no event shall Licensor be liable to Licensee or any third 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 Product. In no event shall Licensor's aggregate liability for damages or claims arising from or related to this Agreement or resulting from the use of the Product exceed the aggregate amount paid by the Licensee to Licensor in respect of the Licenses.

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 the Product used within the scope of the License hereunder. Licensor shall indemnify Licensee against any loss, expense or liability including reasonable attorney's fees from any damages alleged against Licensee. Licensor's obligations under this Section are conditioned on Licensee promptly notifying Licensor in writing after Licensee first receives notice of any such claim, action or allegation of infringement and, Licensor being given sole control of the defense of any action and all negotiations for its settlement or compromise, with the reasonable assistance of Licensee. 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 the Product by reason of the allegations of infringement, or if in Licensor'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(s); or
- (c) If neither (a) nor (b) is reasonably practical in Licensor's judgment, remove the Product and issue Licensee a pro rata refund of all pre-paid license fees actually paid by Licensee for such Product in respect of the remaining portion of the License Term. 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 older version of the Product when use of a newer version made available to Licensee would have avoided the infringement. This Section 9 is Licensor's entire liability and Licensee's sole and exclusive remedy in the event of intellectual property infringement of any kind.

11. VERIFICATION

If you are entering into this Agreement as an entity other than an individual (e.g., as a corporation, a partnership, or other organization), Licensor may, at its expense, audit the number of copies of the Product in use by Licensee, the number of concurrent users using the Product, and the designated CPU(s) on which the Product is 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); and if the underpaid fees exceed 5% of the License fees already paid, then Licensee shall also pay Licensor the reasonable costs of conducting the audit.

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., 4001 W. Parmer Lane, Suite 125, Austin, TX, 78727. Any contract notices should be sent to this address. Licensee may not download, use, transfer, export or re-export the 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, Product 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 (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria), (b) any end user who Licensee's knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems or (c) 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

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, 9, 11 and 13-21 shall survive in accordance with their respective terms.

20. ENTIRE AGREEMENT

Licensee acknowledges it has read this Agreement and agrees that it 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 except in writing signed by the parties. The terms and conditions of any present or future documents submitted by Licensee which conflicts with, or in any way purports to amend or supplement this Agreement, are specifically objected to by

Licensor (unless expressly agreed to by a written instrument signed by Licensor), and shall be of no force or effect.

21. GOVERNING LAW & VENUE

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. Licensor and Licensee hereby irrevocably 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 Travis County. 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 ninety (90) 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 the Software and 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.

THE SOFTWARE PROVIDED FOR THIS EVALUATION IS DELIVERED "AS IS, WHERE IS" AND LICENSOR SPECIFICALLY DISCLAIMS ANY AND ALL WARRANTIES OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Licensor does not warrant that the Products will operate without interruption or be error free. Sections 5, 9, 11-15, and 17-21 of the Agreement shall be deemed incorporated by this reference in the Evaluation license granted under this Section 22.

23. HIGH RISK ACTIVITIES

The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments requiring fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Licensor and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

24. 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 agrees 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. The components listed in the oss license notice.txt file are considered "Separately Licensed Code". Separately Licensed Code is licensed to Licensee under the terms of the applicable third party license agreement(s) set forth in the oss license notice.txt file or as provided with the Separately Licensed Code. The terms of such third party license agreement(s) governs Licensee's use of all Separately Licensed Code. LICENSOR DISCLAIMS ANY AND ALL EXPRESS AND IMPLIED WARRANTIES AND CONDITIONS INCLUDING, BUT NOT LIMITED TO, THE WARRANTY OF TITLE, NON-INFRINGEMENT OR INTERFERENCE AND THE IMPLIED WARRANTIES AND CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE SEPARATELY LICENSED CODE; Licensor is not liable to Licensee, and will not defend, indemnify, or hold Licensee harmless for any claims arising from or related to the Separately Licensed Code; and Licensor is not liable for any direct, indirect, incidental, special, exemplary, punitive or consequential damages including, but not limited to, lost data, lost savings, and lost profits, with respect to the Separately Licensed Code.

25. ADDITIONAL LICENSE RESTRICTIONS

25.1 TOGO EDITION

This Agreement is limited to Products purchased on a ToGo Edition license. If Licensee wishes to acquire a license to the Product on a Server Edition License, Desktop Edition License, Developer Edition License, or other license type offered by Embarcadero, Licensee must agree to Embarcadero's perpetual license agreement available on its website. Under each ToGo Edition license, Licensee may install the ToGo Edition software on a single device and access a single instance of the InterBase ToGo Edition from a single instance of an application running on the same device on which the instance of InterBase ToGo Edition is executing for use by one concurrent user at any one time. InterBase ToGo Edition may only use, on one device, the specific number of CPU cores that are identified in the accompanying documentation for the particular version of InterBase ToGo Edition. Licensee shall provide safeguards to ensure no more than one concurrent user uses the ToGo Edition at any one time. Licensee may not use multiplexing or connection pooling software or hardware to reduce the number of users directly connected to the ToGo Edition software, the number of users installing or using ToGo Edition shall be measured as the number of distinct inputs to the multiplexing or connection pooling front end. Licensee's user may not connect to the ToGo Edition software via an unrestricted-access Internet application. Licensee has the right to distribute Works developed on a ToGo Edition license to the supported mobile platforms to unlimited users on unlimited devices.

25.2 RESTRICTIONS ON LICENSEE REVENUE

The ToGo Edition license licensed under this Agreement may only be purchased if Licensee cumulative annual revenue (of the for-profit organization, the government entity or the

individual developer) or any donations (of the non-profit organization) does not exceed USD 20 Million (or the equivalent in other currencies) (the "Threshold"). If Licensee is an individual developer, the revenue of all contract work performed by developer in one calendar year may not exceed the Threshold (whether or not the ToGo Edition is used for all projects). For example, a developer who receives payment of \$20 Million for a single project (or more than \$20 Million for multiple projects) even if such engagements do not anticipate the use of the ToGo Edition, is not allowed to enter into this Agreement. In addition, a developer building solely an app store application would not be allowed to use this Agreement once the app store revenue reaches a revenue of \$20 Million or more in a year. If Licensee is a company that has a cumulative annual revenue which exceeds the Threshold, then Licensee is not allowed to enter into this Agreement, regardless of whether the ToGo Edition is used solely to write applications for the business' internal use or is seen by third parties outside the company or has a direct revenue associated with it. If Licensee does not qualify to license the Products under this Agreement or otherwise satisfy the additional terms and restrictions applicable to the ToGo Edition described in this Section, Licensee's may not download or use the ToGo Edition and any such use is unauthorized, constitutes a violation of this Agreement and may constitute a misappropriation of Licensor's intellectual property rights.

25.3 ENCRYPTION

The InterBase Software contains encryption and is subject to U.S. Commerce Department export restrictions as outlined in Section 13 of this Agreement.

25.4 CALL HOME FEATURE

If you have obtained InterBase from a third party as part of the third party application it may contain a call home feature whereby the Software makes an automated one-time connection to the Embarcadero product registration system to record that the license is in use and the underlying operating system.

25.5 ADDITIONAL LICENSE TERMS FOR INTERBASE LITE

Subject to Licensee's acceptance of the terms of this Agreement, Licensee may receive a free license to InterBase Lite Edition, subject to Embarcadero's standard freeware license agreement as in effect from time to time and published on the website at https://www.ideracorp.com/legal/Embarcadero#tabs-2.

Embarcadero Technologies 4001 W. Parmer Lane Suite 125 Austin, TX, 78727