



END USER LICENSE AGREEMENT

PLEASE READ THIS END USER LICENSE AGREEMENT (“AGREEMENT”) CAREFULLY BEFORE DOWNLOADING THE LICENSED PRODUCT. BY CLICKING “I AGREE” BELOW, YOU ARE REPRESENTING THAT YOU HAVE THE RIGHT AND AUTHORITY TO LEGALLY BIND YOURSELF OR YOUR COMPANY, AS APPLICABLE AND YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT, THE SUPPORT AGREEMENT AND THE IMPLEMENTATION ASSISTANCE AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THE SUPPORT AGREEMENT OR THE IMPLEMENTATION ASSISTANCE AGREEMENT, CLICK “I DO NOT AGREE” AND YOU WILL NOT BE PERMITTED TO DOWNLOAD THE LICENSED PRODUCT.

1. Interpretation. The following terms have the following meanings throughout this Agreement:

“**Agreement**” means this end user license agreement;

“**Authorized Users**” means individuals within Your organization who are authorized by you to use the Licensed Product.

“**Error**” means a defect in the Licensed Product which causes the Licensed Product not to operate substantially in accordance with the specifications published in the Documentation.

“**Dbvisit**” means Dbvisit Software Limited, a New Zealand company (no. 2180317) based in Auckland, New Zealand, except where the Order Document expressly states that one of its affiliate companies enters into this Agreement, in which case, “Dbvisit” means that specified company.

“**Documentation**” means the user and technical documentation for the Licensed Product, and any update to the Documentation issued by Dbvisit from time to time;

“**License Fee**” means the license fees in respect of the Licensed Product set out in the Order Document.

“**Licensed Product**” means the software product(s) described in the Order Document or downloaded, installed, run, accessed or used by you, the accompanying Documentation and any fixes issued to you pursuant to this Agreement, and if you purchase Support, updates or new releases in respect of that Licensed Product provided to you by Dbvisit in the course of providing that Support.

“**Order Document**” means the invoice, the purchase quotation or other document (including any electronic document) setting out your order and identifying the Licensed Product(s), any special terms and any associated Support and/or implementation assistance services you wish to purchase.

“**Support**” means maintenance and support services for the Licensed Product(s) provided by Dbvisit under the Support Agreement.

“**You**” or “**Your**” means the individual, or other legal entity for which you are accepting this Agreement and Authorized Users of that company or entity.

2. License.

2.1 License: Dbvisit grants you, a non-exclusive, non-assignable, non-sublicensable right and license to download, install, run, access and use the Licensed Product on the terms and conditions set out in this Agreement. Your use of the Licensed Product shall include the right to use one production instance of the Licensed Product and make a reasonably necessary number of copies of the Licensed Product for the purpose of developing replication applications provided that such development is performed on a similar environment to the licensed environment and that the applications being developed will be applied to the licensed environment. You may make a copy for your own back-up archival purposes. You may print reasonable quantities of the Documentation for your own use. All copies of the Licensed Product(s) and Documentation shall replicate Dbvisit’s proprietary rights notices.

2.2 Delivery & Installation: The Licensed Product is provided to you by electronic download from authorized web site(s) as described in the Documentation or by delivering physical media to you. You will need to install the Licensed Product on properly configured and compatible computer equipment according to the system requirements specified in the Documentation and according to the license type as specified on the Order Document. After payment of the License Fee, Dbvisit will send you a certificate with a software license key for the Licensed Product (“Product Certificate”). You will be



required to enter that software license key in order to use the Licensed Product. If you fail to pay the License Fee for the Licensed Product within thirty (30) days from the date of the applicable Order Document, the Licensed Product will cease to function. If you are loading data into the Licensed Product, you will also need to ensure that your data is in a proper format. If the Licensed Product is to interoperate and exchange data with other program(s), you will ensure the Licensed Product and other program(s) are properly configured and tested.

2.3 License Fees: You must pay the License Fee by the due date specified in the applicable invoice in accordance with the electronic transfer details set out in the Order Document. All fees and payments must be in the currency noted on the applicable Order Document. You are not permitted to use the Licensed Product until payment of the License Fee is received by Dbvisit, except in the case of an evaluation version in accordance with (and for the limited period specified by) clause 3.1 below. Unless otherwise stated, all amounts payable under this Agreement are:

- a) exclusive of any sales tax, goods and services tax or value added tax payable which must be paid by you, if applicable, at the time of payment of each invoice; and
- b) shall be paid gross without deduction of any withholding taxes and, if subject to any withholding taxes, you shall ensure that such sum is paid to Dbvisit as shall, after deduction of any withholding tax, be equivalent to the amount due.

3. Permitted Use of the Licensed Product.

3.1 Evaluation Version: If you obtained an evaluation version of the Licensed Product, it may be installed for the sole purpose of evaluating its features to determine its suitability for your needs. **The evaluation version contains a time-out feature that will disable its use after 30 days from the date of installation.** You may not use the evaluation version or other bundled software of the Licensed Product beyond the end of that period.

3.2 Operating License: Subject to your payment of the License Fee by its due date specified in the invoice, you may install and use the Licensed Product in accordance with the restrictions and limitations set forth in this Agreement and the licensing and usage rules for the type of Licensed Product you have acquired, as set out in the Documentation and/or Order Document. Unless the Order Document and/or Documentation for the Licensed Product expressly states that the Licensed Product is for hosting use, the Licensed Product must only be downloaded, installed, run accessed or used for your internal use. If the Order Document and/or the Documentation expressly state that the Licensed Product is for hosting use, the Licensed Product must only be used for hosting (as defined in the applicable Order Document and/or Documentation) and must not be used for your internal use.

3.3 The Licensed Product uses Oracle Instant Client and a number of other open source components. Details of the open-source components used, and the license terms that apply to those components, can be found in the following file for the Licensed Product, README.txt or ACKNOWLEDGEMENT.txt. On agreeing to the terms of this agreement, you also agree to be bound by, and must comply with, the license terms for those open-source components.

4. Reservation of Rights.

4.1 Your Rights: The Licensed Product is licensed, not sold to you. The intellectual property rights in the Licensed Product shall at all times remain the exclusive property of Dbvisit or other owner identified in the Documentation. You agree to use the Licensed Product strictly in accordance with this Agreement. You will not loan, rent, sublicense or distribute any part of the Licensed Product to persons not licensed under this Agreement through public networks or otherwise except to the extent expressly permitted in the licensing and usage rules for the type of Licensed Product you have acquired (as set out in the Documentation and/or Order Document) or otherwise agreed in writing by Dbvisit. You agree not to disassemble, decompile or reverse engineer the Licensed Product. You will ensure that all marks, notices or legends pertaining to the origin, identity or ownership of the Licensed Product remain intact and clearly legible. These license rights are personal to you and are non-transferable in whole or in part to any other person.

4.2 Compliance Audit: Dbvisit shall have the right, not more than once in each year, to audit your compliance with the terms of this Agreement. Such audit shall be conducted during your normal business hours upon 20 days' prior written notice. You agree to allow Dbvisit and its agents access to your offices, records and systems for this purpose.

5. Product Support. By downloading, installing, running, accessing or using the Licensed Product you agree to the terms



of the DbvisitProtect Support Agreement and the Dbvisit Implementation Assistance Agreement set out at <http://www.dbvisit.com/legal> in respect of any support services and any implementation assistance services specified in the Order Document or otherwise purchased by you.

6. Registration & Electronic Communications. Dbvisit may require electronic registration of the Licensed Product and collect information about your Oracle database and servers, including your system configuration, installed software and peripheral devices. Dbvisit may use this information to provide support and to verify your compliance with this Agreement. Dbvisit may send you messages at your registered email address for this purpose.

7. Infringement Indemnity. Dbvisit will defend or settle any claim, action or proceeding brought against you by a third party alleging that the Licensed Product, as provided by Dbvisit to you under this Agreement and used in accordance with this Agreement and the Documentation, directly infringes any valid copyright, trade mark, patent, or the trade secrets of any third party ("Claim") by paying final judgments awarded against you or settlement amounts; provided that you have provided Dbvisit with prompt written notice of the Claim. Dbvisit has the sole right to control and direct the defense of any Claim. If the use of any of the Licensed Product is, or in Dbvisit's reasonable opinion is likely to be, enjoined, then Dbvisit may, at its sole option: (a) procure for you the right to continue using the Licensed Product, (b) modify the Licensed Product to make it noninfringing while substantially preserving the original functionality; (c) replace the Licensed Product with functionally equivalent software; or (d) if options (a), (b) and (c) are not commercially reasonable, terminate this Agreement and refund the unamortized portion of the License Fees paid by you for the Licensed Product, based upon a three (3) year straight-line depreciation period commencing on the date you first received such Licensed Product.

8. Warranty.

8.1 General Warranty. Each party hereby represents and warrants to the other party that it has the right and authority to enter into this Agreement.

8.2 Reproduction Warranty: If you obtained the Licensed Product by electronic download from authorized website(s), Dbvisit warrants the delivered copy against defects in reproduction from the master original. Dbvisit will provide a free replacement of defectively reproduced copies upon proof of purchase. This is the sole remedy available to you for breach of the warranty in this clause 8.2.

8.3 Limited Performance Warranty. Dbvisit warrants to you that it will use commercially reasonable efforts to diagnose and rectify all reproducible Errors that materially affect the operation of the Licensed Product for a period of three months from the date you receive the Product Certificate. If you have purchased Support, then Dbvisit will respond and use commercially reasonable efforts to resolve Errors in accordance with the applicable Support Agreement, rather than this Section 8.3. Dbvisit does not warrant that it will be able to correct all reported Errors or that use of the Licensed Product will be uninterrupted or error free. NOTWITHSTANDING THIS WARRANTY, ANY CONTENT FILES OR OPEN SOURCE FILES ARE PROVIDED STRICTLY ON AN "AS IS AND AS AVAILABLE BASIS. DBVISIT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCT OR ANY SERVICES AND HEREBY DISCLAIMS ANY AND ALL EXPRESS, IMPLIED OR STATUTORY WARRANTIES, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF TITLE, ACCURACY, INTEROPERABILITY, INTEGRATION, NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

9. Not Fault Tolerant. THE LICENSED PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE LICENSED PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY OR PHYSICAL OR ENVIRONMENTAL DAMAGE.

10. Limitation of Liability. IN NO EVENT SHALL DBVISIT, ITS RESELLERS OR DISTRIBUTORS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT, LOST DATA OR BUSINESS INTERRUPTION EVEN IF DBVISIT IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY). THIS LIMITATION PROTECTS DBVISIT AND ANY DISTRIBUTOR OR RESELLER FROM WHOM YOU OBTAINED THE LICENSED PRODUCT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.



IN NO EVENT SHALL DBVISIT'S LIABILITY FOR DIRECT DAMAGES ARISING UNDER THIS AGREEMENT OR RELATING THERETO, EXCEED, THE LICENSE FEES ACTUALLY PAID BY YOU FOR THE LICENSED PRODUCT THAT GAVE RISE TO THE LIABILITY.

11. Term & Termination.

11.1 General: Unless terminated in accordance with this clause, your license will continue for the period set out in the Order Document. Your license will terminate automatically if you breach any provision of this Agreement and fail to cure the breach within fifteen (15) days after we have notified you in writing of such breach. Your license will immediately terminate if you fail to pay your License Fee on the due date or if you breach any of the terms of the Oracle software license agreement as notified to us by Oracle.

11.2 Effect of Termination: Termination of this Agreement will terminate your right to possess or use the Licensed Product. Upon termination for any reason, you agree to destroy the original and all copies of the Licensed Product (including Documentation) and cease all further use of it. Termination will have no effect on clause 8 ("Warranties"), clause 9 ("Not Fault Tolerant"), clause 10 ("Limitation of Remedies & Liabilities"), clause 12 ("Disputes, Choice of Law") and clause 14 ("Payment Default").

12. Disputes, Choice of Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF NEW ZEALAND UNLESS A DIFFERENT STATE'S LAWS IS EXPRESSLY PRESCRIBED IN THE ORDER DOCUMENT ("**SPECIFIED STATE**"), IN WHICH CASE ONLY THE SPECIFIED STATE'S LAWS SHALL APPLY. THE PARTIES WILL INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN NEW ZEALAND OR THE SPECIFIED STATE (AS APPLICABLE) AND IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN NEW ZEALAND OR THE SPECIFIED STATE. YOU WILL BRING ANY ACTION AGAINST DBVISIT ARISING OUT OF THIS AGREEMENT WITHIN ONE YEAR AFTER THE CLAIM ARISES, OR BE BARRED. If Dbvisit is required to enforce this Agreement or its rights, you irrevocably agree to receive legal notices and papers by electronic mail at your last known email address (Dbvisit will also attempt to send you a backup copy by regular mail or regular service).

13. U.S. Government End Users. The Licensed Product and related documentation are "Commercial Items" as defined in the United States at 48 C.F.R. 2.201, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable. The Licensed Product and documentation are being licensed to U.S. Government end users: (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms of this Agreement. Unpublished rights are reserved under U.S. Copyright Law. The Contractor is Dbvisit.

14. Payment Default. If you fail to pay any applicable fees or charges in respect of the Licensed Product, Support or implementation assistance services under the Dbvisit Implementation Assistance Agreement by the due date for payment specified in an invoice then you agree to pay, on demand, the following additional amounts: (a) interest on the unpaid amounts at the rate of 15% per annum from the due date to the date of actual payment, (b) US\$10 administration fee for every week that the unpaid amounts remain unpaid and (c) the actual costs of collection incurred by Dbvisit.

15. Miscellaneous. This Agreement constitutes the entire and exclusive agreement between the parties and supersedes all other communications, whether written or oral. This Agreement and evidence of its acceptance procedure shall be considered an original document with authenticated signature admissible into evidence. This Agreement is not assignable, transferable, or sub-licensable by you without prior written consent of Dbvisit. This Agreement may be modified or amended only by a writing signed by an authorized representative of Dbvisit. It is agreed that resellers and distributors of the Licensed Product have no authority to alter this Agreement. Any provision found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision of this Agreement in one instance shall not preclude enforcement of it on future occasions. Headings are for reference purposes only and have no substantive effect.