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AS DESCRIBED BELOW, USING THE SOFTWARE OPERATES AS YOUR CONSENT TO THE TRANSMISSION OF CERTAIN COMPUTER INFORMATION DURING ON-LINE AUTHORIZATION AND VALIDATION OF THE SOFTWARE.

## 1. DEFINITIONS

- 1.1** “Pervasive” means Pervasive Software Inc., a Delaware corporation, 12365 Riata Trace Parkway, Building B, Austin, Texas (U.S.A.) 78727.
- 1.2** “You” or “Your” means the person or business entity which is licensing the Software pursuant to this Agreement.
- 1.3** “Communications Network” means a data communication system, which allows a number of independent devices to communicate with each other, including its internal bridges and the workstations physically attached to it.
- 1.4** “Local Area Network” or “LAN” means privately accessible Communications Network for information distribution within Your company but does not include Your Intranet or the Internet.
- 1.5** “Client Software” means the software provided pursuant to a separate Pervasive license agreement that operates on a computing device and allows such device to be incorporated into a Communications Network and access the Server Software through the Communications Network.
- 1.6** “Workstation/Workgroup Edition” means the Pervasive PSQL Workstation or Workgroup Edition software You have received from Pervasive with this Agreement, including all applicable Updates.
- 1.7** “Server Edition” means the Pervasive PSQL Server Edition software You have received from Pervasive with this Agreement that operates on a Server which may be incorporated into a Communications Network, including all applicable Updates.
- 1.8** “Vx Server Edition” means the Pervasive PSQL Vx Server Edition software You have received from Pervasive with this Agreement that operates on a Server which may be incorporated into a Communications Network, including all applicable Updates.
- 1.9** “Server Software” means the Server Edition, Vx Server Edition or Workstation/Workgroup Edition You received from Pervasive with this Agreement, including all applicable Updates.
- 1.10** “Trial Software” means any Server Software downloaded or otherwise received from Pervasive for a limited time period for the purposes set forth in Section 2.3 below.
- 1.11** “Server” means a single computing system that runs the Server Software as either a standalone computing system or a system capable of operating remotely over a Communications Network, including but not limited to a primary network server, a fail over server, or a virtual (or otherwise emulated) server.
- 1.12** “Documentation” means the manuals and any other material provided by Pervasive with the Server Software in electronic or print form.
- 1.13** “Intranet” means a privately accessible Communications Network for information distribution within Your company, its subsidiaries or remote offices, and does not include connection to the Internet.
- 1.14** “Internet” means the publicly accessible computer Communications Network for information distribution.

**1.15** “Concurrent User License” means a type of license granted hereunder with respect to Server Edition or Workstation/Workgroup Edition which is limited by Concurrent Users and otherwise subject to the terms and conditions of this Agreement, and which may be referred to as a “Server Edition Concurrent User License” or “Workstation/Workgroup License”, as applicable. If you cannot accurately track the number of Concurrent Users accessing the applicable Server Software under a Concurrent User License and maintain appropriate Records in accordance with Section 11.4 below, then You may not purchase a Concurrent User License.

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**1.18** “Server Edition Intranet License” means a type of license granted hereunder with respect to Server Edition which has the same rights and restrictions as a Concurrent User License, except that the Intranet License has unlimited Concurrent Users.

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**1.24** “Session” means (i) a database connection established by Your application to the Vx Server Edition relational engine interface or (ii) a unique database transaction context established by Your application to the Vx Server Edition transactional engine interface when accessing data files.

**1.25** “Updates” means any maintenance releases, updates, upgrades or other modifications to the Server Software

## **2. LICENSE**

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## **9. LIMITED WARRANTY**

**9.1 Digital Media and Documentation.** Digital Media and Documentation. Pervasive warrants that if the digital media or Documentation are in a damaged or physically defective condition at the time that the Server Software is delivered to You and if they are returned to Pervasive within ten (10) days of delivery, then Pervasive will provide You with replacements at no charge.

**9.2 DISCLAIMER OF WARRANTY.** PERVASIVE LICENSES THE SERVER SOFTWARE TO YOU UNDER THIS AGREEMENT SOLELY ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, PERVASIVE MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, REGARDING THE SERVER SOFTWARE AND DOCUMENTATION; PERVASIVE EXPRESSLY STATES AND YOU ACKNOWLEDGE THAT PERVASIVE DOES NOT MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES, INCLUDING, FOR EXAMPLE, WITH RESPECT TO MERCHANTABILITY, TITLE, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AMONG OTHERS.

**9.3 High Risk Activities.** The Server Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments regarding 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 Server Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Pervasive and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

## **10. LIMITATION OF LIABILITY**

**10.1 PERVASIVE'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SERVER SOFTWARE OR DOCUMENTATION IS LIMITED TO THE TOTAL OF ALL PAYMENTS MADE BY OR FOR YOU FOR THE SERVER SOFTWARE UNDER THIS AGREEMENT.**

**10.2 CONSEQUENTIAL DAMAGES.** IN NO EVENT WILL PERVASIVE OR ITS LICENSORS BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER UNDER THEORY OF WARRANTY, TORT, PRODUCTS LIABILITY OR OTHERWISE EVEN IF PERVASIVE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. THIS LIMITATION WILL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM PERVASIVE'S OR ITS LICENSORS' NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION.

## **11. GENERAL CONDITIONS**

**11.1 Governing Law.** This Agreement will be governed by, and interpreted in accordance with, the laws of the State of Texas (U.S.A.) exclusive of its choice of law provisions. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods.

**11.2 Complete Understanding.** This Agreement sets forth the entire understanding and agreement between You and Pervasive with respect to the subject matter hereof and may be amended only in writing signed by both parties. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SERVER SOFTWARE.

**11.3 Waiver.** No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of Pervasive. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

**11.4 Audit.** You are responsible for ensuring that the number of Concurrent Users accessing the Server Software does not exceed the User Count, and You will maintain sufficient records, logs and other materials (“Records”) sufficient to document that Your use of the Server Software is in accordance with the terms of this Agreement for a minimum of five years after You cease to use the Server Software. Pervasive has the right to audit such Records upon reasonable notice.

**11.5 Severability.** If any provision in this Agreement is held invalid or unenforceable, then that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

**11.6 Export Controls.** None of the Server Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to any person or entity on the U.S. Treasury Department’s list of Specially Designated Nationals or the U.S. Commerce Department’s Table of Denial Orders, or the U.S. Commerce Department’s Entity List of Missile, Nuclear, and Chemical and Biological Weapons Proliferators, or the U.S. Department of State’s Foreign Terrorist Organization List. You agree to the foregoing and You represent and warrant that You are not located in, under the control of, or a national or resident of such country or on any such list. The Server Software may also be subject to U.S. laws and export regulations of the U.S. Government that require an explicit export license before any export or re-export of the Server Software. You will obtain any such explicit export license that may be required.

**11.7 U.S. Government End Users.** If You are an agency, department, or other entity of the U. S. Government (“Government”), then the use, duplication, reproduction, release, modification, disclosure or transfer of the Server Software and Documentation is restricted in accordance with Federal Acquisition Regulation (“FAR”) 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement (“DFARS”) 227.7202 for military agencies. The Server Software and Documentation are commercial computer software and commercial computer software documentation. The use of the Server Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto. The Contractor / Manufacturer is Pervasive Software Inc., 12365 Riata Trace Parkway, Building B, Austin, Texas, 78727.

**11.8 Operating System.** It is Your responsibility to fully comply with applicable license agreements for any operating systems or other software You may use with the Server Software.

**11.9** Results of benchmark tests or other performance tests run on the Server Software may not be disclosed to any third party without Pervasive’s prior written consent.

**11.10** English is the controlling language of this Agreement.

## **12. JAVA RUNTIME ENVIRONMENT.**

Depending on installation options, the Server Software may include the JAVA SE RUNTIME ENVIRONMENT (JRE) 6 from Oracle Corporation (“Oracle”). The Binary Code License Agreement from Oracle governs the JAVA SE RUNTIME ENVIRONMENT (JRE) Version 6. By accepting the Pervasive PSQl v11 License Agreement, You also agree to accept the terms and conditions of the Binary Code License Agreement and the Supplemental License Terms from Oracle for the JAVA SE RUNTIME ENVIRONMENT (JRE) VERSION 6 and JAVAFX RUNTIME, a copy of which is in the Server Software “about box,” notice.txt file or similar file, or accompanying documentation.



