



LICENSE AGREEMENT

SOUTH AFRICA

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1. ABBREVIATIONS AND DEFINITIONS. Abbreviations and definitions appear at the end of this Agreement.

2. LICENSE.

2.1 Subject to the terms and conditions set forth in this Software License Agreement, Sybase grants to You a non-exclusive, non-transferable license to Use the Primary Copy of each licensed Program (and make and Use each licensed Secondary Copy) at the location(s) specified on the Order or reseller order. Each Program shall be subject to the usage limitations based on quantity and type of license purchased, as indicated on the Order or reseller order. If any technology used by You reduces the number of devices that directly Use the Program, the number of Seats shall include all inputs to the front-end technology. You may Use the Program (and accompanying Documentation) solely for Your internal business purposes by Your employees, agents and contractors and on the Operating System Software specified in the Order or reseller order, unless otherwise permitted by the type of license purchased. If the type of license is not indicated in the Order or reseller order, each copy shall be licensed for a single Seat on a single Machine. The Program, license, media and Documentation may not be transferred, sold, assigned, sublicensed or otherwise conveyed (whether by operation of law or otherwise) to another party without Sybase's prior written consent and payment of any applicable fees in accordance with Sybase's then current policies. The Program may be transferred to another Machine, site or Operating System Software only upon prior written notice and subject to Sybase's transfer policies and fees then in effect

2.2 You understand and agree that some Sybase Programs and license types are subject to additional or supplemental terms and conditions (“Product Specific License Terms”) that are posted on www.sybase.com/pslt as of the date of the Order or reseller order for such Programs. Product Specific License Terms are written and shall be enforceable in the English language. You acknowledge that You have had the opportunity to review the Product Specific License Terms applicable to each licensed Program prior to Using the Program in any way. By ordering, installing or Using the Program in any way, You acknowledge and agree that You have read, understood and agreed to the applicable Product Specific License Terms.

2.3 You may not copy the Program except (a) to make a reasonable number of copies of each Program solely for inactive backup or archival purposes, and (b) to make the number of Secondary Copies indicated in the Order or reseller order for the Program. You may not modify, reverse engineer, decompile or disassemble the Program (except as specifically permitted by law without the possibility of contractual waiver, or as expressly permitted in the Documentation). Transfer of the Program outside the country in which it was originally delivered to You is not permitted without Sybase’s prior written consent and is subject to compliance with all applicable export regulations and restrictions. If the Program includes more than one component product, Use of all components of the Program is restricted to the same Machine and the Program may not be unbundled for Use on different or additional Machines. You may not Use the Program for timesharing, hosting, rental or service bureau purposes, or otherwise allow direct or indirect (including over the Internet) access or Use of the Program by any third party (except consultants and contractors performing services for Your benefit as expressly permitted in Sections 2.1 and 5), without Sybase’s prior written consent and subject to any applicable fees. You may contract with a third party (“Outsourcer”) to operate the Program on Your behalf and solely for Your benefit; however, You shall remain subject to all of the provisions of this Agreement and shall be liable for Outsourcer’s compliance with the provisions of this Agreement. You shall not remove any copyright notices or other proprietary notices from the Program, and shall reproduce such notices on all copies of the Program. Results of benchmark or other performance tests run on the Program may not be disclosed to any third party without Sybase’s prior written consent.

2.4 Sybase shall provide an access code permitting You to download each Primary Copy, or, if specified on the Order or reseller order, ship such Primary Copy to You or your authorized reseller. You, at Your own expense, shall be responsible for installing the Program and all Updates.

2.5 Third party products ordered by You and delivered by Sybase that are accompanied by a license agreement from the third party supplier are provided subject to such supplier license agreement. The terms of this Agreement shall not apply to such third party products, except that, as between You and Sybase, the provisions of this Section 2.5, Section 3, Section 7.4 and Section 9.8 shall apply. WITHOUT LIMITING THE FOREGOING, SYBASE PROVIDES SUCH THIRD PARTY PRODUCTS “AS IS” WITHOUT ANY INDEMNITIES OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT, ACCURACY OF INFORMATIONAL CONTENT, CONDITIONS OF MERCHANTABILITY, OR FITNESS FOR A PARTICULAR PURPOSE. Sybase shall not be obligated to provide any Support or error correction services for such third party products, but such services may be available from the third party supplier. Third party products not accompanied by a license agreement from the supplier shall be subject to the terms of this Agreement.

2.6 Within 30 calendar days following a written request from Sybase, which shall be made no more often than once in any 12-month period, You shall provide an accurate written report of Programs then currently in Use by You.

2.7 No more often than once in any 12-month period, Sybase may, at its expense, upon written notice and during business hours, audit the number of copies of the Program in Use and Your compliance with the applicable usage limitations set forth by this Agreement. The auditors shall protect the confidentiality of Your information. If the Use of the Program is found to be greater than that for which You are licensed, You shall pay any additional amounts due based upon the list prices set forth

in the Price List in effect upon the date of notice of the audit. Your refusal to permit an audit within a period of 30 calendar days following receipt of notice shall be a material breach of this Agreement.

3. PAYMENT

Payment is due to Sybase or its assigns within 30 calendar days of the invoice date. You will pay all applicable shipping and handling charges and sales, use, personal property or similar taxes, tariffs or governmental charges, exclusive of those based upon Sybase's income and corporate franchise taxes. You will reimburse Sybase for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts.

4. SUPPORT AND TECHNICAL SERVICES.

4.1 The payment of license fees does not entitle You to Support services or software Updates, however, Support and Updates are available from Sybase under this Agreement upon the payment of additional fees. Except with respect to specific Programs designated by Sybase, You agree to purchase a technical support plan ("Support") for the first year for each Program licensed. Support commences on the date the Primary Copy is shipped to You (or an access code is provided to permit You to download a Primary Copy), or on the date You are invoiced for Secondary Copies ("the Support Date"). Fees for Support ("Support Fees") shall be paid annually in advance. Support may be extended for one-year periods on the anniversary of each Support Date at the Support Fees set forth in the Price List for as long as Sybase offers Support for the applicable Program. If You do not provide a valid Purchase Order or written acknowledgement for the renewal of Support prior to expiration, Support will be suspended on the expiration date. Once Support has been suspended, You may reinstate Support only by paying Sybase's then current reinstatement fee.

4.2 Subject to the terms and conditions of this Agreement, including, without limitation, Your payment of applicable Support Fees, Sybase will provide You the level of Support corresponding to the Support Plan specified on the Order or reseller order. Support will be provided in accordance with Sybase's then current plan description for such Support Plan solely to Your authorized support contacts for the "Supported Program" listed on such Order or reseller order. "Supported Program" shall mean the then current Major Version of a listed Program running on the specified Operating System Software and, for a period of 12 months after introduction of a new Major Version of such Program, the immediately preceding Major Version of the Program. If You purchase Support for any Program in Use on a Machine, You must purchase the same level of Support for all copies of such Program on said Machine. If You purchase Support for any Program in Use on a network, You must purchase the same level of Support for all copies of such Program on said network. Sybase will use commercially reasonable efforts to correct or circumvent reported errors in the Supported Program that can be reproduced at a Sybase support facility. Sybase shall have no obligation to provide Support with respect to: (a) Use of any Program on any computer system other than the specified Machine and Operating System Software; (b) Use of any version of the Program modified by You in breach of this Agreement; or (c) Use of versions of different Supported Programs together on a Machine or in a network that are not specified in the applicable Documentation as certified to be compatible. Sybase has no obligation to modify any version of the Program to run with new versions of the Operating System Software. Sybase reserves the right to make corrections only to the most current generally available Major Version of the Program.

4.3 Except as otherwise mutually agreed in writing, Sybase will provide consulting or educational services described in the Order or reseller order under the terms of this Agreement. All consulting services provided under this Agreement will be on a time and materials basis.

5. CONFIDENTIALITY.

"Confidential Information" shall include the Program (including methods or concepts utilized therein) and all information identified by Sybase as proprietary or confidential. Confidential Information shall remain the sole property of Sybase and shall not be disclosed to any third party without the express

written consent of Sybase; except that You may disclose Confidential Information to consultants performing services for Your benefit, provided that such consultants are bound by a written non-disclosure agreement with You that protects such Confidential Information in a manner consistent with this Agreement. Except with respect to the Program, items will not be deemed Confidential Information if (a) available to the public other than by a breach of an agreement with Sybase; (b) rightfully received from a third party not in breach of any obligation of confidentiality; (c) independently developed by You without access to the Confidential Information; or (d) proven to have been known to You at the time of disclosure. You shall immediately inform Sybase if You are required to produce Confidential Information by operation of law, and if so requested by Sybase, shall provide reasonable assistance to Sybase in seeking to limit such production. A copyright notice on a Program does not, by itself, constitute evidence of publication or public disclosure.

6. OWNERSHIP AND PROPRIETARY RIGHTS. Each Program is licensed, not sold. All copyright and other intellectual property rights in the Program, Documentation, and media, and all copies thereof, are owned by Sybase or its subsidiaries, or their respective licensors and are protected by copyright and/or trade secret laws and international treaty provisions. Sybase reserves and retains ownership in and to (i) all rights, title and interest to the Program, media, Documentation, and all copies thereof, (ii) all rights, title and interest to all copyright and other intellectual property rights in each Program and each copy of the Program, and (iii) all other rights not expressly granted herein. You acquire only the non-exclusive non-transferable right to Use the Program subject to the conditions set forth in this Agreement, and do not acquire any ownership or distribution rights whatsoever in the Program. When You have ceased Using the Program, You shall return or destroy the Program, media, Documentation, and all copies thereof. A license to Use a Program does not include any right, implied or otherwise, to implement patents or other intellectual property of Sybase and its licensors.

7. LIMITED WARRANTY AND LIMITATIONS ON LIABILITY.

7.1 Unless otherwise specified in the Documentation, for a period of ninety (90) days from the date of shipment (or date on which an electronic download access code is made available) to You, Sybase warrants that the Program, when Used in accordance with the Documentation, will operate in material conformity with such Documentation and the Program media shall be free of defects. In the event of a non-conforming Program or defective media, Your sole remedy shall be, at Sybase's option, replacement of the defective Program or a refund of the license fees received by Sybase for the affected Program. This limited warranty gives You specific legal rights. Sybase warranties extend solely to You, the original licensee.

7.2 THE WARRANTIES SET OUT IN THIS CLAUSE 7.2 ARE IN LIEU OF ALL OTHER WARRANTIES. NO OTHER WARRANTY, EXPRESS OR IMPLIED, IS MADE WITH RESPECT TO THE PROGRAM, GOODS OR SERVICES TO BE SUPPLIED HEREUNDER. EXCEPT AS EXPRESSLY SET OUT IN THIS AGREEMENT, ALL WARRANTIES, CONDITIONS, REPRESENTATIONS AND TERMS WHETHER EXPRESS OR IMPLIED BY STATUTE, COMMON LAW, CUSTOM, TRADE USAGE, COURSE OF DEALING OR OTHERWISE, INCLUDING WITHOUT LIMITATION ANY IMPLIED TERMS, CONDITIONS OR WARRANTIES OF ACCURACY OF INFORMATIONAL CONTENT, SATISFACTORY QUALITY, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. NO WARRANTY IS MADE REGARDING THE RESULTS TO BE OBTAINED FROM ANY PROGRAM OR SERVICES OR THAT ALL ERRORS IN THE PROGRAM WILL BE CORRECTED, OR THAT THE PROGRAM'S FUNCTIONALITY WILL MEET YOUR REQUIREMENTS. YOU ACKNOWLEDGE YOUR RESPONSIBILITY TO REGULARLY BACK-UP DATA AND TO ADEQUATELY TEST PROGRAM PRIOR TO DEPLOYMENT.

7.3 The Program and third party products are not fault-tolerant and are not designed, manufactured or intended for use in applications in which the failure of the Program could lead directly

or indirectly to death, personal injury, or severe physical or environmental damage, including, without limitation, the on-line control of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems. SYBASE AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY EXPRESS OR IMPLIED WARRANTY OF FITNESS FOR SUCH PURPOSES.

7.4 LIMITATIONS ON LIABILITY. UNDER NO CIRCUMSTANCES SHALL SYBASE, ANY SYBASE GROUP COMPANY, NOR ANY OF SYBASE'S OR ANY SYBASE GROUP COMPANY'S LICENSORS BE LIABLE TO THE CUSTOMER FOR ANY OF THE FOLLOWING TYPES OF LOSS OR DAMAGE ARISING UNDER OR IN RELATION TO THIS AGREEMENT (WHETHER ARISING OUT OF ANY INDEMNITY IN THIS AGREEMENT, BREACH OF CONTRACT, DELICT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND GROSS NEGLIGENCE), MISREPRESENTATION (WHETHER UNDER THE LAW OF DELICT OR STATUTORY), BREACH OF STATUTORY DUTY, BREACH OF WARRANTY, CLAIMS BY THIRD PARTIES FROM ANY REPUDIATORY, MATERIAL OR OTHER BREACH (HOWEVER MINOR) OF THIS AGREEMENT (WHETHER OR NOT INTENTIONAL), FROM WILFUL MISCONDUCT OR OTHERWISE): (a) (i) ANY LOSS OR INACCURACY OF DATA, (ii) LOSS OF PROFITS, (iii) LOSS OF BUSINESS, (iv) LOSS RESULTING FROM BUSINESS DISRUPTION, (v) LOSS OF CONTRACTS, (vi) LOSS OF REVENUE, (vii) LOSS OF ANTICIPATED SAVINGS, (viii) LOSS OF GOODWILL, (ix) LOSS OF REPUTATION, (x) PAYMENTS MADE TO A THIRD PARTY, (xi) LOST OR WASTED MANAGEMENT TIME OR TIME OF OTHER EMPLOYEES OR CONTRACTORS, (xii) CHARGES LEVIED BY ANY THIRD PARTY, (xiii) ANY ADDITIONAL BANK BORROWINGS OR CHARGES RELATING TO BANK BORROWINGS, (xiv) COSTS OF RECOVERING DEBT (REGARDLESS OF WHETHER DUE) OR (xv) ANY ADMINISTRATIVE COSTS (REGARDLESS OF WHETHER THESE TYPES OF LOSS OR DAMAGE LISTED IN THIS SUB-PARAGRAPH (a) ARE DIRECT, INDIRECT, SPECIAL OR CONSEQUENTIAL); OR (b) ANY INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES OR DAMAGES WHATSOEVER, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES. UNDER NO CIRCUMSTANCES SHALL THE TOTAL AGGREGATE LIABILITY OF SYBASE (OR SYBASE GROUP COMPANIES) TO THE CUSTOMER (HOWEVER ARISING) UNDER OR IN CONNECTION WITH THIS AGREEMENT, INCLUDING (BUT NOT LIMITED TO) LIABILITY UNDER ANY INDEMNITY IN THIS AGREEMENT, FOR BREACH OF CONTRACT, DELICT (INCLUDING, BUT NOT LIMITED TO NEGLIGENCE AND GROSS NEGLIGENCE), MISREPRESENTATION (WHETHER UNDER THE LAW OF DELICT OR STATUTORY), BREACH OF STATUTORY DUTY, BREACH OF WARRANTY, CLAIMS BY ANY THIRD PARTIES FROM ANY REPUDIATORY, MATERIAL OR OTHER BREACH (HOWEVER MINOR) OF THIS AGREEMENT (WHETHER OR NOT INTENTIONAL), FROM WILFUL MISCONDUCT OR OTHERWISE, EXCEED AN AMOUNT EQUAL TO THE LICENSE OR SUPPORT FEES PAID FOR THE PROGRAM OR SERVICES GIVING RISE TO THE CLAIM. LICENSORS OF SOFTWARE COMPONENTS INCLUDED IN SYBASE PRODUCTS SHALL NOT BE LIABLE FOR DIRECT DAMAGES. NOTWITHSTANDING ANY OTHER CLAUSE IN THIS AGREEMENT, SYBASE DOES NOT EXCLUDE OR LIMIT ITS LIABILITY FOR DEATH OR PERSONAL INJURY CAUSED BY ITS NEGLIGENCE OR FOR ANY LIABILITY WHICH CAN NOT BE EXCLUDED BY LAW. "SYBASE GROUP" MEANS SYBASE, SYBASE, INC. OR ANY GROUP COMPANY OF SYBASE OR SYBASE, INC. OR ANY COMPANY UNDER COMMON CONTROL (I.E. MORE THAN 50% VOTING CONTROL) WITH SYBASE OR SYBASE, INC..

8. TERMINATION. Sybase may terminate a license if You have not paid the fees due within 15 calendar days after written notice that payment is past due. The license and all rights to Use a Program shall terminate automatically and immediately without notice upon any transfer or attempted transfer of the Program without Sybase's express written consent. Either party may terminate this Agreement upon any other material breach of this Agreement by the other party which has not been corrected within 45 calendar days after written notice. Upon termination of this Agreement, all licenses

granted hereunder shall terminate, You shall cease Using the Program and Documentation (whether or not modified or merged into other materials) and You shall certify in writing to Sybase that all copies (in any form or media) have been destroyed or returned to Sybase. Termination shall not relieve You from paying all fees accruing prior to termination and shall not limit either party from pursuing any other available remedies. Sections 1, 3, 5, 6, 7, 8, 9, 10, and 11 shall survive termination of this Agreement.

9. GENERAL

9.1 Neither this Agreement, nor any rights or obligations arising hereunder, nor any license granted herein may be assigned by You (whether by operation of law or otherwise) without Sybase's prior written consent. Any such purported assignment shall be void. The terms and conditions of the licenses granted hereunder shall be binding upon any permitted assignees or transferees, if any.

9.2 This Agreement is the entire agreement between the parties and supersedes and extinguishes all previous and contemporaneous communications, representations, arrangements, understandings, collateral contracts, agreements or draft agreements (both oral and written) regarding the subject matter hereof (including without limitation additional terms of any purchase orders, order acknowledgments or invoices) and no representation, condition, understanding or agreement of any kind, oral or written, shall be binding upon the parties unless incorporated herein. Each party acknowledges and agrees that it does not enter into this Agreement on the basis of and does not rely and has not relied upon and shall have no remedy in respect of any oral or written statement, collateral or other warranties, assurances, undertakings or representations which were made, by or on behalf of the other party in relation to the subject matter of this Agreement at any time before its signature (whether negligently or innocently made) (together "Statements") except those expressly referred to in this Agreement. Nothing in this paragraph 9.2 shall operate to limit or exclude the liability of either party arising out of its fraud, fraudulent concealment or fraudulent misrepresentation. This Agreement may be modified only in writing signed by both parties. Purchase Orders shall be binding as to the products and services ordered, the fees due and the site for installation or performance of services. Other terms and preprinted terms on or attached to any Purchase Order shall be void even if Sybase has acknowledged such Purchase Order. In the event of any conflict between the terms of an Exhibit A or reseller order and a Purchase Order, the terms of the Exhibit A or reseller order shall prevail over the Purchase Order.

9.3 You shall not transfer, directly or indirectly, any restricted Program or technical data received from Sybase, Sybase, Inc. or any of Sybase, Inc.'s subsidiaries, or the direct product of such data, to any destination or entity subject to export restrictions under U.S. or South African law or the law of any country to which the Program is delivered by Sybase, unless prior written authorization is obtained from the appropriate U.S. or South African agency or the appropriate agency of such other applicable country.

9.4 Sybase shall not be liable by reason of any failure or delay in the performance of its obligations hereunder on account of: acts by You, acts of God or the public enemy, war, terrorism, riots, strike, embargo, acts of civil or military authority, unavailability of communications facilities or energy sources, or any other cause that is beyond the reasonable control of Sybase.

9.5 All notices relating to this Agreement shall be in writing and delivered to the other party by overnight delivery service or first class prepaid mail with return receipt requested (in the case of Sybase to the attention of its General Counsel).

9.6 The Program is restricted commercial computer software. Sybase reserves all unpublished rights under the United States copyright laws.

9.7 If any provision of this Agreement is held to be unenforceable, the parties shall substitute an enforceable provision for the affected provision that approximates the intent and economic effect of the affected provision. The failure or delay by either party to enforce any term of this Agreement shall not be deemed a waiver of such term.

9.8 This Agreement shall be governed by and construed under the laws of South Africa. It shall not be governed by the United Nations Convention on the International Sale of Goods, the application

of which is expressly excluded. The competent courts in South Africa shall have exclusive jurisdiction over any disputes with regard to this Agreement.

9.9 It shall be your responsibility to obtain promptly from the proper authorities as required non South African governmental approvals of this Agreement.

10. If you have any questions about this Agreement, write to Sybase South Africa (Pty) Limited Attn Director of EMEA Legal Affairs, Building 1, Country Club Estate, Woodmead, Johannesburg, South Africa.

11. ABBREVIATIONS AND DEFINITIONS.

“Agreement” – This Software License Agreement, together with each Exhibit A or reseller order, any applicable supplements, amendments, addenda, Product Specific License Terms, and each Purchase Order.

“Application License” or “AP” – The limited right to install the Program on any Server at the single physical location (or approved hosting site) specified for such license in the applicable Order or reseller order.

“Chip” - Electronic circuitry containing one or more Cores, usually on a silicon wafer.

“Chip License”, or “CH” – The limited right to Use the Program on a Chip in a production environment.

“Chip Development and Testing License” or “DH” – The limited right to Use the Program on a Chip for development and testing purposes only and not in a parallel production environment. See “Chip” and “Chip License”.

“Chip Standby License” or “SH” - The limited right to access and Use a Standby Copy of a Program licensed under a Chip License for the duration of an interruption in the operation of the production Server. See “Chip”, “Chip License”.

“Cluster License”, or “CL” - The limited right to Use the Program on any number of Servers at the single physical location specified for such license in the applicable Order or reseller order, but only if each such Server is part of a load-balanced or failover configuration and in the aggregate provides no greater access to the Program or any associated data than would be provided by a single Server operating alone.

“Concurrent User” or “CU” - A specific, identifiable, unique input/output device capable of directly or indirectly accessing and using a Program such as (without limitation) a terminal, personal computer, single user workstation, personal digital assistant (“PDA”), wireless device or real time device. See “Concurrent User License”.

“Concurrent User License” - The limited right for a maximum number of Concurrent Users equal to the quantity of such licenses purchased, as indicated in the applicable Order or reseller order, to directly or indirectly access the Program on a single specified licensed Server at any given instant in time.

“Core” - A functional unit within a computing device that interprets and executes software instructions.

“CPU” – The unit of measurement used in the CPU License type (see “CPU License”) and the Internet Access License type (see “Internet Access License”). Unless otherwise specified on the Order, for Sybase Programs, the number of CPUs is equal to the number of Processors or Cores on a Machine, and for iAnywhere Solutions Programs, the number of CPUs is equal to the number of Chips on a Machine irrespective of the number of Processors or Cores.

“CPU Development and Testing License” or “DT” – The limited right to Use the Program on a Machine on which the number of CPUs is no greater than the number of licenses purchased, as specified on the Order, and to Use such Program for development and testing purposes only and not in a parallel production environment. See “CPU” and “CPU License”.

“CPU License” or “CP” -. The limited right to Use the Program on a Server on which the number of CPUs is no greater than the number of licenses purchased, as specified on the Order or reseller

order. The number of Seats that may access the Program shall be limited only by the capacity of the licensed CPUs, and may include internal usage by Seats within the Customer's organization, and external usage by Seats outside of the Customer's organization accessing the Program via the Internet ("Internet Users"). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Customer's applications. The license fee payable by Customer for the copy or copies of the Program shall be determined by multiplying the number of CPUs on the Server or Servers Using the Program by the applicable rate, each as specified on the Order or reseller order. In the event that the number of CPUs on a Server is increased, Customer shall report such increase, execute a new Exhibit A and pay an additional amount determined by multiplying the incremental CPUs by the then applicable rate per CPU set forth in the Price List.

"Data Storage Unit" or "DSU" – The unit of measurement used in the Storage License types which quantifies the volume of data stored inside the main database of a Program. Certain Programs tend to compress data to an amount less than the raw data. The amount of compression applied to the data may vary depending on the characteristics of the data and the data types Used in the Program.

"Documentation" - Installation instructions and user manuals supplied with the Program.

"ESD" in the column entitled "Media" – means Electronic Software Download.

"Exhibit A"- a standard form purchase authorization document made available by Sybase containing order information for each Customer order.

"Floating License" or "FL" – The limited right to install the Program on any number of workstation Machines, provided that at any given instant in time the total number of such workstation Machines on which Customer is permitted to Use the Program simultaneously may not exceed the number of licenses purchased.

"Internet Access License" or "IC" – The limited right to permit "External Internet Seats" to access a licensed Program, provided the number of CPUs on the Server Using the licensed Program is no greater than the quantity of such licenses purchased, as specified on the Order or reseller order. The number of "External Internet Seats" shall be limited only by the capacity of the licensed CPUs. "External Internet Seats" shall mean Seats which access the specified Program via the Internet; provided that the person at such Seat is not acting in the capacity of an employee, agent or independent contractor of Customer. External Internet Seats may query the Program database and update such database to the extent allowed by Customer's application, but may not Use the Program to develop or modify applications or perform other programming tasks. Customer may not Use the specified Program in connection with a website hosted by Customer on behalf of third parties. An Internet Access License does not cover intranet usage or other internal usage and Customer must acquire the necessary Seat licenses for all internal usage of the Program. If Customer purchases (or renews) Support for a Program for which an Internet Access License has been obtained, Customer shall purchase the same level of Support for the Internet Access License as for such Program. The license fee payable by Customer for the copy or copies of the Program shall be determined by multiplying the number of CPUs on the Server or Servers by the applicable rate, each as specified on the Order or reseller order. In the event that the number of CPUs on a Server is increased, Customer shall report such increase, execute a new Exhibit A and pay an additional amount determined by multiplying the incremental CPUs by the then applicable rate per CPU set forth in the Price List.

"Machine" – A single computer hardware system identified on the applicable Order or reseller order (or in the event no single computer hardware system is identified in the Order or reseller order, the single computer hardware system where the Program is in Use).running a single copy of the Operating System Software.

"Mainframe Base" or "MB" – The basic license fee applicable for certain mainframe Programs based upon the mainframe Machine model set forth in the applicable Order or reseller order. For each copy of a Program designated as license type MB, Customer shall also pay the applicable MSU License fee based upon the then current MSU rating of the mainframe Machine. See also "MSU (Millions of Service Units) License".

“Major Version” - A major release of a Program containing new features and functions.

“MSU (Millions of Service Units) License” or “MU” – The license fee payable by Customer for each copy of the Program shall be determined by multiplying the number of MSUs for the Machine by the applicable rate and adding the applicable Mainframe Base rate thereto, all as specified in the applicable Order or reseller order. In the event that the number of MSUs for the Machine is increased, Customer shall report such increase, execute a new Exhibit A, and pay an additional amount determined by multiplying the incremental number of MSUs by the then applicable MSU rate for the Program and adding any incremental base rate fee thereto, all as set forth in the Price List. The number of users shall be limited only by the capacity of the licensed MSUs, and may include internal users within the Customer’s organization, and external users outside of the Customers organization accessing the Program via the Internet (“Internet Users”). Internet Users may not Use the Program to develop or modify applications or perform other programming tasks, and may only Use the Program in conjunction with Customer’s applications.

“Multi-core Coefficient or Multi-core Scaling Coefficient” – The scaling coefficient set forth in the Price List which is applied to License and Support Price to determine the List Price for eligible License Types and Machines.

“Networked License” – The limited right for the number of Seats equal to the quantity of such licenses purchased, as specified in the Order or reseller order, to directly or indirectly Use a Program through licensed Server or Servers, in a network..

“Networked Seat” – see **“Seat”**.

“Operating System Software” - The operating system software on which the Program is licensed to be Used, as specified on the Order or reseller order.

“Order” – A Purchase Order or Exhibit A signed by Customer and accepted by Sybase.

“OT” - denotes “other”, for products or services included on an Order or reseller order, which are not otherwise defined.

“Price List” - Sybase’s then current price list for the country in which the Programs are installed.

“Primary Copy” - A licensed copy of the Program provided by Sybase or made available by Sybase for electronic download, including a copy provided initially as a trial copy.

“Processor” – means **“Core”**.

“Program” -The object code version of the software product(s) listed in the Order or reseller order, as well as any and all Updates and authorized copies. Although the Program media may contain other software products, Customer is licensed to Use only the designated Program.

“Purchase Order” - A purchase order or other purchase-authorizing document issued by Customer for Sybase products and/or services and accepted by Sybase, as confirmed by a Sybase invoice.

“Quantity of Licenses” – The number of a particular license type, such as (without limitation) Server or Seat, licensed for a particular Program pursuant to an Order or reseller order.

“Seat”, or “ST” - A specific, identifiable, unique input/output device capable of directly or indirectly accessing and using a Program such as (without limitation) a terminal, personal computer, single user workstation, personal digital assistant (“PDA”), wireless device or real time device. See “Networked License”.

“Secondary Copy” - A licensed copy of the Program reproduced by Customer from the Primary Copy.

“Server” – A Machine containing software, which permits it to await and fulfill services to other computers and in case of a cluster or grid computing environment, each node or host Machine is considered an individual Server.

“Server License” or “SR” – The limited right to Use the Program on a Server, for access solely by licensed Seats or licensed Concurrent Users, as applicable.

“Standalone Seat” or “SS” – The limited right to install the Program on a single workstation Machine (and not a server Machine) for access solely by the single workstation Machine upon which it resides.

“Standby Concurrent User License” or “SC” – The limited right to access and Use a Standby Copy of a Program licensed under a Concurrent User License in the event of an interruption of a production copy of the same Program. See “Concurrent User License”.

“Standby Copy” – means the Use of a Program by a Server for the purpose of processing data for the durations of an n interruption in the operation of the production Server.

“Standby CPU License” or “SF” – The limited right to access and Use a Standby Copy of a Program licensed under a CPU License in the event of an interruption of the production environment on another Server.

“Standby Server License” or “SV” – The limited right to Use a Standby Copy of a Program licensed under a Server License for the duration of an interruption in the operation of the production Server.

“Storage License” or “TB” – The limited right to store data in a Program such that the quantity of DSUs Used is no greater than the number of DSUs licensed, as specified in the Order or reseller order. The license fee payable by Customer shall be determined by multiplying the number of DSUs by the applicable rate, each as specified on the Order or reseller order. In the event the number of DSUs in a Program is increased, Customer shall report such increase, execute a new Exhibit A and pay an additional amount determined by multiplying the incremental storage capacity by the then applicable rate per DSU set forth in the Price List. Storage may only be licensed in whole DSUs, and the number of DSUs shall be rounded up to the next higher whole DSU when determining the number of Storage Licenses required.

“Storage Development and Testing License” or “DB” – The limited right to store data in a Program up to the number of DSUs licensed, and to Use such data for development and testing purposes only and not in a parallel production environment. See “DSU” and “Storage License”.

“Storage Standby License” or “SB” – The limited right to store data in a Standby Copy of a Program up to the number of DSUs licensed, and to Use such data in the event of an interruption of a production copy of the same Program. See “DSU” and “Storage License”.

“Support” - The technical support plan selected by Customer.

“Updates” - means error corrections, maintenance releases and Major Versions of the Program made available to Sybase customers under certain Sybase Support plans.

“Upgrade” - means (i) transfer of the Program to a Machine of a higher Sybase Machine Class, i.e. transfer to a Machine that provides greater processing capacity, or (ii) Customer migration from one edition of a Program to another edition with increased functionality, e.g. from Advanced Edition to Enterprise Edition.

“Use” or “Using” – means to install, load, view, print, update, access, utilize, or store the Program.
