

## **QDABRA® SOFTWARE**

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IF YOU INSTALL, COPY, DISPLAY, EXECUTE, PERFORM OR MAKE ANY OTHER USE OF THE SOFTWARE PRODUCT, YOU ARE DEEMED TO HAVE ACCEPTED AND YOU ARE BOUND BY ALL THE TERMS AND CONDITIONS OF THE EULA (INCLUDING WITHOUT LIMITATION ANY APPENDICES OR SCHEDULES ATTACHED HERETO APPLICABLE TO THE PARTICULAR SOFTWARE PRODUCT).

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IF YOU DO NOT ACCEPT AND AGREE TO ALL THE TERMS AND CONDITIONS OF THE EULA, YOU ARE PROHIBITED FROM INSTALLING, COPYING, DISPLAYING, EXECUTING, PERFORMING, OR OTHERWISE USING THE SOFTWARE PRODUCT. YOU MUST DELETE AND REMOVE ANY AND ALL ELECTRONIC, DIGITAL, MAGNETIC OR OTHER TYPES OF COPIES OF THE SOFTWARE PRODUCT AND DESTROY ITS RELATED DOCUMENTATION. IF THE SOFTWARE PRODUCT WAS PURCHASED BY YOU, YOU MAY RETURN TO LICENSOR THE SOFTWARE PRODUCT AND THE PURCHASE PRICE WILL BE REFUNDED IN FULL ONLY IF YOU (1) CONTACT LICENSOR FOR A RETURN AUTHORIZATION NUMBER WITHIN FIFTEEN (15) DAYS FROM THE DATE OF PURCHASE OF SUCH SOFTWARE PRODUCT AS EVIDENCED BY THE SOFTWARE PRODUCT RECEIPT/INVOICE; (2) RETURN ALL DOCUMENTATION, MEDIA AND ALL RELATED ITEMS OF THE SOFTWARE PRODUCT TO LICENSOR IN UNDAMAGED AND RESALABLE CONDITION; (3) DELETE AND DESTROY ANY AND ALL ELECTRONIC, DIGITAL, MAGNETIC OR OTHER TYPES OF COPIES IN OR ON ANY MEDIA OR MADE BY ANY MEANS OF THE SOFTWARE PRODUCT; AND (4) CERTIFY IN WRITING THAT YOU HAVE NOT KEPT, DISTRIBUTED, SHARED, SOLD, LOANED, DONATED, OR TRANSFERRED IN ANY WAY ANY COPY OF THE SOFTWARE PRODUCT OR OTHERWISE VIOLATED ANY TERM OR CONDITION THIS EULA.

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c. "Confidential Information" is to be construed broadly and includes, but is not limited to, all of the following: software architecture, data and other recorded information, designs, devices, discoveries, drawings, Inventions, know-how, materials and documents, procedures and products, software (including interfaces, object code, source code, firmware and any and all enhancements, related documentation, releases, revisions, and updates thereto), trade secrets, specifications, and the like, all whether in preliminary or final form and in and on any media whatsoever, that are created, conceived, reduced to practice, developed, discovered, invented or made, relating to the Software Product. Confidential Information does not include what is already public or what is later publicly made known without any unlawful acts, omissions and conduct of LICENSEE or third-parties.

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- (2) For Pre-Release, Beta, Test, Trial or other evaluation software, "Free Download" or "Free Developer Edition" software, the terms Software Product or Software Products shall mean ONLY the free pre-release, beta, test, evaluation, free download, or free developer software to which this EULA applies, including without limitation, any and all applications, help files, libraries, source code, executables, applets, scripts, forms, user manuals and documentation, technical manuals, systems manuals, and all other products included in or with any Software Product and all associated Intellectual Property for any computer operating systems ("Platforms").

e. "Person" means a natural person or any form of organization or entity including, but not limited to, corporations, partnerships, associations, limited liability companies or governmental organizations or agencies.

f. "Purchase" or "purchased" shall mean "license" or "licensed." Nothing in this EULA assigns in any way to LICENSOR any of the Intellectual Property Rights or other ownership rights, title or interest in any Software Product. Title to the Software Product and all modifications thereto shall remain with LICENSOR. Payment of the fees specified for a Software Product entitles LICENSEE to the grants described in this EULA for that specific paid-up Software Product. Any rights to updates, upgrades, or additions are subject to any fees that may be separately required by LICENSOR when they are available.

g. "Virtual Machine" shall mean an operating system that is running in a "virtualized" environment hosted on a physical computer or network whether the virtualization is accomplished by software or hardware (including for example only and not by way of limitation, software providing Virtual Machine environments including without limitation Microsoft Virtual PC, Microsoft Virtual Server, User-mode Linux, and EMC VMware, or hardware-based virtual machines such as Intel's VT (Vanderpool) and AMD's Pacifica), any CPU that is licensed to run one or more virtual environments, e.g. EMC VMWare or Microsoft Virtual Server 2005 Virtual Environment, or any other emulation of a physical CPU or machine running under the control of a Virtual Machine. Virtual Machine also means any virtualized environment run on any networks whether there is one physical "host," more than one physical "host," or no physical "hosts."

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c. Schedule B attached hereto describes any support policies that may be in effect for a Software Product and also support options that may be purchased by LICENSEE.

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Section 3. TERM AND TERMINATION.

a. Term. The license grants made in this EULA for a Software Products that is the subject of this EULA shall be effective so long as LICENSEE is in compliance with all terms and conditions of the EULA.

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a. LIMITED WARRANTY. LICENSOR makes only to LICENSEE the limited warranty expressly described in this Section 4.. LICENSOR makes no warranties of any kind to any other Persons. Furthermore to the maximum extent permitted by applicable laws, no other warranty of any kind, whether express or implied, is made by LICENSOR to the LICENSEE or any other Person.

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(2) THE RIGHTS AND REMEDIES OF LICENSEE ARE SPECIFICALLY SET FORTH IN THIS SECTION 4 AND ARE THE LICENSEE'S EXCLUSIVE REMEDIES, NOTWITHSTANDING ANY DAMAGES THAT LICENSEE MIGHT INCUR FOR ANY REASON WHATSOEVER. IN NO CASE SHALL ANY POTENTIAL LIABILITY TO A LICENSEE FOR ANY DAMAGES OF ANY KIND (INCLUDING WITHOUT LIMITATION, DIRECT OR GENERAL DAMAGES, BY LICENSOR OR ITS MEMBERS, DIRECTORS, EQUITY OWNERS, SHAREHOLDERS, OFFICERS, MANAGERS, EMPLOYEES, AGENTS, DISTRIBUTORS, RESELLERS, OR OTHER AFFILIATES) IN THE AGGREGATE FOR ALL POTENTIAL CLAIMS (WHETHER BASED ON CONTRACT, TORT, STATUTES OR OTHER AUTHORITIES) EXCEED THE AMOUNTS DESCRIBED BELOW:

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(B) FOR PRE-RELEASE, BETA, TEST, TRIAL OR OTHER EVALUATION SOFTWARE, "FREE DOWNLOAD" OR "FREE DEVELOPER EDITION," A MAXIMUM AMOUNT EQUAL TO TEN UNITED STATES CENTS (U.S. \$ 0.10).

(3) NOTHING IN THE FOREGOING SHALL BE DEEMED TO BE A BAR, DISCHARGE, RELEASE, FORGIVENESS, WAIVER, FORBEARANCE, IMPAIRMENT, OR OTHER LIMITATION OF ANY OF LICENSOR'S RIGHTS IN LAW OR EQUITY AGAINST THE LICENSEE OR ANY OTHER PERSON FOR ANY INFRINGEMENT OR OTHER VIOLATION OF ANY OF LICENSORS'S INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OR OF ANY OTHER RIGHTS OR REMEDIES OF LICENSOR..

#### Section 5. PROPRIETARY RIGHTS.

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b. Export. The Software Products are subject to U.S. export jurisdiction.

Section 7. DISPUTES; ARBITRATION; GOVERNING LAW; MISCELLANEOUS

a. Arbitration, Jurisdiction, Venue and Attorneys' Fees. LICENSEE agrees that any dispute regarding, relating to, or arising from this EULA or any Software Product or LICENSOR shall be determined in accordance with the Commercial Arbitration Rules of the American Arbitration Association before a single arbitrator mutually selected by the parties with the arbitration to take place in Seattle, Washington, United States of America. The award of the arbitrator shall be final and binding on the parties. LICENSEE agrees and consents to personal jurisdiction, subject matter jurisdiction and venue in a federal or state court located in Seattle, King County, Washington, to enforce this EULA and any arbitration award and LICENSEE waives all defenses of lack of personal jurisdiction or *forum nonconveniens*. The prevailing party shall be entitled to its reasonable attorney fees and costs as awarded by the arbitrator (or the court, as the case may be). This EULA shall be governed by and construed in accordance with the laws of the State of Washington. The prevailing party may seek to enforce a final arbitration award in any and all courts or forums that have jurisdiction over the losing party. The parties agree that this Section 7 is subject to the New York Convention and fully enforceable in all countries that are signatories to the New York Convention.

b. Invalidity/Unenforceability/Waiver. The invalidity or unenforceability of any provision of this EULA shall not affect or impair the validity or enforceability of any other provision hereof. The exercise of any right or remedy herein provided shall be without prejudice to the right to exercise any other right or remedy provided herein or by law, subject to the terms and conditions of this EULA. No waiver of rights shall be valid unless contained in a writing specifically referring hereto and signed by the Person against whom enforcement is sought.

Section 8: ENTIRE AGREEMENT. In addition to the agreement to pay the applicable licensee fees for the license of a Software Product being purchased, this EULA and all attachments hereto constitute the entire agreement between LICENSOR and LICENSEE and supersede any and all oral or other agreements, statements, representations, and/or negotiations that may be not expressly incorporated in this EULA. This EULA may only be amended in a writing executed by authorized representatives of LICENSOR and LICENSEE.

## SCHEDULE A

### SOFTWARE PRODUCTS

Additional restrictions and limitations are described below for the specific Software Product described therein. Please contact LICENSOR's sales office for current prices for licenses. LICENSOR reserves the right to change, add, or remove the contents below without notice for any actual or potential customers that had not purchased a particular Software Product before any changes are made. Please contact LICENSOR's sales office for any updated, revised, or new information.

#### Section 1. DEFINITIONS.

a. "Unlimited" means only for one legal entity as a LICENSEE and shall not include subsidiaries, parents, affiliates, brother-sister companies, joint ventures, and any other entities related in any way to the legal entity that is the LICENSEE.

b. "Server" means one (1) stand-alone server (only one cpu) installation with unlimited access from networked computers but excluding other servers that may also be networked. In the case of Virtual Machines, each separate Virtual Machine is considered a single "Server".

c. An "event" is limited to one hour of technical consultation without charge. Please contact LICENSOR's sales office for additional support agreements that may be available for purchase.

d. "DBXL" means Qdabra® Database Accelerator for InfoPath®. InfoPath is a registered trademark of the Microsoft Corporation.

e. "ShP" means "SharePoint®" from the Microsoft Corporation. SharePoint is a registered trademark of the Microsoft Corporation.

f. "Doctype" or "Document Type" means any single database XML mapping configuration in DBXL such as an InfoPath form template corresponding to a unique ".XSN" file.

g. "Documents" means XML files.

h. "Forum" refers to the forum at URL <http://www.infopathdev.com/forums/>. LICENSOR reserves its rights in its sole discretion to change the URL in the future or to discontinue such forum.

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b. Software Products.

**Qdabra Forms Viewer for InfoPath:** The Qdabra™ Forms Viewer (also know by codename DViewer) is licensed for one (1) stand-alone server (only one CPU) installation with unlimited access

from networked computers but excluding other servers that may also be networked. In the case of virtual machines, the product is licensed for up to three (3) virtual machine installations all residing on the same one (1) stand-alone server (only one CPU) with unlimited access from networked computers but excluding other servers that may also be networked.

**Qdabra Database Accelerator Web Service (DBXL):**

The Qdabra Database Accelerator Web Service (DBXL) is licensed for one (1) stand-alone server (only one CPU) installation with unlimited access from networked computers but excluding other servers that may also be networked. In the case of virtual machines, the product is licensed for up to three (3) virtual machine installations all residing on the same one (1) stand-alone server (only one CPU) with unlimited access from networked computers but excluding other servers that may also be networked. NOTICE: The Qdabra Database Accelerator product contains redistributables licensed from Developer Express Inc. which are subject to Developer Express Inc.'s End-User License Agreement – Single Developer License for All Software Component Products, 2005.

## **Schedule B**

### **STANDARD SUPPORT**

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### **CUSTOM PROGRAMMING OR SOFTWARE DEVELOPMENT**

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