

## **QDABRA® SOFTWARE**

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As sometimes used in this EULA, the terms "you" and "LICENSEE" are the same.

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**IN ALL CASES, THE TERMS AND CONDITIONS OF THIS EULA APPLY TO THE SOFTWARE PRODUCTS LISTED IN SCHEDULE A.**

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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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## Section 1. DEFINITIONS.

The following definitions apply to this EULA.

a. "Intellectual Property Rights" shall mean all worldwide intellectual property or industrial property rights arising under statutes, laws, regulations, common law, treaties, conventions, or other source, whether or not vested or inchoate, including, without limitation, all (i) provisional patents, patent applications, patents, conceptions, Inventions as defined herein, discoveries, or improvements owned or licensable, including without limitation any patent applications filed or patents acquired after your purchase of a Software Product for any Intellectual Property Rights in existence that is contained in or applies to the Software Product that you purchased; (ii) rights associated with works of authorship including copyrights, copyright applications, copyright registrations, moral rights, mask work rights, mask work applications, and mask work registrations; (iii) rights relating to the protection of trade secrets and any Confidential Information as defined herein; (iv) trademark, trade dress, or service mark rights; (v) any right analogous to those set forth in this Subsection 1.a and any other proprietary rights relating to intangible or industrial property; and (vi) utility models, divisionals, continuations, continuations-in-part, renewals, reissues, and extensions of the foregoing (whether now existing, hereafter filed, issued, or acquired), for any Intellectual Property Rights.

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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.

d. The terms "Software Product" or "Software Products" apply to both purchased software and "free" software being licensed as a pre-release, beta, test, trial or other evaluation, "free download" or "free developer edition" software as follows:

- (1) For Purchased Software, the terms Software Product or Software Products shall mean ONLY the specific Software Product or Software Products that LICENSEE purchased AND that is or are specifically identified in LICENSOR's invoice or invoices, 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").
- (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

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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."

h. Software Products are in some cases intended to be used with one or more of Microsoft Corporation's products, and nothing herein or in any documentation for Software Products is intended to be any claim by Licensor to any of the Microsoft Corporation trademarks.

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a. In accordance with the terms and conditions of this EULA (and further on the condition precedent of full payment in the case of any SOFTWARE PRODUCT requiring a paid-for license), LICENSOR grants LICENSEE the rights as outlined in Schedule A attached hereto.

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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 Software Products that are the subject of this EULA shall be effective so long as LICENSEE is in compliance with all terms and conditions of the EULA and the attached Schedules and provided that LICENSEE is current with all applicable license fees. Notwithstanding the preceding sentence, the following Software Products shall have a one (1) year license term, unless otherwise renewed by LICENSEE: DBXL Basic, Standard and Enterprise versions and qRules.

b. Termination of EULA. The licenses granted herein shall be automatically terminated upon any breach by LICENSEE of any term or condition of the EULA. Any such termination shall not operate as a bar, discharge, release, forgiveness, waiver, forbearance, impairment, or other limitation of LICENSOR's rights in law or equity against LICENSEE for breach of this EULA or for any other rights and remedies available under the intellectual property laws (including without limitation copyright laws) or other laws. Immediately upon any termination of the license grants made herein, LICENSEE's rights to the applicable Software Product or Software Products shall be terminated, and LICENSEE shall certify to LICENSOR that LICENSEE has returned to LICENSOR or has destroyed all documentation and materials and copies or partial copies of the applicable Software Products within its possession or control and LICENSEE shall make no further use of any Software Product.

c. Survival. The terms and conditions in the "NOTICE TO LICENSEE" section at the start of this EULA and Sections 1, 2.b, 3.b, 3.c, 4, 5, 6, 7 and 8 of this EULA and the restrictions in Schedule A hereto shall also survive any termination of this EULA. In addition, if at termination of this EULA, LICENSEE owes LICENSOR any unpaid licensee fees, all such unpaid fees shall remain due and payable. Termination shall not be deemed to be and shall not be any or act as a bar, discharge, release, forgiveness, waiver, forbearance, impairment or any other limitation of LICENSOR's rights and remedies, in law or equity, for any violations by LICENSEE of any term or condition of this EULA or for any other violations of law, including without limitation, any infringement of any of LICENSOR's Intellectual Property Rights, including copyrights.

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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 LICENSOR'S INTELLECTUAL PROPERTY RIGHTS OR OTHER RIGHTS OR OF ANY OTHER RIGHTS OR REMEDIES OF LICENSOR.

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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. Notwithstanding anything to the contrary, it is understood and agreed that money damages may not be a sufficient remedy for any breach of the provisions of this EULA by either party hereto and that the parties shall be entitled to equitable relief, including injunction and specific performance, as a remedy for any such breach. The parties may seek such injunctive relief in a federal or state court

located in Seattle, King County, Washington without having to first go before an arbitrator. LICENSEE agrees that LICENSOR shall be entitled to such equitable remedies without posting bond and waives any right LICENSEE may have to the posting of a bond. Such remedies shall not be deemed to be the exclusive remedies for a breach by either party of the enforceable provisions of this EULA but shall be in addition to all other remedies available at law or equity to the non-breaching party. Statutes of limitation applicable under Washington law shall apply to proceedings in arbitration.

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 license 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 are not expressly incorporated in this EULA. This EULA may only be amended in a writing executed by authorized representatives of LICENSOR and LICENSEE.

Section 9: AUTHORITY. LICENSEE warrants to LICENSOR that it has the right and authority to enter into, and to grant the rights and perform the obligations described in this EULA. The individual executing this EULA by clicking the "I Agree" button or by otherwise installing the Software Product warrants that he/she is an authorized signatory of LICENSEE and has sufficient corporate authority to enter into this EULA.

## 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 have 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. "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". "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."

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

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

d. "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.

e. "Documents" means XML files.

#### Section 2. Restrictions and limitations:

a. If a purchased Software Product is transferred to a different server within the same legal entity that is the LICENSEE, the Software Product must be completely de-installed and otherwise removed from the server in which it had been installed before the transfer. No other kinds of transfers are allowed.

b. A license is 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.

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### Section 3. Software Products.

#### **Qdabra qRules Software:**

A license to the Qdabra qRules Software is licensed by the LICENSEE for one individual user (“licensed user”) only. Each licensed user may install qRules on one (1) end user CPU (only one CPU) installation. qRules may not be installed on a Server machine unless LICENSEE has licensed the Enterprise unlimited developer edition.

**Qdabra Forms Viewer for InfoPath:** The Qdabra™ Forms Viewer (also known 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 DBXL Server Edition (IIS version):**

The Qdabra DBXL Server Edition 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 DBXL 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. The terms “server” and “virtual machine” are as defined in Section 1.a above.

#### **Qdabra DBXL Standalone Edition (non IIS version):**

The Qdabra DBXL Standalone Edition is licensed for one (1) client installation (Windows XP, Windows Vista or Windows 7 client machine) (only one CPU) installation. NOTICE: The Qdabra DBXL 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.

#### **Qdabra Excel to XML Migration tool (XLS to XML):**

A license to the Qdabra Excel to XML Migration Tool (XLS to XML) is licensed by the LICENSEE for one individual user (“licensed user”) only. Each licensed user may install XLS to XML on one (1) end user CPU (only one CPU) installation. The end result XML files created with the XLS to XML tool on the installed end user CPU may be lawfully distributed by LICENSEE in accordance with the terms and conditions of the EULA, including without limitation this Schedule A. XLS to XML may not be installed on a Server machine unless LICENSEE has licensed the Enterprise unlimited developer edition.

#### **Qdabra Active Directory Web Service (ADWS) Single Server License:**

The Qdabra Active Directory Web Service (ADWS) Single Server License is licensed for one (1) stand-alone server (only one CPU) installation with unlimited access from networked computers. In the case of virtual machines, the product is licensed for one (1) virtual machine installation residing on the same one (1) stand-alone server (only one CPU) with unlimited access from networked computers.

#### **Qdabra Active Directory Web Service (ADWS) Enterprise Server License:**

The Qdabra Active Directory Web Service (ADWS) Enterprise Server License is licensed for unlimited installation on servers owned by the LICENSEE.

## **Schedule B**

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