

## Redgate EULAs

If you are using any of our products (other than those listed as subscription software on our website <https://www.red-gate.com/support/license/software-editions>), the Redgate Standard EULA will apply.

If you are using subscription software the Redgate Subscription EULA will apply.

### IMPORTANT NOTICES:

- 1 Where you sign a paper version or a bespoke version of the Redgate Standard EULA and/or the Redgate Subscription EULA, that paper/bespoke version will take precedence over any subsequent click to agree versions of the EULAs presented on download and/or installation; and
- 2 The Redgate Standard EULA and/or the Redgate Subscription EULA (whichever one is applicable to you) shall prevail over your standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or confirmation of order.

## Redgate Standard EULA

Any use of our software (other than subscription software, which is subject to our Subscription EULA) is subject to the terms of this licence agreement ("**Agreement**"). Please read the full Agreement carefully.

You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement by downloading and/or installing and/or using the Software. If you do not accept these terms, do not download, install or use the Software.

### IMPORTANT NOTICES:

- 1 Where you sign a paper version of this Agreement, that paper version will take precedence over any subsequent click to agree versions of this Agreement presented on download and/or installation; and
- 2 This Agreement shall prevail over your standard terms and conditions (if any) attached to, enclosed with, or referred to in, the purchase order or confirmation of order.

## TERMS AND CONDITIONS

### 1 LICENCE

- 1.1 **Evaluation Licence.** You are entitled to a free trial of any Licensed Software (other than Freeware) for the purposes of deciding whether or not the Licensed Software meets your requirements ("**Evaluation Period**"). During the Evaluation Period the terms in Schedule 1 will apply.
- 1.2 **Third Party Plug-ins.** Third Party Plug-ins are licensed to you in accordance with paragraph 12 of the Product Specific Terms.
- 1.3 We grant you in perpetuity a limited, personal, non-exclusive, and non-transferable licence to use the Licensed Software, subject to any applicable Product Specific Terms.
- 1.4 The Licence is personal to you. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or Licensed Software or hold this Agreement on trust for any other person.
- 1.5 Except as stated in this Licence, you have no right to use, incorporate into other products, copy, publish, display, modify or translate the Licensed Software or any modification, adaptation or copy of the Licensed Software or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of the Licensed Software either in whole or in part, as expressly permitted under the Licence or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law.
- 1.6 You shall not use the Licensed Software to manufacture or distribute a product that is substantially similar to or competitive with our Software.

## **2 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 2.1 You acknowledge that i) all Intellectual Property Rights in or relating to the Licensed Software are owned by or licensed to us, ii) except as expressly granted under the Licence, you have no rights in the Licensed Software and iii) we shall have the right to use your name and/or logo on customer lists on our website and in other marketing material.
- 2.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Licensed Software or which would call those rights into question.
- 2.3 You agree not to delete, remove or alter any trade marks, logos, copyright notices or similar proprietary devices of ours, including without limitation any electronic watermarks or other identifiers that may be incorporated in the Licensed Software. All representations of our name or logo must remain as originally distributed.

## **3 PAYMENT**

- 3.1 Licence Fees shall be paid by you in full, and any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax, use tax and withholding tax), shall be borne solely by you. You may not deduct any amounts from the Licence Fees, unless otherwise specified in this Agreement.
- 3.2 Licence Fees shall be payable on installation of the Licensed Software and/or on purchase and/or renewal of a Support Package (as applicable), except where agreed otherwise in writing with us.
- 3.3 Where you have obtained the Licensed Software through a Reseller, the terms you have agreed with such Reseller in relation to payment and invoicing will apply instead of this clause 3.

## **4 CONFIDENTIALITY**

- 4.1 The structure, organisation, and source code of the Licensed Software are proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information of ours (including relating to or derived from the Licensed Software) to any third party, including where such confidential information is derived under any applicable law as set out in clause 1.5 (except in, and limited to, the circumstances permitted under paragraph 9 of Schedule 2).
- 4.2 Other than the disclosures referred to in our Privacy Notice, we agree not to provide or disclose to any third party any information of a confidential nature in any form whatsoever which is disclosed to us by you or on behalf of you.
- 4.3 The provisions of clauses 4.1 and 4.2 will not apply to the extent that:
  - 4.3.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or
  - 4.3.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or
  - 4.3.3 such information is required to be disclosed by law.
- 4.4 No information to which clause 4.3.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law) (i) given the disclosing party reasonable written notice of such proposed disclosure, (ii) consulted with the disclosing party, and (iii) agreed with the disclosing party the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.
- 4.5 If you have entered into a separate confidentiality agreement with us, and there are inconsistencies between the terms of the confidentiality agreement and this clause 4, the terms of the confidentiality agreement shall prevail over this clause 4.

## **5 WARRANTY AND SUPPORT**

- 5.1 Subject to clauses 5.3 and 10.8.2(i), we warrant that:
  - 5.1.1 we own the Intellectual Property Rights in the Software and/or have the right to grant a licence to you;

- 5.1.2 in creating the Licensed Software, we have not knowingly infringed the intellectual property rights of third parties; and
- 5.1.3 for a period of 90 days from the first installation of the Licensed Software (or, if applicable, 90 days from the end of the Evaluation Period if you continue to use the Licensed Software) the Licensed Software shall operate substantially in accordance with its description. However, you acknowledge that the Licensed Software is of such a complexity that there will be inherent defects and that therefore we can give no warranty that the Licensed Software is free from error or defect or that operation of the Licensed Software shall be uninterrupted.
- 5.2 Other than as provided for in clauses 5.1 and 10.8.2(i), we do not offer any warranty related to the Licensed Software and/or the Support Package, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality, save for any non-excludable rights and remedies you may have under law. The Licensed Software has been developed as a standard product for use by a wide variety of users and so we are unable to warrant that the Licensed Software will meet any particular user needs. You shall take full responsibility for ensuring that the Licensed Software is suitable for your intended purposes and to facilitate investigation into such suitability, we offer a free Evaluation Period.
- 5.3 The Core Edition Software, Preview Software and Freeware are provided AS IS with no representation, guarantee or warranty of any kind as to their functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.
- 5.4 **Support.** In relation to and without prejudice to the generality of clause 5.2 above, we provide support to users via our website and user forums. You may also purchase a Support Package with certain of the Licensed Software, and when purchased, provision of the Support Package shall be subject to the terms of this Agreement. You accept that, although we will use reasonable endeavours to solve problems identified by purchasers of the Support Package, the nature of software is such that no guarantee can be provided that any particular problem will be solved. You accept that, where a particular problem requires an update to the Licensed Software, the scheduling of any new releases and the functionality those releases contain shall be under our sole control.

## **6 LIMITATION AND EXCLUSION OF LIABILITY**

- 6.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death resulting from negligence, (b) fraud; or (c) any other matter for which liability cannot be excluded by law.
- 6.2 Subject to clause 6.1 and 10.8.2(ii), neither party shall be liable to the other party for any indirect, special or consequential loss or damage whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise). We shall not be liable to you for any of the following types of loss or damage arising under or in relation to this Agreement: (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or (b) any loss, or corruption, of software or data; or (c) any loss of use of hardware, software or data.
- 6.3 Subject to clauses 6.1, 6.2, 9.2 and 10.8.2(ii) our aggregate liability under and in connection with this Agreement howsoever caused shall be limited in all cases to the aggregate sum of the Licence Fees paid in the 12 months prior to the event giving rise to the liability. In relation to the Core Edition Software, Preview Software and Freeware, our sole liability under this Agreement, subject to clause 6.1 shall be as set out in paragraph 5.2 of Schedule 2.
- 6.4 The provisions of this clause allocate risks under this Agreement between you and us, and the Licence Fees reflect this allocation of risks and these limitations of liability.

## **7 LICENCE TERM, SUPPORT TERM, TERMINATION AND RETIRED SOFTWARE**

- 7.1 The Licence shall commence upon your acceptance of its terms and shall continue in perpetuity unless terminated in accordance with clause 7.3 or 7.4, or otherwise in accordance with this Agreement.

- 7.2 Any Support Package you purchase will be provided for the Support Term, unless terminated in accordance with clause 7.3 or 7.4, or otherwise in accordance with this Agreement.
- 7.3 We may terminate the Licence and/or Support Package immediately and without notice if:
- 7.3.1 we reasonably suspect that you are using the Licensed Software for any purpose which contravenes any applicable law; or
- 7.3.2 you materially fail to comply with any provision of this Agreement including the Product Specific Terms.
- 7.4 The Licence will terminate automatically: (a) where applicable, at the end of the relevant licence period specified in paragraph 7 of Schedule 2 or (b) if you uninstall and cease use of the Licensed Software, or uninstall and destroy or voluntarily return the Licensed Software to us.
- 7.5 Where the Licence is terminated in accordance with clause 7.3 or 7.4, then the Agreement shall terminate in its entirety.
- 7.6 Upon termination of this Agreement: (a) you must cease use of the Licensed Software, and uninstall, destroy or put beyond use all copies of the Licensed Software in your possession or control; and (b) the provisions of clauses 1.6, 4, 5.2, 5.3, 6, 7, 9, 10.1 to 10.7, 11 and paragraph 9.3 of Schedule 2 will remain in effect.
- 7.7 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.
- 7.8 **Retired Software.** We reserve the right to retire the Licensed Software on 30 days' written notice by us at any time during the Licence Term, subject to the Product Specific Terms.
- 7.9 We shall continue to provide the Support Package for the Retired Software for the remainder of your current Support Term. On the expiry of such Support Term, paragraph 13 of Schedule 2 shall take effect. Subject to clause 10.8.2(ii), we shall not be liable for any claim, damages or other liability arising from or in connection with your continued use of the Retired Software after, if applicable, the expiry of any Support Term.

## **8 DATA COLLECTION AND PRIVACY NOTICE**

- 8.1 Information on the data we collect about you and how we treat that data is set out in our Privacy Notice, which can be viewed at: <https://www.red-gate.com/website/legal>.

## **9 THIRD PARTY CLAIMS**

- 9.1 You agree to indemnify us from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third party claims that your use of the Licensed Software causes any such loss or damage, except in the circumstances in clause 9.2 below.
- 9.2 If any claim is brought against you alleging that your use of the intellectual property associated with the Licensed Software in accordance with this Agreement infringes the rights of any third party, you shall promptly notify us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and seek to minimise the effect of any claim on the respective businesses. We shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. We will pay any damages and costs awarded against you in connection with any claim subject to a maximum of the aggregate sum of Licence Fees paid to us by you in the 12 months prior to the claim. We shall have the right, at our sole choice, to either: (i) use reasonable endeavours to negotiate terms for continued use by you of the claimed infringing software; or (ii) use reasonable endeavours to amend the Licensed Software to make it non-infringing; or (iii) terminate this Agreement with immediate effect and in such event, we shall refund to you all Licence Fees paid.

## **10 GENERAL**

- 10.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without prejudice to any other rights or remedies that we may have, you acknowledge and agree

that damages alone would not be an adequate remedy for any breach of clauses 1, 2, 4 and/or Schedule 2 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.

- 10.2 **Compliance with applicable law.** You agree that, notwithstanding clause 10.1 above, you may be subject to additional laws in other jurisdictions with respect to your use of the Licensed Software in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations.
- 10.3 **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.
- 10.4 **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 10.5 **No third party rights.** We and you do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 10.6 **Entire agreement.** This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.
- 10.7 **Revisions to terms.** For click-to-agree versions of this Agreement only, we reserve the right to revise the terms of this Agreement by updating this Agreement on our website. You are advised to check the website periodically for notices concerning such revisions. If you do not agree with any such revision you may terminate your agreement within 10 days of the relevant revision without liability to us. Your continued use of the Licensed Software after this period shall be deemed to constitute acceptance of any revised terms. No revisions will apply retrospectively. Any bespoke versions of this Agreement shall continue to apply to all future downloads or installation of Software and shall always take precedence over any click-to-agree versions presented at download or installation of such Software.
- 10.8 **Consumer regulations.**
- 10.8.1 This clause applies to Consumers only. You shall have the right to cancel this Agreement 14 days from the date you agree to be obliged to pay for the Licensed Software and/or Support Package under this Agreement. Should you wish to cancel this Agreement under this clause 10.8, you must notify us of your decision to cancel by either: (a) returning a completed Model Cancellation Form (a copy of which is available here: <https://www.red-gate.com/website/legal>) to us; or (b) sending us an email clearly confirming your decision to: [orders@red-gate.com](mailto:orders@red-gate.com). If you have any complaints about this Agreement, including complaints about the Licensed Software and/or Support Package, please raise these with Redgate using the relevant contact details: <https://www.red-gate.com/our-company/contact-us>
- 10.8.2 Australian Consumer Law.
- (i) Despite clause 5 our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled: (i) to cancel your service contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service. If you think that the Licensed Software does not operate substantially in accordance with its description within the warranty period specified in clause 5.1.3, and you wish to make a claim under the warranty in clause 5.1.3, you must contact us using the relevant contact details: <https://www.red-gate.com/our-company/contact-us> and provide

details of how you think that the Licensed Software does not meet that warranty. You are responsible for any expenses you may incur in connection with making a claim under the warranty in clause 5.1.3.

- (ii) Despite clause 6 and any other provision in this Agreement, if the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law in Schedule 2 of that Act) provides that there is a guarantee in relation to any good or service supplied by us in connection with this Agreement, and our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 6.2, 6.3, clause 3 of Schedule 1, clause 10.4.3 of Schedule 2 and any other limitation of our liability in this Agreement, do not apply to that liability and instead our liability for such failure is limited to (at our election): (i) in the case of a supply of goods, replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods or paying the cost of having the goods repaired; or (ii) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

10.9 **Notices.** References to notices being "written" or "in writing" includes email.

## 11 **DEFINITIONS**

11.1 In this Agreement, capitalised terms shall have the meanings set out below or the relevant Schedule.

**"Core Edition Software"** means the Software listed here: <https://www.red-gate.com/support/license/software-editions>, that is offered as a free edition (sometimes with limitations on the use) as an alternative to a Licence Fee version;

**"Freeware"** means the Software as specified in the relevant Software information on our website <https://www.red-gate.com/support/license/software-editions>;

**"Intellectual Property Rights"** means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide;

**"Licence"** means the licence to use the Licensed Software, set out in clause 1 and/or Schedules 1 and 2 as appropriate, this does not include any licence to use Third Party Plug-ins;

**"Licence Fee(s)"** means the fees payable by you under this Agreement to us excluding VAT and all other relevant taxes, where applicable, as detailed by us from time to time including through our website, as part of a written quotation or renewal;

**"Licensed Software"** means such of the Software, as is selected by you and licensed to you under the terms of this Agreement, including any related manuals, help files or other documentation, any reference to Licensed Software includes Retired Software, unless stated otherwise;

**"OSE"** means an Operating System Environment which is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights;

**"Preview Software"** means any beta version of the Software made available to you for preview prior to full release;

**"Privacy Notice"** means the document entitled Privacy Notice on our website (<https://www.red-gate.com/our-company/about/legal>);

**"Product Specific Terms"** means the terms applicable to a specific item of Licensed Software as set out in Schedule 2;

**"Reseller"** means any third party authorised by us to sell licences to the Software;

**"Retired Software"** is licensed software that has been retired as per clause 7.8;

**"Software"** means any or all of our software products (except those identified as "Subscription Software") in executable form listed on our website (<https://www.red-gate.com/website/legal>);

**“Support Package”** means the support and upgrade package purchased by you for the Licensed Software as described here: <https://www.red-gate.com/support/policy>;

**“Support Term”** means the term for which we agreed to provide the Support Package to you during the purchase process;

**“Third Party Plug-ins”** means a third party plug-in to the Licensed Software;

**“We”, “Our”, “Us”** and the non-capitalised versions means Red Gate Software Limited, a company registered in England with company number 3857576 and registered office at Newnham House, Cambridge Business Park, Cambridge CB4 0WZ, United Kingdom;

**“You”, “Your”** and the non-capitalised versions means, whether the Licensed Software is obtained directly from us or through a Reseller, (a) where an individual downloads and/or installs the Licensed Software on a OSE for his own personal use, that individual (a **“Consumer”**); or (b) where an individual downloads and/or installs the Licensed Software on a OSE for business use, that individual’s employer (and we will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation downloads and/or installs the Licensed Software on a OSE for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of the Licensed Software).

## Schedule 1

### Evaluation Period

- 1 We grant you the right to use the Licensed Software for the Evaluation Period. The length of the Evaluation Period is confirmed on the relevant product page for the Licensed Software on our website. The Evaluation Period may be extended by written agreement with us.
- 2 To the extent permitted by law and subject to the other non-excludable rights and remedies you may have under law in relation to the Licensed Software, during the Evaluation Period, you hereby agree that:
  - 2.1 the Licensed Software is provided "AS IS" with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, suitability or fitness for purpose; and
  - 2.2 all other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.
- 3 Subject to clause 10.8.2(ii) of this Agreement, we shall not be liable for any claim, damages or other liability arising from or in connection with your use of the Licensed Software during the Evaluation Period.
- 4 For the avoidance of doubt, during the Evaluation Period: (a) clauses 5.1, 6.3 and 9.2 of this Agreement shall not apply; and (b) clause 9.1 shall apply except that the reference to clause 9.2 is deleted.
- 5 Before or upon expiry of the Evaluation Period:
  - 5.1 if, in your sole opinion, the Licensed Software has met your requirements, and you wish to continue to use the Licensed Software beyond the end of the Evaluation Period, you can decide whether to obtain a licence to the Core Edition Software or the equivalent Licence Fee version. Once the appropriate licence has been obtained, this Agreement shall continue in force (except that this Schedule 1 shall no longer apply).
  - 5.2 if you decide that the Licensed Software does not meet your requirements, or otherwise do not wish to enter into a paid up Licence, then you shall destroy the Licensed Software and all copies, in any form including partial copies or modifications of the Licensed Software received from us or made in connection with this Licence and all documentation relating thereto. Any rights of yours to use the Licensed Software shall cease.



## Schedule 2

### Product Specific Terms

#### **1** Definitions

1.1 In this schedule, the following definitions shall apply:

“**Bundle**” means a set of more than one of the Software products that are supplied together for a single price. The titles of the Bundles are listed on our website at <https://www.red-gate.com/support/license/software-editions>;

“**Client Component**” means, where the Licensed Software is Per OSE Licensed Software, any component of the Per OSE Licensed Software directed to or otherwise provided for accessing the Server Component;

“**Distribution**” in the context of the SQL Comparison SDK means an instance of any of the files comprising the SQL Comparison SDK installed on an OSE other than the one on which you are developing your SQL Comparison SDK implementation;

“**Licensed Materials**” has the meaning set out in paragraph 9.1 of this Schedule;

“**Linked Software**” means the complete set of Software associated with the relevant Bundle title, except for Non-Linked Software;

“**Non-Linked Software**” means any or all of the Software listed on our website (<https://www.red-gate.com/support/license/software-editions>) as “Non-Linked Software”;

“**Per OSE Licensed Software**” means any or all of the Software listed on our website [<https://www.red-gate.com/support/license/software-editions>], as licensed on a “Per OSE” basis;

“**Per User Licensed Software**” means any or all of the Software listed on our website [<https://www.red-gate.com/support/license/software-editions>], as licensed on a “Per User” basis;

“**Server Automated Process**” means a task or job which runs or is triggered by a server;

“**Server Component**” means, where the Software licensed to you under this Agreement is Per OSE Licensed Software, the server-based components on a single OSE;

“**SQL Comparison SDK**” (also known as “Synchronization Toolkit” or “SQL Toolkit”) means any or all of the software, associated documentation and help files comprising an application programming interface as listed in this Schedule; and

“**SQL Clone Entitlement**” means, where the Licensed Software is SQL Clone, the usage entitlements you purchase for the Licensed Software.

#### **2** Type of Software

2.1 Where the Licensed Software is Per OSE Licensed Software or Per User Licensed Software, the relevant additional terms below shall apply to limit the Licence granted in clause 1 of this Agreement:

##### **Per OSE Licensed Software:**

- The Server Component is licensed for use on a single OSE owned, leased and/or controlled by you for internal use.
- Where the Per OSE Licensed Software includes a Client Component, you may use and install such Client Component on more than one OSEs leased and/or controlled by you for internal use.

##### **Per User Licensed Software:**

- The Licensed Software is licensed for use by a specific user only.
- Per User Licensed Software may be used by the licensed user on more than one OSE.

#### **3** Bundles

- 3.1 Where the Licensed Software includes one or more Bundles then the Linked Software within each Bundle must be used on the same OSE. Any Non-Linked Software purchased as part of a Bundle may be installed on a different OSE to the Linked Software but is still licensed for use on a single OSE only.

**Where the Licensed Software is one of the products listed in paragraphs 4 to 11 below, the relevant additional terms shall apply and form part of this Agreement.**

#### **4 SmartAssembly or SmartAssembly Pro**

- 4.1 We will provide a server for storage of up to 1000 of your error reports.
- 4.2 We will use reasonable endeavours to ensure that such server remains available. However, we do not provide any special facilities such as fault tolerance and so cannot guarantee that the storage on the server will be uninterrupted or that reports will not be lost.

#### **5 Core Edition Software, Freeware and Preview Software**

- 5.1 We specify limitations on free use of some of our Core Edition Software in the relevant Software information on the relevant product page for the Licensed Software on our website and in paragraph 7 as an alternative to an unrestricted Licence Fee version.
- 5.2 For the avoidance of doubt: (a) clauses 3, 5.1 and 5.4 of this Agreement shall not apply to the Core Edition Software, Freeware and Preview Software; and (b) clause 9.2 shall apply except that the wording “and in such event, we shall refund to you all Licence Fees paid” shall be deleted and replaced with “, but no financial reimbursement will be given to you in such circumstances.”
- 5.3 **Open Source Software**
- 5.3.1 We may provide certain Software under open source licences. We will notify you in advance of download and/or installation where this is the case. The terms of this Agreement shall not apply to your use of any such Software, and the open source licence provided with that Software shall apply instead.
- 5.3.2 Where such Software is a plug-in designed to work with any Licensed Software, your use of such Licensed Software shall remain subject to the terms of this Agreement.

#### **6 Contributing changes to a Server Automated Process**

- 6.1 To contribute or input database changes to a Server Automated Process that uses any or all of the components of, or artifacts produced by, the software known as “Server Automated Processes” (as listed on our website <https://www.red-gate.com/support/license/software-editions>), you must have a licence for SQL Change Automation or Deployment Suite for Oracle. A licence for SQL Change Automation is only available as part of a licence of the Bundle known as SQL Toolbelt.

#### **7 VISUAL STUDIO 2017 Core Edition Software**

- 7.1 Where the Licensed Software is both accessed through Visual Studio 2017 and is (i) SQL Change Automation Core Edition, (ii) SQL Prompt Core Edition, (iii) SQL Change Automation, (iv) SQL Prompt Pro, or (v) SQL Search, the following shall apply:
- 7.1.1 the rights granted under clause 1 to use the Licensed Software shall continue only for the applicable licence period specified below:
- (i) **SQL Change Automation Core Edition:** 28 days from when it is initially installed by or on behalf of you, becoming perpetual if you create a Redgate account when prompted.
  - (ii) **SQL Prompt Core Edition**  
(<https://www.red-gate.com/support/license/software-editions>): 28 days from when it is initially installed by or on behalf of you, becoming perpetual if you create a Redgate account when prompted.
  - (iii) **SQL Change Automation:** 28 day trial licence from when a trial is commenced through the in-product dialog by or on behalf of you. At the end of 28 days you can decide whether to (a) obtain a paid licence for SQL Change Automation\*, or (b)

move to a perpetual licence of SQL Change Automation Core Edition, or (c) request a trial extension.

- (iv) **SQL Prompt Pro** (<https://www.red-gate.com/support/license/software-editions>): 28 day trial licence from when a trial is commenced through the in-product dialog by or on behalf of you. At the end of 28 days you can decide whether to (a) obtain a paid up licence for SQL Prompt Pro, or (b) move to a perpetual licence of SQL Prompt Core Edition, or (c) request a trial extension.
- (v) **SQL Search**: 28 days from when it is initially installed by or on behalf of you, becoming perpetual if you create a Redgate account when prompted.

\* A licence for SQL Change Automation is only available as part of a licence of the Bundle known as SQL Toolbelt.

\*\*A licence for SQL Prompt Core Edition is only available if you are using the Enterprise version of VISUAL STUDIO 2017.

- (vi) if at any time you obtain a paid up licence of SQL Prompt Pro or SQL Change Automation, your use of SQL Prompt Pro or SQL Change Automation (as applicable) will be governed by this Agreement.

## **8 SQL Clone (where licensed prior to 15 January 2018)**

- 8.1 SQL Clone is licensed by number of SQL Clone Entitlements per SQL Clone Server. For each SQL Clone Server you wish to install you need a separate licence of SQL Clone.
- 8.2 A SQL Clone Entitlement is required by anyone creating clone databases using the SQL Clone Server, as well as anyone connecting to clone databases to develop software.
- 8.3 Where 20 or fewer SQL Clone Entitlements are required, the SQL Clone Entitlements may only be purchased in licence packs, as specified on our website.
- 8.4 For each SQL Clone Server:
  - 8.4.1 use is limited to and shall not exceed the number of SQL Clone Entitlements you have purchased for that SQL Clone Server;
  - 8.4.2 there is no limit on the number of agents you may download or clones you may create.
  - 8.4.3 SQL Clone Entitlements cannot be shared between SQL Clone Servers.
- 8.5 SQL Clone Entitlements may not be shared by users, except where the SQL Clone Entitlement is permanently re-assigned to a new user.

## **9 SQL Comparison SDK, RedGate.SQLCompare.Engine.dll and RedGate.SQLDataCompare.Engine.dll (and their dependencies)**

- 9.1 Subject to paragraphs 9.3 and 9.4 of this Schedule, you may use or incorporate up to 10 copies of any set of the files which comprise the Licensed Software and which are listed in this paragraph 9 (the "**Licensed Materials**") into up to 10 future products for onward Distribution or internal use (the "**Licensed Products**") on Licence terms substantially similar to those contained in the Licence.
- 9.2 If you use and/or distribute any of the Licensed Materials in accordance with paragraphs 9.1, 9.3 and 9.4 of this Schedule, you agree to comply with the following provisions:
  - 9.2.1 you will distribute such files solely as part of a specific-purpose application program written using an authorised copy of the Licensed Software;
  - 9.2.2 you remain solely responsible for support, service, upgrades and technical or other assistance relating to such files;
  - 9.2.3 you will not use our name or logo without our prior written permission;
  - 9.2.4 you will indemnify and keep indemnified and hold us harmless from and against all costs (including the costs of enforcement and reasonable legal costs), expenses, liabilities, injuries, direct, indirect or consequential loss, pure economic loss, loss of profits, loss of business, loss of employment, or depletion of goodwill and like loss arising out of the use, reproduction or distribution of Licensed Products incorporating Licensed Materials;
  - 9.2.5 you will ensure that all your third party licensees of the Licensed Products comply with the terms of the License; and

- 9.3 You will keep full and accurate records for copies and supplies of Licensed Products and shall, if requested, supply us with a statement giving details of all Licensed Products supplied to any person.
- 9.4 You shall only be permitted to distribute a maximum of 10 copies of the SQL Comparison SDK or any part thereof in Licensed Products. If you wish to distribute more than 10 copies of the SQL Comparison SDK or any part thereof in Licensed Products, then you must apply in writing to us, at our registered office, requesting a full commercial licence which will be subject to the payment of royalties as agreed between the parties.

## **10 SQL Search Everywhere**

- 10.1 SQL Search Everywhere is Preview Software and paragraph 5 of this Schedule applies accordingly.
- 10.2 You may create or store database schemas using the Licensed Software and we may hold a copy of the database schemas on your behalf.
- 10.3 We acknowledge that, where applicable, all rights, title and interest in and to your database schemas belongs to you and you agree that you shall have sole responsibility for the legality, reliability, integrity and quality of your database schemas.
- 10.4 To the extent that we hold a copy of your database schemas:
- 10.4.1 you acknowledge that we hold them for the purpose of providing the SQL Search Everywhere service only;
- 10.4.2 you acknowledge that the service may not be available to you all of the time;
- 10.4.3 subject to clause 10.8.2(ii) of this Agreement, we shall not be responsible for any loss, inaccuracy or disclosure of the copy we hold of your database schemas and any resulting loss of service.

## **11 SQL Monitor**

- 11.1 SQL Monitor is licensed on a Per OSE basis; or
- 11.1.1 if you are using SQL Monitor with an Azure Database (PaaS) environment, you are entitled to monitor either 1 managed instance or up to 5 single Databases for each Per OSE Licensed Software entitlement.
- 11.1.2 if you are using SQL Monitor with the Amazon Relational Database Services (RDS), you are entitled to monitor 1 relational database for each Per OSE Licensed Software entitlement.

## **12 Third Party Plug-ins**

- 12.1 Oracle drivers
- 12.1.1 Oracle drivers are licensed to you by Oracle America, Inc. under the Oracle Free Use Terms and Conditions ("**Oracle FUTC**"). A copy of the Oracle FUTC is provided to you during installation/download of the relevant Licensed Software.
- 12.1.2 You may not use an Oracle driver except in compliance with the Oracle FUTC. See the Oracle FUTC for specific language governing permissions and limitations under the Oracle FUTC.

## **13 Retired Software**

- 13.1 Subject to clause 7.9, from the date of retirement specified in the notice ("**Retirement Date**"), you can continue to use Retired Software under the terms of this Agreement, except: (a) clauses 3, 5.1, 5.4, 6.3 and 9.2 of this Agreement shall not apply in respect of any use of the Retired Software after the Retirement Date, (b) clause 5.3 shall be deemed to include a reference to the Retired Software, (c) clause 9.1 shall apply to the Retired Software except that the reference to clause 9.2 is deleted.

## Redgate Subscription EULA

Any use of our Subscription Software is subject to the terms of this subscription agreement (“Agreement”). Please read the full Agreement carefully.

You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement by downloading and/or installing and/or using the Subscription Software. If you do not accept these terms, do not download, install or use the Subscription Software.

### TERMS AND CONDITIONS

#### **1 SUBSCRIPTION**

- 1.1 **Evaluation.** You are entitled to a free trial of the Subscription Software for the purposes of deciding whether or not the Subscription Software meets your requirements (“**Evaluation Period**”). During the Evaluation Period the terms in Schedule 1 will apply.
- 1.2 **Third Party Plug-ins.** Third Party Plug-ins are licensed to you in accordance with paragraph 5 of the Product Specific Terms.
- 1.3 **Subscription.** In consideration of you paying to us the Subscription Fee, we grant you a non-exclusive, non-transferable right to access and use the Subscription Software during the Subscription Period in accordance with this Agreement, and subject to any applicable Product Specific Terms.
- 1.4 The Subscription is personal to you. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or Subscription Software or hold this Agreement on trust for any other person.
- 1.5 Except as stated in this Agreement, you have no right to use, incorporate into other products, copy, publish, display, modify or translate the Subscription Software or any modification, adaptation or copy of the Subscription Software or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of the Subscription Software either in whole or in part, as expressly permitted under the Subscription or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law.
- 1.6 You shall not use the Subscription Software to manufacture or distribute a product that is substantially similar to or competitive with our software.

#### **2 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS**

- 2.1 You acknowledge that i) all Intellectual Property Rights in or relating to the Subscription Software are owned by or licensed to us, ii) except as expressly granted under this Agreement, you have no rights in the Subscription Software, and iii) we shall have the right to use your name and/or logo on customer lists on our website and in other marketing material.
- 2.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Subscription Software or which would call those rights into question.
- 2.3 You agree not to delete, remove or alter any trade marks, logos, copyright notices or similar proprietary devices of ours, including without limitation any electronic watermarks or other identifiers that may be incorporated in the Subscription Software. All representations of our name or logo must remain as originally distributed.

#### **3 PAYMENT**

- 3.1 The Subscription Fee (together with any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax, use tax and

withholding tax)) shall be due and payable by you when we issue a licence key to you for the Subscription Software.

- 3.2 The Renewal Fee (together with any levies, duties and/or taxes imposed on you in your jurisdiction (including, but not limited to, value added tax, sales tax and withholding tax)) shall be due and payable by you on the payment date of the invoice.
- 3.3 You may not deduct any amounts from the Subscription Fees or the Renewal Fees, unless otherwise specified in this Agreement.
- 3.4 Where you have obtained the Subscription Software through a Reseller, the terms you have agreed with such Reseller in relation to payment and invoicing will apply instead of this clause 3.

#### **4 CONFIDENTIALITY**

- 4.1 The structure, organisation, and source code of the Subscription Software are proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information of ours (including relating to or derived from the Subscription Software) to any third party, including where such confidential information is derived under any applicable law as set out in clause 1.5.
- 4.2 Other than the disclosures referred to in our Privacy Notice, we agree not to provide or disclose to any third party any information of a confidential nature in any form whatsoever which is disclosed to us by you or on behalf of you.
- 4.3 The provisions of clauses 4.1 and 4.2 will not apply to the extent that:
  - 4.3.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or
  - 4.3.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or
  - 4.3.3 such information is required to be disclosed by law.
- 4.4 No information to which clause 4.3.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law) (i) given the disclosing party reasonable written notice of such proposed disclosure, (ii) consulted with the disclosing party, and (iii) agreed with the disclosing party the content of the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.
- 4.5 If you have entered into a separate confidentiality agreement with us, and there are inconsistencies between the terms of the confidentiality agreement and this clause 4, the terms of the confidentiality agreement shall prevail over this clause 4.

#### **5 WARRANTY AND SUPPORT**

- 5.1 Subject to clause 10.8.2(i), we warrant that:
  - 5.1.1 we own the Intellectual Property Rights in the Subscription Software and/or have the right to grant a licence to you;
  - 5.1.2 in creating the Subscription Software, we have not knowingly infringed the intellectual property rights of third parties; and
  - 5.1.3 for a period of 90 days from the first installation of the Subscription Software (or, if applicable, 90 days from the end of the Evaluation Period if you continue to use the Subscription Software) the Subscription Software shall operate substantially in accordance with its description. However, you acknowledge that the Subscription Software is of such a complexity that there will be inherent defects and that therefore we can give no warranty that the Subscription Software is free from error or defect or that operation of the Subscription Software shall be uninterrupted.
- 5.2 Other than as provided for in clauses 5.1 and 10.8.2(i), we do not offer any warranty

related to the Subscription Software and/or the support provided, either express or implied, including but not limited to implied warranties of fitness for purpose or satisfactory quality, save for any non-excludable rights and remedies you may have under law. The Subscription Software has been developed as a standard product for use by a wide variety of users and so we are unable to warrant that the Subscription Software will meet any particular user needs. You shall take full responsibility for ensuring that the Subscription Software is suitable for your intended purposes and to facilitate investigation into such suitability, we offer a free Evaluation Period.

- 5.3 **Support.** In relation to and without prejudice to the generality of clause 5.2 above, we provide support to users of Subscription Software via our web site, user forums, by email and by phone. The support is provided subject to the terms of this Agreement. You accept that, although we will use reasonable endeavours to solve problems identified by you, the nature of software is such that no guarantee can be provided that any particular problem will be solved. You accept that, where a particular problem requires an update to the Subscription Software, the scheduling of any new releases and the functionality those releases contain shall be under our sole control.

## **6 LIMITATION AND EXCLUSION OF LIABILITY**

- 6.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death resulting from negligence, (b) fraud; or (c) any other matter for which liability cannot be excluded by law.
- 6.2 Subject to clauses 6.1 and 10.8.2(ii), neither party shall be liable to the other party for any indirect, special or consequential loss or damage whatsoever arising under or in relation to this Agreement (whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise). We shall not be liable to you for any of the following types of loss or damage arising under or in relation to this Agreement: (a) any loss of profits, business, contracts, anticipated savings, goodwill, or revenue; or (b) any loss, or corruption, of software or data; or (c) any loss of use of hardware, software or data.
- 6.3 Subject to clauses 6.1, 6.2 and 9.2 our aggregate liability under and in connection with this Agreement howsoever caused shall be limited in all cases to the aggregate sum of the Subscription Fees paid in the 12 months prior to the event giving rise to the liability.
- 6.4 The provisions of this clause allocate risks under this Agreement between you and us, and the Subscription Fees reflect this allocation of risks and these limitations of liability.

## **7 SUBSCRIPTION PERIOD, TERMINATION AND RETIRED SOFTWARE**

- 7.1 The Subscription shall commence on the Subscription Start Date and, unless terminated earlier in accordance with this clause 7, shall continue for the Initial Subscription Period and, thereafter, the Subscription shall be automatically renewed for successive periods of 12 months (each a "Renewal Period"), unless either party notifies the other party of termination, in writing, at least 30 days before the end of the Initial Subscription Period or any Renewal Period, in which case the Subscription shall terminate upon the expiry of the applicable Initial Subscription Period or Renewal Period.
- 7.2 If we do not receive the Subscription Fee or the relevant Renewal Fee from you, we reserve the right to terminate your Subscription 30 days after the payment due date.
- 7.3 The Subscription will terminate automatically if you uninstall and cease use of the Subscription Software, or uninstall and destroy or voluntarily return the Subscription Software to us, and notify us that you have done so.
- 7.4 Where the Subscription is terminated in accordance with clause 7.4 or clause 7.3, then the Agreement shall terminate in its entirety.
- 7.5 Upon termination of this Agreement: (a) you must cease use of the Subscription

Software, and uninstall, destroy or put beyond use all copies of the Subscription Software in your possession or control; and (b) the provisions of clauses 1.6, 4, 5.2, 6, 7, 9, 10.1 to 10.7 and 11 will remain in effect.

7.6 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.

7.7 **Retired Software.** We reserve the right to retire the Subscription Software (and therefore terminate the Subscription) on written notice by us at any time to come into effect at the end of the then current Initial Subscription Period or Renewal Period (as the case may be).

## **8 DATA COLLECTION AND PRIVACY NOTICE**

8.1 Information on the data we collect about you and how we treat that data is set out in our Privacy Notice, which can be viewed at <https://www.red-gate.com/our-company/about/legal>.

## **9 THIRD PARTY CLAIMS**

9.1 You agree to indemnify us from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third party claims that your use of the Subscription Software causes any such loss or damage, except in the circumstances in clause 9.2 below.

9.2 If any claim is brought against you alleging that your use of the intellectual property associated with the Subscription Software in accordance with this Agreement infringes the rights of any third party, you shall promptly notify us and supply full details of the claim. The two of us shall consult together on an appropriate course of action and seek to minimise the effect of any claim on the respective businesses. We shall have the right, but not the obligation, to take control of all negotiations and litigation arising out of the claim. We will pay any damages and costs awarded against you in connection with any claim subject to a maximum of the aggregate sum of Subscription Fees paid to us by you in the 12 months prior to the claim. We shall have the right, at our sole choice, to either: (i) use reasonable endeavours to negotiate terms for continued use by you of the claimed infringing software; or (ii) use reasonable endeavours to amend the Subscription Software to make it non-infringing; or (iii) terminate this Agreement with immediate effect and in such event, we shall refund to you all Subscription Fees paid.

## **10 GENERAL**

10.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 1, 2, 4 and/or Schedule 2 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.

10.2 **Compliance with applicable law.** You agree that, notwithstanding clause 10.1 above, you may be subject to additional laws in other jurisdictions with respect to your use of the Subscription Software in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations.

10.3 **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part



provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.

- 10.4 **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.
- 10.5 **No third party rights.** We and you do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.
- 10.6 **Entire agreement.** This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.
- 10.7 **Revisions to terms.** For click to agree versions of the Agreement only, we reserve the right to revise the terms of this Agreement by updating this Agreement on our website. You are advised to check the website periodically for notices concerning such revisions. If you do not agree with any such revision you may terminate your agreement within 10 days of the relevant revision without liability to us. Your continued use of the Subscription Software shall be deemed to constitute acceptance of any revised terms. No revisions will apply retrospectively. Any bespoke versions of this Agreement shall continue to apply to all future downloads or installation of Software and shall always take precedence over any click to agree versions presented at download or installation of such Software.
- 10.8 **Consumer regulations.**
- 10.8.1 This clause applies to Consumers only. You shall have the right to cancel this Agreement 14 days from the date you agree to be obliged to pay for the Subscription Software under this Agreement. Should you wish to cancel this Agreement under this clause 10.8, you must notify us of your decision to cancel by either: (a) returning a completed Model Cancellation Form (a copy of which is available here: <https://www.red-gate.com/website/legal>) to us; or (b) sending us an email clearly confirming your decision to: [orders@red-gate.com](mailto:orders@red-gate.com). If you have any complaints about this Agreement, including complaints about the Subscription Software, please raise these with Red Gate using the relevant contact details: <https://www.red-gate.com/our-company/contact-us>
- 10.8.2 Australian consumer law
- (i) Despite clause 5 our goods and services come with guarantees that cannot be excluded under the Australian Consumer Law. For major failures with the service, you are entitled; (i) to cancel your service contract with us; and (ii) to a refund for the unused portion, or to compensation for its reduced value. You are also entitled to choose a refund or replacement for major failures with goods. If a failure with the goods or a service does not amount to a major failure, you are entitled to have the failure rectified in a reasonable time. If this is not done you are entitled to a refund for the goods and to cancel the contract for the service and obtain a refund of any unused portion. You are also entitled to be compensated for any other reasonably foreseeable loss or damage from a failure in the goods or service. If you think that the Subscription Software does not operate substantially in accordance with its description within the warranty period specified in clause 5.1.3, and you wish to make a claim under the warranty in clause 5.1.3, you must contact us using the relevant contact details: <https://www.red-gate.com/our-company/contact-us> and provide details of how you think that the Subscription Software does not meet that warranty in clause 5.1.3.

- (ii) Despite clause 6 and any other provision in this Agreement, if the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law in Schedule 2 of that Act) provides that there is a guarantee in relation to any good or service supplied by us in connection with this Agreement, and our liability for failing to comply with that guarantee cannot be excluded but may be limited, then clauses 6.2, 6.3 and clause 3 of Schedule 1 and any other limitation of our liability in this Agreement, do not apply to that liability and instead our liability for such failure is limited to (at our election: (i) in the case of a supply of goods, replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or (ii) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

## 11 **DEFINITIONS**

11.1 In this Agreement, capitalised terms shall have the meanings set out below or the relevant Schedule.

**"Initial Subscription Period"** means the initial Subscription period agreed with us, and as stated on the invoice starting on the Subscription Start Date;

**"Intellectual Property Rights"** means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide;

**"OSE"** means an Operating System Environment which is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights;

**"Privacy Notice"** means the document entitled Privacy Notice on our website (<https://www.red-gate.com/our-company/about/legal>);

**"Product Specific Terms"** means the terms applicable to a specific item of Subscription Software as set out in Schedule 2;

**"Renewal Fee"** means the fees payable by you under this Agreement to us for the Subscription during the Renewal Period (excluding VAT and all other relevant taxes, where applicable), as detailed by us from time to time including through our website, as part of a written quotation or renewal;

**"Renewal Periods"** has the same meaning set out in clause 7.1;

**"Reseller"** means any third party authorised by us to sell licences to the Subscription Software;

**"Subscription"** means the right to use the Subscription Software, set out in clause 1 and/or Schedules 1 and 2 as appropriate;

**"Subscription Fee"** means the fee payable by you under this Agreement to us (excluding VAT and all other relevant taxes, where applicable), as detailed by us from time to time including through our website, as part of a written quotation or renewal;

**"Subscription Period"** means the Initial Subscription Period together with any subsequent Renewal Periods;

**"Subscription Software"** means the software, listed under "Subscription Software" on our website: <https://www.red-gate.com/support/license/software-editions>, selected by you and licensed to you under this Agreement;

**"Subscription Start Date"** means the date of the invoice issued to you by us under this Agreement;

**"Third Part Plug-ins"** means a third party plug-in to the Licensed Software;

**"We", "Our", "Us"** and the non-capitalised versions means Red Gate Software Limited, a

company registered in England with company number 3857576 and registered office at Newnham House, Cambridge Business Park, Cambridge CB4 0WZ, United Kingdom; “**You**”, “**Your**” and the non-capitalised versions means, whether the Subscription Software is obtained directly from us or through a Reseller, (a) where an individual downloads and/or installs the Subscription Software on an OSE for his own personal use, that individual (a “**Consumer**”); or (b) where an individual downloads and/or installs the Subscription Software on a OSE for business use, that individual’s employer (and we will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation downloads and/or installs the Subscription Software on a OSE for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of the Subscription Software).

## **Schedule 1**

### **Evaluation Period**

- 1 We grant you the right to use the Subscription Software for the Evaluation Period. The length of the Evaluation Period is confirmed on the relevant product page for the Subscription Software on our website. The Evaluation Period may be extended by written agreement with us.
- 2 To the extent permitted by law and subject to the other non-excludable rights and remedies you may have under law in relation to the Subscription Software, during the Evaluation Period, you hereby agree that the Subscription Software is provided AS IS with no representation, guarantee or warranty of any kind as to its functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.
- 3 Subject to clause 10.8.2(ii) of this Agreement, we shall not be liable for any claim, damages or other liability arising from or in connection with your use of the Subscription Software during the Evaluation Period.
- 4 For the avoidance of doubt, during the Evaluation Period: (a) clauses 5.1, 6.3 and 9.2 of this Agreement shall not apply; and (b) clause 9.1 shall apply except that the reference to clause 9.2 is deleted.
- 5 Before or upon expiry of the Evaluation Period:
  - (a) if, in your sole opinion, the Subscription Software has met your requirements, and you wish to continue to use the Subscription Software beyond the end of the Evaluation Period, you can decide whether to obtain the equivalent Subscription Fee version. Once the appropriate Subscription has been obtained, this Agreement shall continue in force (except that this Schedule 1 shall no longer apply).
  - (b) if you decide that the Subscription Software does not meet your requirements, or otherwise do not wish to enter into a paid up Subscription, then you shall destroy the Subscription Software and all copies, in any form including partial copies or modifications of the Subscription Software received from us or made in connection with this Subscription and all documentation relating thereto. Any rights of yours to use the Subscription Software shall cease.

## **Schedule 2**

### **Product Specific Terms**

## 1 **Definitions**

1.1 In this schedule, the following definitions shall apply:

**"Client Component"** means, where the Subscription Software is Per OSE Subscription Software, any component of the Per OSE Subscription Software directed to or otherwise provided for accessing the Server Component;

**"Per Capacity Software"** means any or all of the software listed on our website:

<https://www.red-gate.com/support/license/software-editions>, as licensed on a "Per Capacity" basis;

**"Per OSE Subscription Software"** means any or all of the Subscription Software listed on our website: <https://www.red-gate.com/support/license/software-editions>, as licensed on a "Per OSE" basis;

**"Per Schema Software"** means any or all of the Subscription Software listed on our website <https://www.red-gate.com/support/license/software-editions>, as licensed on a "Per Schema" basis;

**"Schema"** means the container for database objects commonly referred to as "schema";

**"Server Component"** means, where the Subscription Software licensed to you under this Agreement is Per OSE Subscription Software, the server-based components on a single OSE;

**"Tier"** means a pricing tier as defined on our website, at

<http://www.red-gate.com/support/license/capacity-model> for the Subscription Software; and

**"True Up"** means an annual evaluation of the suitability of the Tier chosen for the Per Capacity Software.

## 2 **Type of Software**

2.1 Where the Subscription Software is Per Capacity Software, Per OSE Subscription Software, or Per Schema the relevant additional terms below shall apply to limit the Subscription granted in clause 1 of this Agreement:

### **Per Capacity Software**

- It is your responsibility to decide, at the point of purchase, which Tier is suitable for your intended use of the Subscription Software over the Initial Subscription Period.
- You will receive an email annually requiring you to conduct a True Up. You are required to notify us of the outcome of the True Up if a different Tier is applicable to your Subscription, and:
  - if your Initial Subscription Period was for a period of 12 months, we will issue to you an invoice for the new applicable Tier which will apply from the start of the Renewal Period; or
  - if you have purchased a multi-year Initial Subscription Period, we will issue you with an invoice for any increase in Subscription Fees between the Tier you have paid for and the Tier that is applicable after the True Up for the remainder of the Initial Subscription Period, based on the Subscription Fee.
- The Subscription Fee payable to us will vary depending on the Tier applicable to your Subscription.
- If you do not True Up before the expiry of the Initial Subscription Period or the expiry of any Renewal Period and you do not terminate your Subscription, your Subscription will automatically renew for the same Tier and we will issue an invoice for the relevant Renewal Period based on that Tier.

### **Per OSE Subscription Software**

- The Server Component is licensed for use on a single OSE owned, leased and/or controlled by you for internal use.
- Where the Per OSE Licensed Software includes a Client Component, you may use and install such Client Component on more than one OSEs leased and/or controlled by you for internal use.

### **Per Schema Software**

- The Subscription Software is licensed for use to manage changes on a single Schema owned, leased and/or controlled by you for internal use in a production environment at any point during the development process.
- It is your responsibility to decide, at the point of purchase, how many licenses are suitable for your intended use of the Subscription Software over the Initial Subscription Period.
- You will receive an email annually requiring you to conduct a True Up. You are required to notify us of the outcome of the True Up if a different Tier is applicable to your Subscription, and:
  - if your Initial Subscription Period was for a period of 12 months, we will issue to you an invoice for the new applicable Tier which will apply from the start of the Renewal Period; or
  - if you have purchased a multi-year Initial Subscription Period, we will issue you with an invoice for any increase in Subscription Fees between the Tier you have paid for and the Tier that is applicable after the True Up for the remainder of the Initial Subscription Period, based on the Subscription Fee.
- The Subscription Fee payable to us will vary depending on the Tier applicable to your Subscription.
- If you do not True Up before the expiry of the Initial Subscription Period or the expiry of any Renewal Period and you do not terminate your Subscription, your Subscription will automatically renew for the same Tier and we will issue an invoice for the relevant Renewal Period based on that Tier.

### **3. SQL Data Catalog**

3.1 SQL Data Catalog is licensed on a Per OSE basis;

3.1.1 If you are using SQL Data Catalog with an Azure Database (PaaS) environment, you are entitled to deploy either 1 managed instance or up to 5 single Databases for each Per OSE Licensed Software entitlement.

### **4 Flyway Pro Edition and Flyway Enterprise Edition**

4.1 Flyway is available in two editions Flyway Pro Edition and Flyway Enterprise Edition. Both editions are licensed on a Per Schema basis.

4.2 The rights granted under clause 1 to use the Subscription Software may be exercised in any hardware and software environment of yours, for all currently known types of use (subject to any restrictions within this Agreement); such rights are limited to the agreed multiple(s) of 10 production database Schemas set out in our invoice.

4.3 Rights to the source code. You are granted the following rights to the source code of the Subscription Software:

4.3.1 The right to edit the source code solely for the purpose of correcting defects, and under the condition that you shall transmit to us all modifications made and grant us all rights required for the commercial exploitation of these changes in new versions or follow-on products of the Subscription Software, in accordance with

the Contributor License Agreement (CLA) of ours:  
(<https://cla-assistant.io/flyway/flyway>) that is applicable at the time of submitting the modifications to us.

- 4.3.2 If, while a valid Subscription for the Subscription Software is in effect, insolvency proceedings have been opened on the assets of ours or the opening of such proceedings has been rejected due to the lack of assets, you shall also be entitled to edit the software for the purpose of adapting the Subscription Software to changing software environments, solely to ensure its continued operability.
- 4.3.3 You are not permitted to disclose the source code to any third party.
- 4.4 Flyway is not redistributable.
- 4.5 **Support.** Clause 5.3 will apply save that the only support we offer for Flyway is priority bug fixing and support requests must be sent by email to [support@flywaydb.org](mailto:support@flywaydb.org)

## **5 Third Party Plug-ins**

- 5.1 Oracle drivers
  - 5.1.1 Oracle drivers are licensed to you by Oracle America, Inc. under the Oracle Free Use Terms and Condition ("Oracle FUTC"). A copy of the Oracle FUTC is provided to you during installation/download of the relevant Licensed Software.
  - 5.1.2 You may not use an Oracle driver except in compliance with the Oracle FUTC. See the Oracle FUTC for specific language governing permissions and limitations under the Oracle FUTC.

**LAST UPDATED: August 25 2020**