



# Unified Compute Platform 3.5.1

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# Preface

The **Hitachi Unified Compute Platform (UCP)** software incorporates third-party software from a number of vendors. This book contains the copyright and license information for that software.

## Intended audience

This book is intended for all UCP users.

## Product version

This guide applies to UCP version 3.5.1.

## Document organization

This book contains three chapters.

Chapter	Description
<a href="#">Chapter 1, "Introduction"</a>	Contains a brief introduction to the book and includes contact information for the UCP product manager.
<a href="#">Chapter 2, "Third-party components"</a>	Provides information about third-party software packages used in UCP.
<a href="#">Chapter 3, "Licenses"</a>	Contains the text of each license mentioned in <a href="#">Chapter 2, "Third-party components."</a>

## UCP document set

The following documents contain information about UCP version 3.5.1:

- *UCP Pre-Installation Requirements and Configuration* — Contains information and procedures you need to be aware of for a successful UCP installation.
- *UCP Administration Manual* — Contains technical and usage information for UCP and UCP Director. Describes how to administer UCP Director through UCP Director Console with both VMware vCenter and Microsoft SCVMM.
- *UCP Director API Reference* — Describes how to use the UCP Director API.
- *UCP Director CLI Reference* — Describes how to use the UCP Director CLI.
- *UCP Director Third-Party Copyrights and Licences* — Contains copyright and license information for the third-party software distributed with or embedded in UCP Director.
- *UCP DOC Administration Manual* — Contains technical and usage information for Unified Compute Platform Director Operations Center (UCP DOC). Describes how to administer UCP DOC through UCP DOC Console.
- *UCP DOC API Reference* — Describes how to use the UCP DOC API.
- *UCP DOC CLI Reference* — Describes how to use the UCP DOC CLI.

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- The exact content of any returned messages

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## Comments

Please send us your comments on this document:

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Include the document title, number, and revision, and refer to specific sections and paragraphs whenever possible.

***Thank you!*** (All comments become the property of Hitachi Data Systems.)





# Introduction

UCP Director includes several open source and third-party packages. Unless otherwise indicated in this book, open source and third-party software is used without modification.

To obtain any of the open source software packages mentioned in this book, please contact:

Project Manager, UCP  
Hitachi Data Systems Corporation  
2845 Lafayette Street  
Santa Clara, CA 95050

Hitachi Data Systems gratefully acknowledges the contributions of the open source community in the development of UCP.



## Third-party components

This chapter identifies the third-party software embedded in or distributed with UCP. Each software package is listed with an indication of where to get it, its copyright (where required), and its license information. The software packages are presented in alphabetical order.

For the text of the licenses identified in this section, see [Chapter 3, "Licenses."](#)

---

**Third-party package**

7-Zip  
Version 9.2

**Source**

<http://www.7-zip.org>

**License text**

See "[7-Zip License](#)" on page 3-20.

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**Third-party package**

Apache  
Version 2.2.15

**Source**

<http://www.apache.org>

**License text**

See "[Apache license 2.0](#)" on page 3-21.

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**Third-party package**

Axiis  
Version 1.1

**Source**

<http://www.axiis.org>

**License text**

See "[MIT license](#)" on page 3-52.

---

**Third-party package**

Castle.Windsor  
Version 3.0.0 (2011-12-13)

**Source**

<http://www.castleproject.org/container/index.html>

**License text**

See "[Apache license 2.0](#)" on page 3-21.

---

**Third-party package**

CentOS  
Version 6.3 & 6.4

**Source**

<http://commandline.codeplex.com>

**License text**

See "[GNU lesser general public license version 2](#)" on page 3-22.

---

**Third-party package**

Code Sample - Single threaded Task Scheduler

**Source**

<http://msdn.microsoft.com/en-us/library/dd997413%28VS.100%29.aspx>

**License text**

See "[Microsoft limited public license](#)" on page 3-51.

---

**Third-party package**

Command Line Parser Library  
Version 1.9.71.2 (compiled binaries from source)

**Source**

<http://commandline.codeplex.com>

**License text**

See "[MIT license](#)" on page 3-52.

---

**Third-party package**

Dapper  
Version 1.12.0.0

**Source**

<http://nuget.org/packages/Dapper>

**License text**

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---

**Third-party package**

DataPaging Control

**Source**

<https://github.com/jamesward/DataPaging>

**License text**

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---

**Third-party package**

Erlang AMQP client library

Version R16B

**Source**

<http://www.rabbitmq.com/erlang-client.html>

**License text**

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---

**Third-party package**

Flash player

Version 11.7.700.169

**Source**

<http://www.adobe.com/products/players/flash-player-distribution.html>

**License text**

Contact HDS for license text.

---

**Third-party package**

Google Chrome

Enterprise

**Source**

<https://www.google.com/intl/en/chrome/browse>

**License text**

See ["Google Chrome Terms of Service"](#) on page 3-33 and ["Google Chrome Additional Terms of Service"](#) on page 3-44.

---

**Third-party package**

google-gson  
Version 2.2.2

**Source**

<http://code.google.com/p/google-gson>

**License text**

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---

**Third-party package**

JCTerm - SSH2 Terminal Emulator in Pure Java  
Version 0.0.11

**Source**

<http://www.jcraft.com/jcterm>

**License text**

See "[GNU lesser general public license version 2](#)" on page 3-22.

---

**Third-party package**

jQuery  
Version 1.7.1, 1.8.2

**Source**

[http://docs.jquery.com/Downloading\\_jQuery](http://docs.jquery.com/Downloading_jQuery)

**License text**

See "[MIT license](#)" on page 3-52.

---

**Third-party package**

jQuery JSON Plugin  
Version 2.4-edge (2011-09-25)

**Source**

<http://code.google.com/p/jquery-json>

**License text**

See "[MIT license](#)" on page 3-52.

---

**Third-party package**

jQuery UI  
Version 1.8.17

**Source**

<http://jqueryui.com/about>

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---

**Third-party package**

jQuery Validation Plugin  
Version 1.9.0, 1.10.0

**Source**

<http://bassistance.de/jquery-plugins/jquery-plugin-validation>

**License text**

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---

**Third-party package**

JRE  
Version 1.7.0\_21

**Source**

<http://www.oracle.com/technetwork/java>

**License text**

See "[Oracle binary code license agreement](#)" on page 3-77.

---

**Third-party package**

JSch  
Version 0.1.48

**Source**

<http://www.jcraft.com/jsch>

**License text**

See "[BSD license](#)" on page 3-21.



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**Third-party package**

jScrollPane

Version v2.0 beta 12 - 2012-05-14

**Source**

<http://jscrollpane.kelvinluck.com>

**Proprietary notice**

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**Third-party package**

Knockout JavaScript library

Version 2.1.0, 2.2.0

**Source**

<http://knockoutjs.com>

**License text**

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**Third-party package**

Mentallis.org Crypto lib

Version 1.0.13.715

**Source**

<http://www.mentalis.org>

**Proprietary notice**

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**Third-party package**

Modernizr

2.6.2

**Source**

<http://modernizr.com>

**License text**

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---

**Third-party package**

MultipleOutputHelper

**Source**

<https://github.com/damieng/DamienGKit>

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---

**Third-party package**

Netcat

Compiled from source on 7/19/2013

**Source**

<http://joncraton.org/blog/46/netcat-for-windows>

**License text**

See ["GNU lesser general public license version 2"](#) on page 3-22.

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**Third-party package**

Netconf4j

Compiled from source on 7/19/2013

**Source**

<https://github.com/dana-i2cat/netconf4j/commits>

**License text**

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**Third-party package**

New-IsoFile

Version 03/06/2012 14:06:16

**Source**

<http://gallery.technet.microsoft.com/scriptcenter/New-ISOFile-function-a8deeffd>

**License text**

See ["Microsoft limited public license"](#) on page 3-51.

---

**Third-party package**

Newtonsoft Jason  
Version 4.5.7

**Source**

<http://james.newtonking.com/projects/json-net.aspx>

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**Third-party package**

Nlog  
Version 2.0

**Source**

<http://nlog-project.org>

**License text**

See ["BSD license"](#) on page 3-21.

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**Third-party package**

NMAP  
Version 6.01

**Source**

<http://nmap.org/book/man-legal.html> nmap

**License text**

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---

**Third-party package**

Notepad++  
Version 6.1.5

**Source**

<http://notepad-plus-plus.org>

**License text**

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**Third-party package**

Omu.ValueInjector  
Version 2.3

**Source**

<http://valueinjector.codeplex.com>

**License text**

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**Third-party package**

Owin  
Version 1

**Source**

<http://owin.org>

**License text**

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---

**Third-party package**

PostSharp  
Version 2.1.6.8

**Source**

<http://www.sharpcrafters.com>

**License text**

See ["PostSharp open-source license agreement"](#) on page 3-62.

**License text**

See ["Support services agreement for PostSharp"](#) on page 3-101.

---

**Third-party package**

PowerGUI  
Version 3.2.0.2237

**Source**

<https://support.quest.com/Download/InstallDetail.aspx?fID=4086224>

**License text**

See ["PowerGUI license"](#) on page 3-84.

---

**Third-party package**

PuTTY  
Version 0.62.0.0

**Source**

<http://www.chiark.greenend.org.uk/~sgtatham/putty>

**License text**

See ["PuTTY license"](#) on page 3-100.

---

**Third-party package**

qTip2  
Nightly build Date: Tue Sep 20 14:19:36.000000000 2011

**Source**

<http://craigsworks.com>

**License text**

See ["MIT license"](#) on page 3-52.

---

**Third-party package**

Rabbit MQ  
3.1.3

**Source**

<http://www.rabbitmq.com>

**License text**

See ["Mozilla public license"](#) on page 3-53.

---

**Third-party package**

SharpSSH  
Version 1.1.1.13 (Jun-24-2007)

**Source**

<http://www.tamirgal.com/blog/page/SharpSSH.aspx>

**Proprietary notice**

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---

**Third-party package**

SignalR  
Version 0.5.2

**Source**

<http://signalr.net>

**Proprietary notice**

Copyright (c) 2011 David Fowler & Damian Edwards

**License text**

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---

**Third-party package**

SlickGrid  
Version 2.0

**Source**

<https://github.com/mleibman/SlickGrid>

**License text**

See ["MIT license"](#) on page 3-52.

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**Third-party package**

SlimFTPd  
Version 3.18.0.0

**Source**

<http://www.whitsoftdev.com/slimftpd>

**License text**

See "[SlimFTPd license](#)" on page 3-100.

---

**Third-party package**

SMS Trace Utility  
Version 2.50.3025.1000

**Source**

<http://support.microsoft.com/kb/125452>

---

**Third-party package**

SNMPSharpNet  
Version 0.9.2

**Source**

<http://www.snmpsharpnet.com>

**License text**

See "[GNU lesser general public license version 3](#)" on page 3-29.

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**Third-party package**

Sumatra PDF  
Version 2.1.1

**Source**

<http://blog.kowalczyk.info/software/sumatrapdf/free-pdf-reader.html>

**License text**

See "[GNU lesser general public license version 3](#)" on page 3-29.

---

**Third-party package**

TeraTerm (including TTP macro)  
Version 4.80.0.0

**Source**

<http://tssh2.sourceforge.jp/index.html.en>

**License text**

See ["BSD license"](#) on page 3-21.

---

**Third-party package**

Tftpd32

Version 4.0.0.0

**Source**

<http://tftpd32.jounin.net>

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See ["GNU lesser general public license version 2"](#) on page 3-22.

---

**Third-party package**

Time entry for jQuery

Version 1.4.9

**Source**

<http://keith-wood.name/timeEntry.html>

**License text**

See ["MIT license"](#) on page 3-52.

---

**Third-party package**

Unobtrusive validation support library for jQuery and jQuery Validate

**Source**

<http://www.asp.net/ajaxlibrary/cdn.ashx>

<http://ajax.aspnetcdn.com/ajax/mvc/3.0/jquery.validate.unobtrusive.js>

**License text**

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**Third-party package**

WebGrease

Version 1.3.0



**Source**

<http://webgrease.codeplex.com>

**License text**

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---

**Third-party package**

WinPcap  
Version 4.1.2

**Source**

<http://www.winpcap.org>

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See "[WinPcap license](#)" on page 3-113.

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**Third-party package**

WinSCP  
Version 4.3.7.1679

**Source**

<http://winscp.net/eng/index.php>

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**Third-party package**

Wireshark  
Version 1.6.1.38096

**Source**

<http://wiki.wireshark.org>

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Version 2, June 1991

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## **PowerGUI license**

Dell Rev 9-28-12 (Based on QSFT Rev 6-14-12)

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3. Restrictions. Except to the extent expressly permitted by applicable law, and to the extent that Quest is not permitted by such applicable law to exclude or limit the following rights, Customer may not reverse engineer, decompile, disassemble, or attempt to discover or modify in any way the underlying source code of the Products, Documentation or any part thereof. In addition, Customer may not (i) modify, translate, localize, adapt, rent, lease, loan, create or prepare derivative works of, or create a patent based on the Products, Documentation or any part thereof, or (ii) resell the Products or Documentation or use the Products or Documentation in any commercial time share arrangement, in connection with the operation of any nuclear facilities, or for purposes which are competitive to Quest. Each permitted copy of the Software and Documentation made by Customer hereunder must contain all titles, trademarks, copyrights and restricted rights notices as in the original. Customer understands and agrees that the Products may work in conjunction with third party products and Customer agrees to be responsible for ensuring that it is properly licensed to use such third party products. Notwithstanding anything otherwise set forth in this Agreement, the terms and restrictions set forth herein shall not prevent or restrict Customer from exercising additional or different rights to any open source software that may be contained in or provided with the Products in accordance with the applicable open source licenses. Customer may not use any license keys or other license access devices not provided by Quest, including but not limited to "pirate keys", to install or access the Products.
  4. Reservation of Rights and Ownership. Quest reserves any and all rights, implied or otherwise, which are not expressly granted to Customer in this Agreement. Customer understands and agrees that (i) the Products are protected by copyright and other intellectual property laws and

treaties, (ii) Quest and/or its suppliers own the title, copyright, and other intellectual property rights in the Products, (iii) the Software is licensed, and not sold, and (iv) this Agreement does not grant Customer any rights to Quest's trademarks or service marks.

5. Hardware. In the event Customer acquires Hardware under this Agreement, title to such Hardware shall pass to Customer upon shipment (unless such Hardware is rented, leased or loaned to Customer).
6. Payment. Customer agrees to pay to Quest (or, if applicable, the Partner) the fees specified in each Order, including any applicable shipping fees. Customer will be invoiced promptly following delivery of the Products or prior to the commencement of any Renewal Maintenance Period and Customer shall make all payments due to Quest in full within thirty (30) days from the date of each invoice or such other period (if any) stated in an Order signed by Quest. Any amounts payable to Quest by Customer that remain unpaid after the due date shall be subject to a late charge of 1.5% of the invoice amount per month from the due date until such amount is paid, or the maximum rate permitted by law if less.
7. Taxes. The fees stated in an Order may not include taxes. If Quest is required to pay sales, use, property, value-added or other taxes based on the Products or Maintenance Services provided under this Agreement or on Customer's use of Products or Maintenance Services, then such taxes shall be billed to and paid by Customer. This Section does not apply to taxes based on Quest's income.
8. Termination. This Agreement or Licenses granted hereunder may be terminated (i) by mutual agreement of Quest and Customer, (ii) by Quest, if Customer or a Service Provider commits a material breach of this Agreement and fails to cure such breach to Quest's reasonable satisfaction within thirty (30) days following receipt of Quest's notice thereof, or (iii) by Customer for any reason upon thirty (30) days written notice to Quest. Upon termination of this Agreement or expiration or termination of a License for any reason, all rights granted to Customer for the applicable License(s) shall immediately cease and Customer shall immediately: (i) cease using the applicable Software and Documentation, (ii) return the applicable Software to Quest together with all Documentation and other materials associated with the Software and all copies of any of the foregoing, or destroy such items, (iii) cease using the Maintenance Services associated with the applicable License(s), (iv) pay Quest or the applicable Partner all amounts due and payable up to the date of termination, and (v) give Quest a written certification that Customer has complied with all of the foregoing obligations. Termination of this Agreement or a License shall



be without prejudice to any other remedies that the terminating party may have under law, subject to the limitations and exclusions set forth in this Agreement. Any provision of this Agreement that requires or contemplates execution after termination of this Agreement or expiration of a License is enforceable against the other party and their respective successors and assignees notwithstanding termination or expiration, including, without limitation, the "Payment," "Taxes," "Restrictions," "Termination," "Warranty Disclaimer," "Infringement," "Limitation of Liability," "Confidential Information," "Compliance Verification," and "General" Sections of this Agreement.

9. Export. Customer acknowledges and agrees that the Products are subject to the export control laws, rules, regulations, restrictions and national security controls of the United States, Canada and other applicable foreign agencies (the "Export Controls"), and agrees not to export or reexport, or allow the export or re-export of the Products or any copy, portion or direct product of the foregoing in violation of the Export Controls.

Customer hereby represents that (i) Customer is not an entity or person to which shipment of Products is prohibited by the Export Controls; and (ii) Customer will not export, re-export or otherwise transfer the Products to (a) subject to applicable laws, any country subject to a United States trade embargo, (b) subject to applicable screening procedures, a national or resident of any country subject to a United States trade embargo, (c) any person or entity to which shipment of Products is prohibited by the Export Controls, or (d) anyone who is engaged in activities related to the design, development, production, or use of nuclear materials, nuclear facilities, nuclear weapons, missiles or chemical or biological weapons.

10. Maintenance Services. During any Maintenance Period and for the applicable fees, Quest shall make available to Customer the maintenance and support services for the Software as defined in this Section. The first Maintenance Period begins on the date of delivery of the Software following an Order and ends twelve (12) months thereafter unless otherwise set forth in the applicable Order (the "Initial Maintenance Period"). Following the Initial Maintenance Period, Maintenance Services shall automatically renew for additional terms of twelve (12) months (each, a "Renewal Maintenance Period") unless the renewal has been cancelled by either party giving written notice, by email or otherwise, to the other at least sixty (60) days prior to the first day of the applicable Renewal Maintenance Period. Cancellation of Maintenance Services will not terminate Customer's rights to continue to use the Software. Maintenance fees shall be due in advance of a Renewal Maintenance Period and shall be subject to the payment requirements set forth in this Agreement. The procedure for reinstating

Maintenance Services after it has lapsed is posted at [http://support.quest.com/Maintenance\\_Service.asp](http://support.quest.com/Maintenance_Service.asp). Except as otherwise stated in the Product Guide, "Maintenance Services" shall be available via the Internet, e-mail, or telephone and shall mean the following:

- a. Quest shall make available to Customer new versions and releases of the Software, including Software corrections, enhancements and upgrades, if and when Quest makes them generally available without charge as part of Maintenance Services.
- b. Quest shall respond to unlimited communications from Customer that report Software failures not previously reported to Quest by Customer. Nothing in the foregoing shall operate to limit or restrict follow up communication by Customer regarding Software failures.
- c. Quest shall respond to requests from Customer's technical coordinators for assistance with the operational/technical aspects of the Software unrelated to a Software failure; provided that Quest shall have the right to limit such responses if Quest determines, in its sole reasonable discretion, that on-site consulting services would be more appropriate to address the scope and nature of the requests. Any such onsite consultation would be pursuant to a services agreement as agreed upon by the parties.
- d. Customer shall have access to Quest's Support Web site at <http://support.quest.com> ("SupportLink").
- e. Maintenance Services are available during standard support hours ("Business Hours") as indicated on SupportLink. In addition, Customer may purchase Business Critical Support (i.e. 24x7 Severity Level 1 support) for certain Software. The list of Software for which Business Critical Support is available and/or required is set forth on SupportLink.
- f. During Business Hours, Quest will respond within one (1) hour to a call from Customer which reports a critical Software condition (a "Severity Level 1 Problem"). Customer must use commercially reasonable efforts to provide Quest with the necessary remote access to facilitate the identification and resolution of a Severity Level 1 Problem. Quest's ability to identify and resolve a Severity Level 1 Problem may be delayed without such remote access.
- g. The Maintenance Services for those Software products that Quest has obtained through an acquisition or merger may, for a period of time following the effective date of the acquisition or merger, be governed by terms other than those in this Section 10. The applicable different terms, if any, shall be stated on SupportLink.

- h. For Hardware on which Total Privileged Access Management Software ("TPAM") is delivered (as such Software may be renamed by Quest in its sole discretion), if the Customer has purchased Maintenance Services for TPAM continuously since the purchase of licenses for TPAM, the Hardware Replacement Policy shall be included as part of Maintenance Services for TPAM.

The "Hardware Replacement Policy" is as follows: On the business day following Quest's determination that replacement Hardware is required, Quest will either ship a replacement for any Hardware ("Replacement Hardware") or, at its discretion, ship a replacement part for the Hardware to be installed by Customer ("Replacement Part"). Any Replacement Parts shall be externally replaceable, not requiring the Hardware case to be opened. Replacement Hardware or Replacement Parts may be previously used, but shall not be of lesser capacity or specification than the Hardware or part being replaced. If Customer cannot permanently delete the data from the Hardware's data storage device and Customer's information security policy does not permit return of the Hardware with the sensitive data on it, Customer may remove any data storage device that does not require the Hardware case to be opened and return the Hardware without the device.

#### 11. Warranties.

- a. Software Warranty. Quest warrants that, for a period of thirty (30) days following the initial delivery of Software pursuant to an Order (the "Warranty Period"), (i) the media provided by Quest, if any, on which the Software is recorded will be free from material defects in materials and workmanship under normal use, (ii) the operation of the Software, as provided by Quest, will substantially conform to the Documentation applicable to such Software, and (iii) the Software as delivered by Quest does not contain any viruses, worms, Trojan Horses, or other malicious or destructive code designed by Quest to allow unauthorized intrusion upon, disabling of, or erasure of the Software (however, the Software may contain a key limiting use of the Software to within the scope of License granted, and license keys issued by Quest for temporary use are time-sensitive) (the "Warranties"). Customer must give written notice to Quest of any breach of the Warranties no later than five days following the expiration of the Warranty Period.

Customer's exclusive remedies, and Quest's sole obligations, for any such breach of these Warranties shall be as follows: (a) for the warranty in subsection (i), Quest shall, at its expense, replace any defective media; (b) for the warranty in subsection (ii), Quest shall correct or provide a workaround for reproducible errors in the Software that cause a breach of the warranty within a reasonable

time considering the severity of the error and its effect on Customer, or, at Quest's option, refund the license fees paid for the nonconforming Software upon return of such Software to Quest and termination of the related License(s) hereunder; and (c) for the warranty in subsection (iii), Quest shall provide a copy of the Software that is in conformance with such warranty.

The foregoing Warranties shall not apply to any non-conformance (i) that Quest cannot recreate after exercising commercially reasonable efforts to attempt to do so; (ii) caused by misuse of the Software or by using the Software in a manner that is inconsistent with this Agreement or the Documentation; or (iii) arising from the modification of the Software by anyone other than Quest.

- b. Hardware Warranty. Except for Hardware upon which TPAM is delivered, Hardware shall be warranted in accordance with the warranty document delivered with the Hardware and/or included on the hardware manufacturers' website. In the event Customer acquires Hardware that is delivered with a third party warranty ("Third Party Warranty"), Customer will rely solely on the applicable third party for all Third Party Warranty obligations.

For the period of one year from the date of delivery, Quest warrants that the Hardware upon which TPAM is delivered shall operate in a manner which allows TPAM to be used in substantial conformance with the Documentation. Customer's exclusive remedy, and Quest's sole obligation, for any such breach of the foregoing warranty shall be as stated in the Hardware Replacement Policy.

- c. Warranty Disclaimer. THE EXPRESS WARRANTIES AND REMEDIES SET FORTH IN THIS SECTION ARE THE ONLY WARRANTIES AND REMEDIES PROVIDED BY QUEST HEREUNDER. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALL OTHER WARRANTIES OR REMEDIES ARE EXCLUDED, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR ANY PARTICULAR PURPOSE, NON-INFRINGEMENT, SATISFACTORY QUALITY, AND ANY WARRANTIES ARISING FROM USAGE OF TRADE OR COURSE OF DEALING OR PERFORMANCE. QUEST DOES NOT WARRANT UNINTERRUPTED OR ERROR-FREE OPERATION OF THE PRODUCTS.

- 12. Infringement. Quest will at its own expense defend or settle any claim, suit, action, or proceeding brought against Customer by a third party to the extent it is based on an allegation that the Software directly infringes any patent, copyright, trademark, or other proprietary right enforceable in the country in which the Software is delivered to Customer, or misappropriates a trade secret in such country (a

"Claim"). Additionally, Quest shall pay any judgments finally awarded against Customer under a Claim or any amounts assessed against Customer in any settlements of a Claim, and reasonable administrative costs or expenses, including without limitation reasonable attorneys' fees, necessarily incurred by Customer in responding to the Claim. Quest's obligations under this Section are conditioned upon Customer (i) giving prompt written notice of the Claim to Quest; (ii) permitting Quest to retain sole control of the investigation, defense or settlement of the Claim, and (iii) providing Quest with such cooperation and assistance as Quest may reasonably request from time to time in connection with the investigation, defense or settlement of the Claim. Quest shall have no obligation hereunder to defend Customer against any Claim (a) resulting from use of the Software other than as authorized in this Agreement, (b) resulting from a modification of the Software other than by Quest, or (c) based on Customer's use of the Software after Quest recommends discontinuation because of possible or actual infringement, (d) based on Customer's use of a superseded or altered release of Software if the infringement would have been avoided by use of a current or unaltered release of the Software made available to Customer, or (e) to the extent the Claim arises from or is based on the use of the Software with other products, services, or data not supplied by Quest if the infringement would not have occurred but for such use. If Customer's use of the Software is enjoined as a result of a Claim, Quest shall, at its expense and option either (1) obtain for Customer the right to continue using the Software, (2) replace the Software with a functionally equivalent non-infringing product, (3) modify the Software so that it is non-infringing, or (4) accept the return of the infringing Software and refund the license fee paid for the infringing Software, pro-rated over a sixty (60) month period from the date of delivery of the Software following an Order. This Section states the entire liability of Quest, and Customer's sole and exclusive remedy, with respect to a Claim.

13. Limitation of Liability. EXCEPT FOR (A) ANY BREACH OF THE "RESTRICTIONS" OR "CONFIDENTIAL INFORMATION" SECTIONS OF THIS AGREEMENT, (B) AMOUNTS CONTAINED IN JUDGMENTS OR SETTLEMENTS WHICH QUEST IS LIABLE TO PAY ON BEHALF OF CUSTOMER UNDER THE "INFRINGEMENT" SECTION OF THIS AGREEMENT, OR (C) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, IN NO EVENT SHALL QUEST, ITS AFFILIATES, OR SUPPLIERS, OR CUSTOMER BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE OF ANY KIND, INCLUDING BUT NOT LIMITED TO LOSS OF REVENUE, LOSS OF ACTUAL OR ANTICIPATED PROFITS, LOSS OF BUSINESS, LOSS OF CONTRACTS, LOSS OF GOODWILL OR REPUTATION, LOSS OF ANTICIPATED SAVINGS, LOSS OF, DAMAGE TO OR CORRUPTION OF DATA,

HOWSOEVER ARISING, WHETHER SUCH LOSS OR DAMAGE WAS FORESEEABLE OR IN THE CONTEMPLATION OF THE PARTIES AND WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE.

EXCEPT FOR (A) ANY BREACH OF THE "SOFTWARE LICENSE," "RESTRICTIONS," "EXPORT" OR "CONFIDENTIAL INFORMATION" SECTIONS OF THIS AGREEMENT, OR ANY OTHER VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; (B) QUEST'S EXPRESS OBLIGATIONS UNDER THE "INFRINGEMENT" SECTION OF THIS AGREEMENT; (C) QUEST'S COSTS OF COLLECTING DELINQUENT AMOUNTS WHICH ARE NOT THE SUBJECT OF A GOOD FAITH DISPUTE; OR (D) ANY LIABILITY TO THE EXTENT LIABILITY MAY NOT BE EXCLUDED OR LIMITED AS A MATTER OF LAW, THE MAXIMUM AGGREGATE AND CUMULATIVE LIABILITY OF QUEST, ITS AFFILIATES AND SUPPLIERS, AND CUSTOMER UNDER THIS AGREEMENT, WHETHER ARISING IN OR FOR BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTORY DUTY, OR OTHERWISE, SHALL NOT EXCEED THE FEES PAID AND/OR OWED (AS APPLICABLE) BY CUSTOMER FOR THE PRODUCTS OR MAINTENANCE SERVICES THAT ARE THE SUBJECT OF THE BREACH. FOR MAINTENANCE SERVICES OR A PRODUCT SUBJECT TO RECURRING FEES, THE LIABILITY SHALL NOT EXCEED THE AMOUNT PAID AND/OR OWED (AS APPLICABLE) FOR SUCH MAINTENANCE SERVICE OR PRODUCT DURING THE TWELVE (12) MONTHS PRECEDING THE BREACH.

Quest's Affiliates and suppliers shall be beneficiaries of this "Limitation of Liability" section and Customer's Service Providers are entitled to the rights granted under the "Third Party Use" section of this Agreement; otherwise, no third party beneficiaries exist under this Agreement. Quest expressly excludes any and all liability to Customer's Service Providers, Clients and to any other third party.

#### 14. Confidential Information.

- a. Definition. "Confidential Information" means information or materials disclosed by one party (the "Disclosing Party") to the other party (the "Receiving Party") that are not generally available to the public and which, due to their character and nature, a reasonable person under like circumstances would treat as confidential, including, without limitation, personal data, financial, marketing, and pricing information, trade secrets, know-how, proprietary tools, knowledge and methodologies, the Products (in source code and/or object code form), information or benchmark test results regarding the functionality and performance of the Products, any Software license keys provided to Customer, and the

terms and conditions of this Agreement. Personal data includes “Individually Identifiable Health Information” (as that term is defined in 45 CFR § 164.501) or “Nonpublic Personal Information” (as that term is defined in Title V of the Gramm-Leach-Bliley Act of 1999).

Confidential Information shall not include information or materials that (i) are generally known to the public, other than as a result of an unpermitted disclosure by the Receiving Party after the Agreement Date; (ii) were known to the Receiving Party without an obligation of confidentiality prior to receipt from the Disclosing Party; (iii) the Receiving Party lawfully received from a third party without that third party’s breach of agreement or obligation of trust; or (iv) are or were independently developed by the Receiving Party without access to or use of the Disclosing Party’s Confidential Information.

- b. **Obligations.** The Receiving Party shall (i) not disclose or permit disclosure of the Disclosing Party’s Confidential Information to any third party, except as permitted in Section 14(c) below, (ii) only use the use the Disclosing Party’s Confidential Information to exercise the rights granted to it under this Agreement, and (iv) protect the Disclosing Party’s Confidential Information from unauthorized use or disclosure by exercising at least the same degree of care it uses to protect its own similar information, but in no event less than a reasonable degree of care. The Receiving Party shall promptly notify the Disclosing Party of any known unauthorized use or disclosure of the Disclosing Party’s Confidential Information and will cooperate with the Disclosing Party in any litigation brought by the Disclosing Party against third parties to protect its proprietary rights. For the avoidance of doubt, this Section 14 shall apply to all disclosures of the parties’ Confidential Information as of the Agreement Date, whether or not specifically arising from a party’s performance under this Agreement.
- c. **Permitted Disclosures.** Notwithstanding the foregoing, the Receiving Party may disclose the Disclosing Party’s Confidential Information without the Disclosing Party’s prior written consent to its any of its Affiliates, directors, officers, employees, consultants or representatives (collectively, the “Representatives”), but only to those Representatives that (i) have a “need to know” in order to carry out the purposes of this Agreement, (ii) are legally bound to the Receiving Party to protect information such as the Confidential Information under terms at least as restrictive as those provided herein, and (iii) have been informed by the Receiving Party of the

confidential nature of the Confidential Information and the requirements regarding restrictions on disclosure and use as set forth in this Section 14.

Additionally, it shall not be a breach of this Section for the Receiving Party to disclose the Disclosing Party's Confidential Information as may be required by operation of law or legal process, provided that the Receiving Party provides prior notice of such disclosure to the Disclosing Party unless expressly prohibited from doing so by a court, arbitration panel or other legal authority of competent jurisdiction.

15. Compliance Verification. Customer agrees to maintain and use systems and procedures to accurately track, document, and report its installations and usage of the Products. Such systems and procedures shall be sufficient to determine if Customer's deployment of the Products is within the quantities, Product Terms, and maintenance releases to which it is entitled. At Quest's request, but not more frequently than once per year, Customer shall provide a written report to Quest, signed by an authorized representative, listing Customer's then current deployment of the Products. Customer will permit Quest or its designated auditing agent to audit Customer's deployment of the Products for compliance with the terms and conditions of this Agreement and the applicable Order(s). Customer shall provide its full cooperation and assistance with such audit and provide access to the applicable records and computers. Any such audits shall be scheduled at least ten (10) days in advance, shall be conducted during normal business hours at Customer's facilities, and shall not unreasonably interfere with Customer's business activities. If Customer's deployment of the Products is found to be greater than its purchased entitlement to such Products, Customer will be invoiced for the additional deployment and the applicable Maintenance Services fees at Quest's then current list price, plus any applicable penalty assessed by Quest. The unpaid fees shall be payable in accordance with this Agreement. Additionally, if the unpaid fees exceed five percent (5%) of the fees paid for the subject Products, then Customer shall also pay Quest's reasonable costs of conducting the audit. The requirements of this Section shall survive for two (2) years following the termination of the last License governed by this Agreement.

16. General.

- a. Governing Law and Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, without giving effect to any conflict of laws principles that would require the application of laws of a different state. Any action seeking enforcement of this Agreement or any provision hereof shall



be brought exclusively in the state or federal courts located in the County of Orange, State of California, United States of America. Each party hereby agrees to submit to the jurisdiction of such courts.

Notwithstanding the foregoing, if you acquired the Products in Canada, this Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario and the federal laws of Canada. Any action seeking enforcement of this Agreement or any provision hereof shall be brought exclusively in the state or federal courts located in the Province of Ontario, Canada.

The parties agree that neither the United Nations Convention on Contracts for the International Sale of Goods, nor the Uniform Computer Information Transaction Act (UCITA) shall apply to this Agreement, regardless of the states in which the parties do business or are incorporated.

- b. Assignment. Except as otherwise set forth herein, Customer shall not, in whole or part, assign or transfer any part of this Agreement, Licenses granted under this Agreement or any other rights provided hereunder without the prior written consent of Quest. Any attempted transfer or assignment by Customer that is not permitted by this Agreement shall be null and void.
- c. Severability. If any provision of this Agreement shall be held by a court of competent jurisdiction to be contrary to law, such provision will be enforced to the maximum extent permissible and the remaining provisions of this Agreement will remain in full force and effect. Notwithstanding the foregoing, the terms of this Agreement that limit, disclaim, or exclude warranties, remedies or damages are intended by the parties to be independent and remain in effect despite the failure or unenforceability of an agreed remedy. The parties have relied on the limitations and exclusions set forth in this Agreement in determining whether to enter into it.
- d. Use by U.S. Government. The Software is a "commercial item" under FAR 12.201. Consistent with FAR section 12.212 and DFARS section 227.7202, any use, modification, reproduction, release, performance, display, disclosure or distribution of the Software or Documentation by the U.S. government is prohibited except as expressly permitted by the terms of this Agreement. In addition, when Customer is a U.S. government entity, the language in Subsection 12 (ii) of this Agreement and Section 16 (i) of this Agreement shall not be applicable.

- e. **Personal Data.** Customer hereby acknowledges and agrees that Quest's performance of this Agreement may require Quest to process or store personal data of Customer, its employees and Affiliates and to transmit such data internally within Quest or to Quest Affiliates. Such processing, storage, and transmission (i) shall be for the sole purpose of, and only to the extent necessary for Quest to perform its obligations under this Agreement and (ii) may take place in any of the countries in which Quest and its Affiliates conduct business, including countries outside of the European Economic Area. Quest hereby affirms to Customer that Quest Software, Inc. currently abides by the safe harbor framework as set forth by the U.S. Department of Commerce regarding the collection, use and retention of data from the European Union.
- f. **Notices.** All notices provided hereunder shall be in writing and addressed to the legal department of the respective party or to such other address as may be specified in an Order or in writing by either of the parties to the other in accordance with this Section. Except as may be expressly permitted herein, notices may be delivered personally, sent via a nationally recognized courier or overnight delivery service, or mailed by first class mail, postage prepaid. All notices, requests, demands or communications shall be deemed effective upon personal delivery or, if sent by mail, four (4) days following deposit in the mail in accordance with this paragraph.
- g. **Disclosure of Customer Status.** Quest may include Customer in its listing of customers and, upon written consent by Customer, announce Customer's selection of Quest in its marketing communications.
- h. **Waiver.** Performance of any obligation required by a party hereunder may be waived only by a written waiver signed by an authorized representative of the other party, which waiver shall be effective only with respect to the specific obligation described therein. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- i. **Injunctive Relief.** Each party acknowledges and agrees that in the event of a material breach of this Agreement, including but not limited to a breach of the "Software License," "Restrictions" or "Confidential Information" Sections of this Agreement, the non-breaching party shall be entitled to seek immediate injunctive relief, without limiting its other rights and remedies.

- j. Force Majeure. Each party will be excused from performance for any period during which, and to the extent that, it is prevented from performing any obligation or service as a result of causes beyond its reasonable control, and without its fault or negligence, including without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, communication line failures, and power failures. For the avoidance of doubt, an excuse of the obligation to pay fees due hereunder during the pendency of a force majeure event shall not operate to relieve Customer or its Affiliates of its contractual obligations to pay such fees.
- k. Equal Opportunity. Quest Software, Inc. is a federal contractor and Affirmative Action employer (M/F/D/V) as required by the Equal Opportunity clause C.F.R. § 60-741.5(a).
- l. Headings. Headings in this Agreement are for convenience only and do not affect the meaning or interpretation of this Agreement. This Agreement will not be construed either in favor of or against one party or the other, but rather in accordance with its fair meaning. When the term "including" is used in this Agreement it will be construed in each case to mean "including, but not limited to."
- m. Legal Fees. If any legal action is brought to enforce any rights or obligations under this Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, court costs and other collection expenses, in addition to any other relief it may be awarded.
- n. Entire Agreement. This Agreement is intended by the parties as a final expression of their agreement with respect to the subject matter hereof and may not be contradicted by evidence of any prior or contemporaneous agreement unless such agreement is signed by both parties. In the absence of such an agreement, this Agreement and the applicable Order shall constitute the complete and exclusive statement of the terms and conditions and no extrinsic evidence whatsoever may be introduced in any judicial proceeding that may involve the Agreement. In the event of a conflict between the terms of this Agreement and the terms contained in an Order, the terms in the Order shall only control if the Order is signed by both Quest and Customer; otherwise, the terms of this Agreement shall control. Neither this Agreement, nor an Order, may be modified or amended except by a writing executed by a duly authorized representative of each party. No other act, document, usage or custom shall be deemed to amend or modify this Agreement or an Order. Delivery of Products shall be FOB Shipping Point.

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### **PuTTY license**

PuTTY is copyright 1997-2012 Simon Tatham.

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### **SlimFTPd license**

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## **Support services agreement for PostSharp**

### 1. PREAMBLE

#### 1. Whereas:

- a. the Licensor and the Licensee (as these terms are defined below) already concluded the Licence Agreement related to Software (as this term is defined below) under which the Licensor has granted to the Licensee [Personal Licence/ Commercial Licence/Corporate Site Licence/Corporate General Licence] (the 'Licence Agreement');
- b. the Licensee is interested in using Support Services (as this term is defined below) in relation to the Software; and
- c. the Licensor is interested to provide to the Licensee such Support Services.

#### 2. The parties agreed as follows:

### 2. PARTIES

1. 'Licensor' means SharpCrafters s.r.o., with its registered office at Praha 5, nám. 14. října 1307/2, Postal Code 150 00, the Czech Republic, ID 28953690, registered in the Commercial Register maintained by the Municipal Court in Prague, Section C, File 155506.

2. 'Licensee' means the legal entity or the individual specified in the respective Certificate of Licences and Services duly filled in by the Licensee and accepted by the Licensor or the respective authorised reseller.

### 3. DEFINITIONS

1. As used in this Agreement, the capitalized terms shall have following meaning:

'Software' means the software program known as PostSharp delivered under the Licence Agreement.

'Price List' means a document specified in Section 5.1 of this Agreement.

'Source Code' means in relation to the Software the collection of files needed to convert from human-readable form to some kind of computer-executable form.

'Support Services' means the services specified in Section 4 of this Agreement.

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'Support Case' means any unique and indivisible problem experienced by the Licensee in the use of the Software and for which the help of the Licensor is requested.

'Supported Platform' means any platform on which the Software is designed to run, as stated in Exhibit A.

'Certificate of Licences and Services' means the certificate issued by the Licensor or by the authorised reseller of the order submitted by the Licensee and dispatched to the Licensee. The Certificate of Licences and Services shall include a listing of the Licences and Services granted under this Agreement and the Licence Agreement.

'Escrow Agreement' means the Agreement specified in Section 4.5 of this Agreement and, if applicable, mentioned in the Certificate of Licences and Services.

'Escrow Agent' means the third party to an Escrow Agreement specified in Section 4.5 of this Agreement.

#### 4. SUPPORT SERVICES CONDITIONS

1. The Licensor hereby agrees to provide the Support Services, all subject to the terms, conditions and limitations specified hereunder. The Licensee may purchase various types of Support Services, as they are specified in Sections 4.3 – 4.5 (the 'Support Services'). The Support Services to be provided hereunder shall be solely the type of the Support Services specified in the respective Certificate of Licences and Services issued by the Licensor and delivered to the Licensee. The Support Services provided hereunder may be used by the Licensee solely for the Software delivered under the Licence Agreement specified in the Preamble of the Agreement and for no other software.
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3. 'Standard Forum Support' shall mean the Support Services based on the following principles. The Licensee shall have the right to access the web forum contained on <http://www.sharpcrafters.com/> which comprehends the responses to generic questions from the Licensor's engineers and from the community. The number of support contacts, i.e. access to the forum by the Licensee, is unlimited.
4. 'Support Subscription' shall mean the Support Services based on the following principles. In addition to the right to use the Standard Forum Support under this Agreement, the Licensee shall have the right to send to the Licensor questions relating to the Software to get personalised help. The questions shall be delivered to the email address [support@sharpcrafters.com](mailto:support@sharpcrafters.com), or other, as may be specified by the Licensor. The Licensor shall handle such questions with priority and make all reasonable effort to react to delivered questions within a reasonable time. The number of Support Cases is

limited to the maximum extent as specified in the respective Certificate of Licences and Services and can be extended by the acquisition, as a separate purchase, of new Support Cases. Support Cases must be consumed one year after the date of their acquisition. The Licensor is entitled, at its sole discretion, to divide a Support Case in multiple Support Cases. Under Support Subscription the Licensee shall have the right to acquire major released upgrades of the Software for free.

5. 'Source Code Escrow' shall mean a three-party agreement ('Escrow Agreement') according to which the Licensor provides the Source Code to a third party's ('Escrow Agent') escrow and allows the Escrow Agent to provide access to the Source Code under conditions defined in the Escrow Agreement. Provided that the Source Code was released to the Licensee under the Escrow Agreement, the Licensor shall provide the Licensee with access to the Source Code by granting the Source Code Licence, as specified in Section 7 of this Agreement. The Licensor is entitled to require the signature of an additional non-disclosure agreement before signing the Escrow Agreement. The Licensee may use the Source Code solely for the purposes specified in Section 7 of this Agreement.
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unless otherwise agreed mutually between the parties. The Licensee is entitled to use the Support Services in accordance herewith only following the payment of the respective fees hereunder and also under the Licence Agreement, unless otherwise agreed with the Licensor. The then current Price List is located on the Licensor's website at <http://www.sharpcrafters.com/> or will be otherwise disclosed to the Licensee.

2. Unless otherwise agreed between the parties, the Price List shall constitute an integral part of any and all of this Agreement. The Licensor reserves the right to change, modify and amend the Price List at any time at its sole discretion, which amendments shall become effective as of the date set forth in the Price List in respect of each such amendment.
3. For each payment due to the Licensor under this Agreement, an invoice signed by the authorised representative of the Licensor or of the authorised reseller shall be issued in accordance with the applicable tax regulations. The invoice shall be payable within forty-five (45) days after the day of its issuance and the fees shall be paid to the account of the Licensor or of an authorised reseller of the Licensor, as specified in the respective invoice, unless agreed otherwise.
4. Should the Licensee fail to pay the fee within the above-stated period, the Licensee shall be obliged to pay to the Licensor the delay interest at lesser of (i) 1% per month, or (ii) the maximum rate applicable by law and/or the Licensor may terminate this Agreement with immediate effect by written notice delivered to the Licensee. The Licensee will reimburse the Licensor for any reasonable legal fees and other costs and expenses incurred by the Licensor in collecting past due amounts.
5. The prices on the Price List are without any VAT or similar taxes. Any such taxes will be added to the price.
6. All payments to be made by the Licensee to the Licensor under this Agreement shall be made free and clear of and without deduction for or on account of tax unless the Licensee is required by law to make such payment subject to the deduction or withholding of tax, in which case the sum payable by the Licensee in respect of which such deduction or withholding is required to be made shall be increased to the extent necessary to ensure that, after making of the required deduction or withholding, the Licensor receives and retains (free from any liability in respect of any such deduction or withholding) a net sum equal to the sum which it would have

received and so retained had no such deduction or withholding been made or required to be made. Licensor shall be responsible for payment of all applicable taxes..

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1. During the term of this Agreement, the parties may disclose certain Confidential Information to each other in the performance of their rights and obligations under this Agreement. Without the prior written authorisation of the disclosing party, the receiving party shall not use or copy any Confidential Information for any purpose other than as specifically authorised by this Agreement, and shall not transfer or disclose any Confidential Information to any person, except for the purposes of performing its obligations and exercising its rights in accordance with this Agreement. The receiving party shall take steps necessary or appropriate to protect Confidential Information against unauthorised disclosure or use, including, without limitation, ensuring that each of its employees with access to Confidential Information is aware of and complies with the non-disclosure obligations set out in this Section. The receiving party shall promptly notify the disclosing party of any unauthorised disclosure or use of any Confidential Information that comes to the receiving party's attention, and shall take all action that the disclosing party reasonably requests to prevent any further unauthorised use or disclosure of it. Each party expressly acknowledges and agrees that, except as specifically provided in this Agreement, at no time shall it acquire or retain, or appropriate for its own use, any right, title or interest in or to any Confidential Information of the other party.
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3. Notwithstanding the termination of this Agreement, each party shall continue to abide by the terms of the non-disclosure obligations with respect to Confidential Information as set out in this Section and indemnification as set out in Section 6.2 hereof.

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5. In the event that the Licensee fails to comply with any of its obligations under this Section 7, the Licensee shall pay to Licensor the contractual penalty amounting to 100,000 EUR (one hundred thousand euro) for each case of breach of the obligation by the Licensee; the right to claim the damages shall not be affected.
6. Obligation of maintenance. Provided that the Escrow Agreement is effective and that all fees for this Agreement and the Escrow Agreement have been paid by the Licensee, the Licensor shall be obliged:
- a. to fix or provide a workaround to an issue preventing the normal and documented use of the Software delivered by the Licensee within 180 days following the written reminder of the Licensee;

- b. to deliver to the Licensee an upgrade of the Software supporting a new version of a Supported Platform within 180 days following the date when a stable release of this new version has been published by its publisher, unless characteristics of the new version of the Supported Platform make it technically impossible to implement the Product for this version of the Supported Platform,

## 8. INTELLECTUAL PROPERTY

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2. The Licensee shall indemnify the Licensor for damages, costs, loss (including expenses and attorney's fees) and damages of any kind resulting from its breach of its obligation under Section 7 of this Agreement.

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## 10. LIMITATION OF LIABILITY

1. Licensor's entire liability for all claims or damages arising out of or related to this Agreement, shall be limited to and shall not exceed, in the aggregate for all claims, actions and causes of action of every kind and nature; the amount paid to the Licensor under this

Agreement for the specific item that caused the damage or that is the subject matter of, or is directly related to, the cause of action. The parties hereby expressly agree that the amount referenced in the immediately preceding sentence represents the amount of foreseeable damages within the meaning of Section 379 of the Czech Act No. 513/1991 Coll., Commercial Code, as amended. In no event will the measure of damages payable by the each party include, nor will the such party be liable for, any amounts for loss of income, loss of data, loss of profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if the such party has been advised of the possibility of such damages in advance, and all such damages are expressly disclaimed.

## 11. TERM OF AGREEMENT AND TERMINATION

1. This Agreement is concluded for a definite period of one (1) year beginning on the day of purchasing the Support Services by the Licensee, unless agreed otherwise between the parties. Unless the Licensor sends, at least one (1) month before the expiry of any one (1) year period of the term of this Agreement, to the Licensee a notice that the Licensor is not able to provide further extension of the term of this Agreement (which step the Licensor may do at its own discretion), the Agreement may be extended repeatedly for an additional one (1) year subject to the Licensee paying before the end of the term of the Agreement to the Licensor the respective fees for the additional year in accordance with the then current Price List of the Licensor, applicable to the respective type of the Support Services, unless otherwise agreed mutually between the parties. The Licensor reserves the right to contact the Licensee with notification concerning the expiration of the Agreement and the possibility and conditions of its prolongation.
2. If either party materially defaults in the performance of any of its duties or obligations under this Agreement and fails to proceed within fifteen (15) days after written notice thereof to commence rectifying the default and thereafter to proceed with reasonable diligence to substantially rectify the default, the other party may, by giving written notice thereof, terminate this Agreement effective immediately. However, this provision does not apply to a default in payments to the Licensor by the Licensee (no cure period is provided for such a breach and the Licensor may terminate this Agreement effective immediately).
3. Except as may be prohibited by Czech bankruptcy laws, in the event of either party's insolvency or inability to pay debts as they become due, voluntary or involuntary bankruptcy proceedings by or against

a party hereto, or appointment of a receiver or assignee for the benefit of creditors, the other party may terminate this Agreement by written notice.

4. This Agreement shall be automatically terminated on the day of termination of the Licence Agreement.
5. All rights granted will cease upon any termination of this Agreement, except for the rights relating to the Source Code already granted to the Licensee during the duration of the Support Subscription. Within 15 days after termination of the licence rights granted herein or this Agreement for any reason, the Licensee will destroy the original and all copies of the upgrade of the Software and the Source Code delivered under this Agreement in all forms, and will certify to the Licensor in writing that such obligation has been fulfilled.
6. To avoid any doubts, in case of termination of this Agreement for any reason the Licensee is not entitled to any refund of payment paid hereunder.

## 12. NOTICES

1. All notices required by or relating to this Agreement will be in writing and will be sent by mail to the Licensor at the address set forth on the first page of this Agreement; to the Licensee by mail or in electronic form at the address communicated by the Licensee when ordering the Support Services; or to such other address as either party may specify by written notice to the other.

## 13. GENERAL

1. The Licensor reserves the right at any time to alter prices, and to change the specification and terms of the Support Services, or other characteristics of the Support Services.
2. The Licensee shall notify the Licensor in writing, without undue delay, of any changes in the data contained in this Agreement or any other arrangement between the Licensor and the Licensee, or any changes affecting the Licensee's identity or legal status, or any significant facts and changes that relate to or might have a substantial impact upon its transactions or business relationship with the Licensor or the Licensee's ability to fulfil its obligations towards the Licensor or of which the Licensor could reasonably be expected to want to be informed, and shall submit documents evidencing such changes and other information as the Licensor may reasonably request. Any change shall become effective against and

binding on the Licensor on the business day following receipt of such notification, notwithstanding any information contained in any public register. The Licensee is responsible for any loss or damage incurred by the Licensor or the Licensee arising out of the failure of the Licensee to duly and promptly notify the Licensor of such changes.

3. Neither party will be liable for any delay in or failure to perform any of its non-monetary obligations under this Agreement if due to any cause or condition beyond their reasonable control, whether foreseeable or not.
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5. Nothing in this Agreement shall create a partnership or a corporation between the parties, nor deem either party the agent of the other party for any purpose.
6. This Agreement is governed by and shall be construed in accordance with the laws of the Czech Republic without regard to the conflict of law principles thereof. Any dispute, controversy or claim arising out of or in connection with this Agreement shall be settled by the courts of the Czech Republic. In accordance with Section 89a of Act No. 99/1963 Coll., the Czech Civil Procedure Code, the parties hereby agree that the competent court shall be the general court of the Licensor.

#### **EXHIBIT A – SUPPORTED PLATFORMS**

The Product can be executed on the following supported operating systems:

- Windows Vista 32-bit or 64-bit
- Windows 7 32-bit or 64-bit

The Product can be executed with the following development tools:

- Visual Studio 2008



- Visual Studio 2010

The Product can process programs that are designed to be executed on the following supported platforms:

- Microsoft .NET 2.0, or any later version
- Microsoft Silverlight 2.0, or any later version
- Microsoft Silverlight for Windows Phone 7.0, or any later version

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## **Hitachi Data Systems**

### **Corporate Headquarters**

2845 Lafayette Street  
Santa Clara, California 95050-2627  
U.S.A.

[www.hds.com](http://www.hds.com)

### **Regional Contact Information**

#### **Americas**

+1 408 970 1000

[info@hds.com](mailto:info@hds.com)

#### **Europe, Middle East, and Africa**

+44 (0)1753 618000

[info.emea@hds.com](mailto:info.emea@hds.com)

#### **Asia Pacific**

+852 3189 7900

[hds.marketing.apac@hds.com](mailto:hds.marketing.apac@hds.com)



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