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# 1. DEFINITIONS

1.1 "Pervasive" means Pervasive Software Inc., a Delaware corporation, 12365 Riata Trace Parkway, Building B, Austin, Texas (U.S.A.) 78727.

1.2 "You" or "Your" means the person or business entity which is licensing the Software pursuant to this Agreement.

1.3 "Communications Network" means a data communication system, which allows a number of independent devices to communicate with each other, including its internal bridges and the workstations physically attached to it.

1.4 "Local Area Network" or "LAN" means privately accessible Communications Network for information distribution within Your company but does not include Your Intranet or the Internet.

1.5 "Client Software" means the software provided pursuant to a separate Pervasive license agreement that operates on a Terminal and allows the Terminal to be incorporated into a Communications Network and access the Server Software through the Communications Network.

1.6 "Terminal" means a single computing system that runs the Client Software, including but not limited to a virtual (or otherwise emulated) device.

1.7 "Server Software" or "Software" means the software You have received from Pervasive with this Agreement that operates on a Network Server which is incorporated into a Communications Network, including all Updates.

1.8 "Trial Software" means any Server Software downloaded or otherwise received from Pervasive for a limited time period for the purposes set forth in Section 2.3 below.

1.9 "Network Server" means a single computing system that runs Server Software to permit access by Client Software located either on such single computing system or remotely over a Communications Network, including but not limited to a primary network server, a fail over server, or a virtual (or otherwise emulated) server.

**1.10** "Documentation" means the manuals and any other material provided by Pervasive with the Software in electronic or print form.

1.11 "Intranet" means a privately accessible Communications Network for information distribution within Your company, its subsidiaries or remote offices, and does not include connection to the Internet.

1.12 "Internet" means the publicly accessible computer Communications Network for information distribution.

1.13 "Concurrent User" means an end user authorized by You to access and use the Software or a non-human operated device configured by or for You to access and use the Software.

1.14 "User Count" means the number of Concurrent Users specified for the license purchased by You that are authorized to simultaneously access and use the Server Software, whether such Concurrent Users access the Network Server via a LAN, Intranet, the Internet, or through multiplexing, pooling or otherwise. Notwithstanding the number of Concurrent Users licensed, the number of Concurrent Users able to access a Network Server is technically limited by the maximum number of concurrent consections allowed by Your operating system.

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1.15 "Updates" means any maintenance releases, updates, upgrades or other modifications to the Software.

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**11.2 Complete Understanding.** This Agreement sets forth the entire understanding and agreement between You and Pervasive with respect to the subject matter hereof and may be amended only in writing signed by both parties. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SOFTWARE.

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11.4 Audit. You are responsible for ensuring that the number of Concurrent Users accessing the Software does not exceed the User Count, and You will maintain sufficient records, logs and other materials ("Records") sufficient to document that Your use of the Software is in accordance with the terms of this Agreement for a minimum of five years after You cease to use the Software. Pervasive has the right to audit such Records upon reasonable notice.

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**11.8 Operating System.** It is Your responsibility to fully comply with applicable license agreements for any operating systems or other software You may use with the Software.

11.9 Results of benchmark tests or other performance tests run on the Software may not be disclosed to any third party without Pervasive's prior written consent.

11.10 English is the controlling language of this Agreement.

## 12. JAVA RUNTIME ENVIRONMENT.

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