

PLEASE CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT GOVERNING YOUR USE OF THE LICENSED PRODUCT. BY COMPLETING ITS INSTALLATION, CLICKING A BUTTON OR TYPING "Y" ACCEPTING THIS AGREEMENT, YOU AGREE TO BE LEGALLY BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE, THEN STOP AND DO NOT INSTALL OR USE THIS LICENSED PRODUCT.

IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT ACCEPT THIS AGREEMENT AND MAY NOT USE THE LICENSED PRODUCT.

You may not access or license Avisit Solutions Limited (Avisit) products if you are a direct competitor of Avisit, except with Avisit's prior written consent.

## **END-USER LICENSE AGREEMENT**

THIS AGREEMENT (the "Agreement") is entered into between Avisit Solutions Limited, a limited liability company incorporated in New Zealand ("Avisit") and the legal entity obtaining the right to use the Licensed Product ("you" and "your") on the following terms and conditions:

**1. Licensed Product.** This license allows you to use Dbvisit Replicate software, the accompanying documentation and any fixes, releases, upgrades, new versions or enhancements that may subsequently be issued to you (the "Licensed Product") according to the terms set out in this Agreement.

**2. Delivery & Installation.** The Licensed Product is distributed to you by electronic download from authorized web site(s) as described in the documentation or by delivering physical media to you. You will need to install the Licensed Product on properly configured and compatible computer equipment according to the system requirements specified in the documentation and according to the license type as specified on the Dbvisit certificate sent to you after your purchase of the Licensed Product as amended from time to time. If you are loading data into the Licensed Product, you will also need to ensure that your data is in proper format. If the Licensed Product is to interoperate and exchange data with other program(s), you will ensure the Licensed Product and other program(s) are properly configured and tested.

### **3. Permitted Use of the Licensed Product.**

**3.1 Evaluation Version:** If you obtained an evaluation version of the Licensed Product, it may be installed for the sole purpose of evaluating its features to determine its suitability for your needs. The evaluation version contains a time-out feature that will disable its use after 30 days from the date of installation. You may not use the evaluation version or other bundled software beyond the end of that period.

**3.2 Operating License:** Subject to payment of the license fee by its due date, you may install and use the Licensed Product on only one Oracle primary database server that meets the system and license requirements. If you have purchased more than 1 licensed copy of the Licensed Product then you may install and use each Licensed Product on only one Oracle primary database server that meets the system and license requirements. Use shall also include the right to make copies of the Licensed Product for the purpose of performing disaster recovery testing provided such testing is for the same primary database server, and for back-up archival purposes. You may print reasonable quantities of the documentation for your own use.

#### **4. Reservation of Rights.**

4.1 Your Rights: The Licensed Product is licensed, not sold to you. The intellectual property rights in the Licensed Product shall at all times remain the exclusive property of Avisit or other owner identified in the documentation. You agree to use the Licensed Product strictly in accordance with this Agreement. You will not loan, rent, sublicense or distribute any part of the Licensed Product to persons not licensed under this Agreement through public networks or otherwise. You agree not to disassemble, decompile or reverse engineer the Licensed Product. You will ensure that all marks, notices or legends pertaining to the origin, identity or ownership of the Licensed Product remain intact and clearly legible. These license rights are personal to you and are non-transferable in whole or in part to any other person.

4.2 Compliance Audit: Avisit shall have the right, not more than once in each year, to audit your compliance with the terms of this Agreement. Such audit shall be conducted during your normal business hours upon 20 days' prior written notice. You agree to allow Avisit and its agents access to your offices for this purpose.

**5. Product Support.** You may obtain product support in accordance with the terms of your DbvisitProtect Software Support Terms, as set out on the Licensed Product website: [www.dbvisit.com](http://www.dbvisit.com). Avisit may change these terms from time to time without notice.

**6. Registration & Electronic Communications.** Avisit may require electronic registration of the Licensed Product and collect information about your Oracle database and servers, including your system configuration, installed software and peripheral devices. Avisit may use this information to provide support and to verify your compliance with this Agreement. Avisit may send you messages at your registered email address.

**7. Warranties.** The following provisions are subject to clause 9. Warranties are for your benefit alone, are not assignable and there are no third party beneficiaries.

7.1 Noninfringement Warranty. Avisit warrants it has the rights needed to enter into this Agreement and that, to the best of its knowledge and belief, your use of the Licensed Product according to this Agreement will not infringe or misappropriate any valid copyright, trademark, patent, or the trade secrets of any third persons. If promptly notified of any claim to the contrary, Avisit shall (a) defend through litigation or obtain through negotiation your right to continue using the Licensed Product, (b) rework the Licensed Product to make it noninfringing while preserving the original functionality or (c) replace the Licensed Product with functionally equivalent software. **NOTWITHSTANDING THIS WARRANTY, ANY CONTENT FILES OR OPEN SOURCE FILES ARE PROVIDED STRICTLY ON AN "AS IS AND AS AVAILABLE BASIS."**

7.2 Reproduction Warranty. If you obtained the Licensed Product by electronic download from authorized web site(s), Avisit warrants the delivered copy against defects in reproduction from the master original. Avisit will provide a free replacement of defectively reproduced copies upon proof of purchase.

7.3 Limited Performance Warranty. Avisit warrants to you that it will make whatever effort is reasonably required to ensure the Licensed Product operates substantially in accordance with the documentation for so long as you have a fully paid DbvisitProtect contract. Otherwise, this warranty applies for a period of three months from the date of purchase of the Licensed Product. If you notify Avisit of a defect, Avisit will attempt to correct the defect at no cost to you. Avisit does not warrant that it will be able to correct all reported defects or that use of the Licensed Product will be uninterrupted or error free. **AVISIT MAKES NO OTHER WARRANTY, EXPRESS OR IMPLIED, WITH RESPECT TO THE LICENSED PRODUCT OR ANY SERVICES AND DISCLAIMS ALL IMPLIED WARRANTIES OF TITLE, ACCURACY, INTEROPERABILITY, INTEGRATION, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.**

**8. Not Fault Tolerant.** THE LICENSED PRODUCT IS NOT FAULT TOLERANT AND IS NOT DESIGNED, MANUFACTURED OR INTENDED FOR USE IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATIONS SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE LICENSED PRODUCT COULD LEAD TO DEATH, PERSONAL INJURY OR PHYSICAL OR ENVIRONMENTAL DAMAGE.

**9. Limitation of Remedies & Liabilities.** The following provisions are a material condition of this Agreement and reflect a fair allocation of risk:

9.1 Remedies. If Avisit breaches any provision of this Agreement, your sole and exclusive remedy will be to obtain a refund of unamortized license fees paid by you (using 3 year straight-line amortization). You also agree that legal remedies alone provide inadequate protection of Avisit's intellectual property rights in the Licensed Product and that, in addition to other relief, Avisit may without necessity of posting bond obtain temporary and permanent injunctions to enforce those rights.

9.2 Liabilities. AVISIT IS NOT LIABLE FOR ANY AMOUNT EXCEEDING THE LICENSE FEES ACTUALLY PAID BY YOU UNDER THIS AGREEMENT. IN NO EVENT SHALL AVISIT, ITS RESELLERS OR DISTRIBUTORS BE LIABLE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING LOST SAVINGS OR PROFIT, LOST DATA OR BUSINESS INTERRUPTION EVEN IF AVISIT IS NOTIFIED IN ADVANCE OF SUCH POSSIBILITY). THIS LIMITATION PROTECTS AVISIT AND ANY DISTRIBUTOR OR RESELLER FROM WHOM YOU OBTAINED THE LICENSED PRODUCT. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU. THIS LIABILITY LIMIT IS INDEPENDENT OF THE EXCLUSIVE REMEDY IN CLAUSE 9.1 ABOVE.

**10. Term & Termination.**

10.1 Generally. Unless terminated in accordance with this clause, your license will continue in perpetuity. Your license will terminate automatically if you breach any provision of this Agreement, if you fail to pay your license fee on the due date or if you breach any of the terms of the Oracle software to be used with the Licensed Software. You may terminate your license at any time at your election by permanently deleting the Licensed Product from all databases, servers and computers, destroying all copies and documentation and ceasing all further use.

10.2 Effect of Termination. Termination of this Agreement will terminate your right to possess or use the Licensed Product. Upon termination for any reason, you agree to destroy the original and all copies of the Licensed Product (including documentation) and cease all further use of it. Termination will have no effect on clause 7 ("Warranties"), clause 8 ("Not Fault Tolerant"), clause 9 ("Limitation of Remedies & Liabilities"), clause 11 ("Disputes, Choice of Law") and clause 13 ("Payment Default").

**11. Disputes, Choice of Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE SUBSTANTIVE LAWS OF NEW ZEALAND WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES. THE PARTIES WILL INITIATE ANY DISPUTE RESOLUTION PROCEEDING IN NEW ZEALAND AND IRREVOCABLY CONSENT TO THE EXCLUSIVE JURISDICTION OF NEW ZEALAND COURTS. YOU WILL BRING ANY ACTION AGAINST AVISIT ARISING OUT OF THIS AGREEMENT WITHIN 1 YEAR AFTER THE CLAIM ARISES, OR BE BARRED. You irrevocably agree that any claim will be brought and maintained by you on an individual basis (and not consolidated with similar cases). If Avisit is required to enforce this Agreement or its rights, you irrevocably agree to receive legal notices and papers by electronic mail at your

last known email address (Avisit would also attempt to send you a backup copy by regular mail or regular service).

**12. U.S. Government End Users.** The Licensed Product and related documentation are "Commercial Items" as defined in the United States at 48 C.F.R. 2.201, consisting of "Commercial Computer Software" and "Commercial Computer Software Documentation" as such terms are used in 48 C.F.R. 12.212 or 48 C.F.R. 227.7202-1 through 227.7202-4, as applicable. The Licensed Product and documentation are being licensed to U.S. Government end users: (a) only as Commercial Items and (b) with only those rights as are granted to all other end users pursuant to the terms of this Agreement. Unpublished rights are reserved under U.S. Copyright Law. The Contractor is Avisit Solutions Limited, with offices in Blockhouse Bay, Auckland, New Zealand.

**13. Payment Default.** If you fail to pay the license fee for the Licensed Product by the due date for payment then you agree to pay, on demand, the following additional amounts: (a) interest on the unpaid license fee at the rate of 15% per annum from the due date to the date of actual payment, (b) \$10 administration fee for every week that the license fee remains unpaid and (c) the actual costs of collection incurred by Avisit.

**14. Miscellaneous.** This document constitutes the entire and exclusive agreement between the parties and supersedes all other communications, whether written or oral. This document and evidence of its acceptance procedure shall be considered an original document with authenticated signature admissible into evidence. This Agreement may be modified or amended only by a writing signed by an authorized representative of Avisit. It is agreed that resellers and distributors of the Licensed Product have no authority to alter this Agreement. Any provision found by a tribunal of competent jurisdiction to be illegal or unenforceable shall be automatically conformed to the minimum requirements of law and all other provisions shall remain in full force and effect. Waiver of any provision of this Agreement in one instance shall not preclude enforcement of it on future occasions. Headings are for reference purposes only and have no substantive effect.