

The terms of the License and Support Agreement (“Agreement”) which accompanies the AppWave software is hereby incorporated herein. In the event of a conflict between these terms and the Agreement these terms will control.

**SUPPORT, MAINTENANCE AND ENHANCEMENTS (“Support”).** Licensee is entitled to the Support services defined below as part of an annual Support fee.

Support for Custom Apps and Third Party Apps comes in three levels as follows

- Tier 1: AppWave customers receive upgrades and access to online FAQ. Tier 2: Includes Tier 1 support and phone support for up to 15 cases per year. Tier 3: Includes Tier 1 support and customers get unlimited phone support based on normal Support hours.

Tiers are based on the following annual dollar spend for Custom and Third Party Apps Support:

- Up to USD\$2,000 annually in Support = Tier 1
- Over USD\$2,000 annually and under USD\$9,000 = Tier 2
- USD\$9,000 and over = Tier 3

**ELECTRONIC SERVICES.** To the extent that electronic services are available, Licensee may electronically access, at no charge, Support services which will be available twenty four (24) hours a day, seven (7) days per week. Such electronic services may include, but are not limited to: user forums, Product-specific information, hints and tips; bug fix retrieval via the Internet or World Wide Web access; Product maintenance and demonstration code retrieval via a WAN-accessible FTP server; and access to a problem resolution database via the Licensor customer support system.

**SUPPORT.** Support shall be applicable only to the Product licensed or sold under this Agreement for which Support fees have been paid. In the United States and Canada, Support is provided from 6:00 AM through 6:00 PM PST Monday through Friday, excluding United States federal holidays.

Embarcadero only provides support for the AppWave product. It does not provide support for the product that runs in AppWave. It is Licensee’s obligation to determine if use of the AppWave technology impacts any support contract Licensee may have with third party software suppliers.

**TERMINATION OF SUPPORT.** Licensee may cancel enrollment in Support upon written notice to Licensor at least (30) days prior to the next Support Anniversary Date. If Licensee has terminated its enrollment in Support, Licensee may re-enroll by paying a reinstatement fee consisting of all Support fees due for the period during which Licensee was not enrolled in Support. In addition, Licensee must pay the annual charge for Support for the next year in advance. Such reinstatement date shall then be considered the Support Anniversary Date. Licensee agrees not to modify the Product without the prior written approval of Licensor. Unapproved alterations to the Product shall void any obligation by Licensor to provide Support for the Product, pursuant to this Section, during the warranty period and any subsequent period in which Licensee is enrolled in Support.

**CHANGE OF SUPPORT FEES.** Licensor reserves the right to change its then current published list prices for the Products and its charge for Support at any time upon thirty (30) days written notice to Licensee. Any such change to Support shall not take effect until the completion of the then current support term. Notwithstanding the foregoing, for new license contracts, the support services fee quoted for the initial order period will be the basis for the renewal fee in the two subsequent years, subject to price increases not to exceed 5% per annum.

**SERVICES; UPDATES; PRODUCT CHANGES.** Licensor is not required under this Agreement to provide any installation, training or other services to licensee. Such services, if available, must be purchased separately. If Licensee purchases support and Licensor provides licensee with a new release, error correction, update, upgrade or other modification to the Product, such modification will be deemed part of the Product, and subject to the terms of this License, unless the modification is expressly provided subject to a separate license agreement. If licensee has acquired an upgrade version of the Product, such upgrade constitutes a single Product together with the copy of the Product that licensee upgraded. This means that, although licensee may have two sets of Product media and/or two license keys, licensee still has only one license. Therefore, licensee may not transfer the original copy of the Product or license key to any other party or user. Licensor reserves the right at any time not to release or to discontinue release of any Product and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Product.