

This Agreement is made:

between **WhereScape, Inc., a Delaware corporation (the "Company")**  
and **You (the "Licensee")**

## General Terms

### 1. Definitions

1.1 In this Agreement, unless the context otherwise requires

**Confidential Information** means all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including terms of this Agreement, but does not include information which is, or becomes publicly available other than through unauthorized disclosure by the other party. In the case of the Company, the term Confidential Information includes the Software and the Documentation;

**Control** means, in relation to a party, the power to:

- (a) manage, directly or indirectly, the operation of the business; or
- (b) control, directly or indirectly, the composition of the board of directors or board of management, of that party, whether through the ownership of voting securities, by contract or otherwise;

**Data Warehouse Repository** means a single data warehouse consisting of one or more object sets (e.g. dimensional, normalized or data store) as defined in the License Fee invoice and confirmed by you when using the WhereScape RED License Key, and underlying support tables and utilities on one or more hardware devices sharing common objects (including but not limited to dimension tables) and may include copies or near copies used for development and testing purposes;

**Documentation** means software user guides (including those in electronic form), handbooks, maintenance libraries, educational materials and all other related material supplied by the Company to the Licensee for aiding the use of the Software;

**Initial Support Period** means the first 12 months Support Services, commencing on the date of the invoice for the License Fee and ceasing on the same date in the following year;

**Licensee Template** means any Template for use within the Software, except a Standard Template which is supported within that version of the Software;

**License Fee** means the sum invoiced to the Licensee by the Company for the Licensee's use of the WhereScape Software and for provision of Support Services for the Initial Support Period;

**Non Production Purposes** means the Licensee using the Software for the purposes of evaluation and testing but not production;

**Open Source Software** means the open source software and/or artefacts set out in Schedule A;

**Proprietary Rights** means all rights to patents, trademarks, service marks, trade names, inventions, trade secrets, copyright, moral rights, rights in a design, know-how, confidential information and all or any other intellectual property rights whether or not registered (together with the right to seek any such registration) and the right to enforce such rights which relate to the origin, manufacture, programming, operating and/or servicing of the WhereScape Software and Documentation and any related enhancements or modifications;

**Software** means the WhereScape Software and the Open Source Software; **Standard Template** means a Template provided by the Company as part of the Software in the form it has been provided by the Company.

**Support Agreement** means the software support agreement set out in Annex B;

**Support Fee** means those sums invoiced to the Licensee by the Company for the provision of the Support Services including any applicable Additional Fees (as that term is defined in the Support Agreement);

**Support Services** means the support services specified in the Support Agreement and provided in accordance with the terms of that agreement;

**Template** means a file used to generate textual output using the Software's built-in template engine;

**Warranty Period** means the period of 30 days starting from the date of the invoice for the License Fee;

**WhereScape RED License Key** means the WhereScape RED License Key that you have applied to the Company for, which the Company has provided to you; and

**WhereScape Software** means the object code version of the WhereScape RED software application excluding the Open Source Software.

1.2 In this Agreement:

- (a) clause and other headings are for ease of reference only and will not be deemed to form any part of the context or to affect the interpretation of this Agreement;
- (b) the word **person** includes any corporation, entity or unincorporated body or association of persons; and
- (c) words importing the singular include the plural and vice versa.

### 2. License and Support

2.1 On payment of the License Fee in accordance with clause 4, the Company grants to the Licensee a perpetual, non-exclusive, non-transferable license to use the Software for the Licensee's own internal business purposes for one Data Warehouse Repository for that number of seats, object sets and usage identified in the License Fee invoice and confirmed by you when using the WhereScape RED License Key, in accordance the terms and conditions of this Agreement. By installing or using the Software, the Licensee acknowledges that it has read and agrees to be bound by the terms of this Agreement.

2.2 The Licensee acknowledges that the License Fee contains an amount for provision of Support Services for the Initial Support Period but that this amount does not include any Additional Fees (as that term is defined in the Support Agreement) which may be payable during the Initial Support Period in accordance with the terms of the Support Agreement.

- 2.3 The Support Services will commence on the date of the invoice for the License Fee unless otherwise agreed in writing between the parties.
- 2.4 For the avoidance of doubt the continuation of the License will not be dependent on the Support Agreement continuing beyond the Initial Support Period.
- 2.5 Either party may terminate the Support Agreement with effect from the end of the Initial Support Period in accordance with the Support Agreement.
- 2.6 Should the Support Agreement continue on after the Initial Support Period, the Licensee will pay additional Support Fees in accordance with the Support Agreement.
- 2.7 Where the Licensee has been using the WhereScape Software under an existing license, this Agreement shall supersede and replace any existing license.

### 3. **Open Source Software**

- 3.1 The Licensee acknowledges and agrees that:
- (a) the Software includes Open Source Software;
  - (b) notwithstanding anything to the contrary in this Agreement, the relevant terms set out in Annex A of this Agreement shall apply to the Licensee's use of the Open Source Software;
  - (c) in the event of any conflict or inconsistency between the terms of this Agreement and the terms set out in Annex A in respect of the Open Source Software, the terms of Annex A shall prevail in respect of the Open Source Software to the extent of such conflict or inconsistency; and
  - (d) the Open Source Software is licensed under this Agreement by WhereScape only and the Licensee shall not have any rights, or make any claims, against any other contributors to the Open Source Software (other than WhereScape) under or in connection with this Agreement.

### 4. **Payment**

- 4.1 The Licensee will pay the License Fee and any subsequent Support Fees, plus sales tax or any other equivalent tax as may be applicable including remittance, sales, use, excise, stamp and value added taxes to the Company within 20 days of the date of the relevant invoice.
- 4.2 The Licensee is responsible for payment of all duties or taxes. Import duty, where applicable, will be charged by the Company at the rate in effect on the invoice date.
- 4.3 If the Licensee is required by law to make any deduction or withholding from the License Fee or any other amount paid or payable by it under this Agreement then the License Fee or other amount payable by the Licensee in respect of which that deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that, after that deduction, withholding or payment is made, the Company receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no such deduction, withholding or payment been made.

### 5. **Protection of proprietary rights**

- 5.1 The Licensee acknowledges that the Proprietary Rights in the WhereScape Software and Documentation relating to the WhereScape Software belong to the Company and the Licensee will not dispute such ownership.
- 5.2 The Licensee may not copy the WhereScape Software or Documentation relating to the WhereScape Software in whole or in part in any visual or machine readable form, except to the extent that such copying is necessary for the Licensee's own backup purposes.
- 5.3 The Licensee undertakes that it will:
- (a) not reproduce, translate, reverse-engineer, adapt, vary or modify the WhereScape Software nor communicate the same to any person except as permitted by this Agreement;
  - (b) not transfer, assign or otherwise deal in or grant a security interest in the WhereScape Software, the Documentation relating to the WhereScape Software or the Licensee's rights under this Agreement;
  - (c) maintain all copyright notices on the Software and Documentation; and
  - (d) notify the Company in writing immediately if it has knowledge of the existence of any circumstances which may suggest that any person may have unauthorized knowledge, possession or use of the WhereScape Software or Documentation.
- 5.4 The Licensee's obligations under this clause 5 will survive termination of this Agreement.

### 6. **Warranty**

- 6.1 The Company warrants that it has full power and authority to license the WhereScape Software to the Licensee.
- 6.2 The Company warrants that to the best of its knowledge and belief the Software does not infringe any copyright or any US patent.
- 6.3 If the Company reasonably believes that the Software or Documentation may infringe the intellectual property rights of a third party, the Company may in its absolute discretion and at its own expense do one or more of the following:
- (a) defend any claim of infringement and the Licensee will permit the Company to control the defense and settlement of the claim for infringement and co-operate with the Company in the defense and settlement of the claim; or
  - (b) replace or modify the Software so that it becomes non-infringing; or
  - (c) obtain a license for the Licensee to continue using the Software; or
  - (d) terminate this Agreement and refund the Residual Amount. For the purposes of this clause the "**Residual Amount**" shall be that proportion of the License Fee paid under this Agreement amortized over a period of five years starting from the date of the invoice for the License Fee, down to and thereafter remaining at a base level of 10% of the License Fee.
- 6.4 The Company does not warrant that the Software will meet the Licensee's requirements whether or not these requirements have been made known to the Company.
- 6.5 The Company warrants that, during the Warranty Period, the Software will function substantially in accordance with the Documentation. The Licensee acknowledges that the Software is of a complicated and technical nature and may have minor or inherent defects.

- 6.6 The Company will not be liable for any failure of the Software if alterations to the Software have been made by any person other than the Company (unless such alterations have been made with the Company's prior written consent) or if the failure has arisen as a result of the Software not being used in accordance with the Documentation.
- 6.7 Should any defects or errors occur in the Software during the Warranty Period the Licensee will notify the Company and provide documented examples of any defects or errors in the Software.
- 6.8 Upon the Licensee providing examples of defects or errors in the manner set out in clause 6.7, the Company will use reasonable endeavors to correct the Software.
- 6.9 Where the Company is unable to correct the Software pursuant to clause 6.8 the Company may (and the Licensee's sole and exclusive remedy shall be limited to) at the Company's discretion:
- (a) replace the Software in whole or in part with alternative software that fulfills the same purpose and performs to the levels set out in the Documentation;
  - (b) refund the License Fee paid under this Agreement.
- 6.10 The Software contains Standard Templates, which the Company may update or modify from time to time. In addition to this the Software allows the Licensee to use Licensee Templates. The Company makes no warranties as to the suitability of any Licensee Template for any purpose whatsoever. In updating or modifying the Software the Company may modify, update or discontinue (and therefore cease to support) any Standard Template provided as part of an earlier version or update of the Software. The Company warrants that any Standard Template that it supports for a version of the Software will be suitable for use with that version but does not warrant that any Standard Template that it has ceased to support will continue to be so. The Company will in developing any future versions or updates of the Software use reasonable endeavors to take into account the impact that the changes to the Software may have on the utility of any Templates the Licensee may have used but makes no warranty that any Template will be compatible with any future versions or updates of the Software.
- 6.11 No issue with any Licensee Template will be considered to be a defect or error under clause 6.7.

## 7. **Limitation of liability**

- 7.1 Except as expressly provided in this Agreement, all representations or warranties (statutory, express or implied) except any which may not lawfully be excluded, are expressly excluded, including without prejudice to the generality of the foregoing, the implied warranties of merchantability and fitness for a particular purpose.
- 7.2 Notwithstanding anything in this Agreement to the contrary, the Company will not be liable under the law of tort, contract or otherwise for any loss of profits or any indirect or consequential loss or damage, however caused, arising out of or in connection with the use of the Software or Documentation.
- 7.3 The Company will have no liability for any loss or damage whatsoever, whether direct or indirect, arising out of the Licensee's creation or use of any Licensee Templates, including as a result of any Licensee Template ceasing to be compatible with the Software, whether as a result of a failure by the Company to ensure compatibility or otherwise.
- 7.4 The Company's liability to the Licensee arising out of all claims for damages under this Agreement will not exceed in aggregate the total amount of the License Fee actually paid by the Licensee.

## 8. **Default and termination**

- 8.1 The Company may terminate this Agreement immediately by notice in writing to the Licensee if the Licensee:
- (a) breaches any of its obligations under this Agreement and fails to remedy the breach within 14 days after notice from the Company requiring the breach to be remedied; or
  - (b) becomes bankrupt, goes or is put into liquidation, has a receiver or statutory manager appointed of any of its assets, becomes insolvent, ceases to carry on its business or makes any composition or arrangement with its creditors.
- 8.2 The Licensee may terminate this Agreement at any time immediately by notice in writing to the Company.
- 8.3 Immediately following termination of this Agreement the Licensee must, at the Company's option but subject to clause 3, either destroy or deliver to the Company all copies of the Software and Documentation in whatever form possessed by the Licensee.

## 9. **Publicity and Press Release**

The Company:

- (a) may while this Agreement continues:
  - (i) use the Licensee's name or logo on the Company's website; and
  - (ii) use the Licensee's name or logo in the Company's collateral marketing materials relating to the Software;
- (b) may issue a press release announcing the Licensee's use of the Software;
- (c) may write and publish a case study detailing Licensee's use of the Software, the project(s) for which the Software was used, and the business and technical benefits arising from the project(s); and
- (d) may use the Licensee as a reference for the Software provided that if the Company is aware that a third party proposes contacting the Licensee the Company shall notify the Licensee and arrange a time that is suitable for the third party to make such contact.

## 10. **Confidentiality**

- 10.1 Both parties will preserve the confidentiality of all Confidential Information of the other obtained in connection with this Agreement. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by this Agreement. The Licensee will require its officers, employees and agents not to use, disclose or copy any Confidential Information for any purpose except as permitted by this Agreement.
- 10.2 Notwithstanding clause 10.1 a party may disclose Confidential Information which it is obliged by law to disclose, provided that it has first advised the other party of this obligation, has allowed the other party reasonable time to avoid the disclosure having to be made, and has given the other party such assistance (at the other party's own cost) as the other party reasonably requests in doing this.

10.3 The obligations of the parties to ensure non-disclosure and confidentiality of Confidential Information under this clause 10 will survive termination of this Agreement.

11. **Force Majeure**

11.1 Neither party hereto will be held to have committed a breach of this Agreement by virtue of any failure on its part caused by governmental or local governmental interference, statute, regulations, restrictions, law, control, war, strike, lockout, go slow, work to rule, fire, flood, civil disturbance or other cause beyond its reasonable control and for which it is not responsible.

12. **General**

12.1 Any notice to be given in terms of this Agreement must be made in writing, by email or by facsimile transmission sent to the registered office or principal place of business of the other party or to such other address as may be notified by either party to the other from time to time. Any communication by email or facsimile transmission will be deemed to be received when transmitted to the correct email or facsimile transmission address of the recipient. Any other communication in writing will be deemed to be received when left at the specified address of the recipient or on the third day following the date of posting.

12.2 No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of this Agreement will not be interpreted as a waiver of the provision.

12.3 Except to the extent a previous written agreement expressly overrides this Agreement, this Agreement constitutes the entire agreement between the parties and supersedes all previous negotiations, commitments and/or writings, provided that, where a confidentiality agreement has previously been signed by the parties, that confidentiality agreement will continue in full force and effect, except to the extent of any inconsistency with this Agreement.

12.4 No alteration of this Agreement will be binding unless it is in writing and executed by both parties.

12.5 The Licensee may not assign or transfer this Agreement or any of its rights or obligations hereunder without the prior written consent of the Company. A change in the ownership or Control of the Licensee is deemed to be an assignment of the Agreement.

12.6 If any provision of this Agreement is invalid or unenforceable, the remaining provisions of this Agreement will not be affected and will continue in full force.

12.7 This Agreement may be executed by the parties in counterparts, each of which will be deemed to be an original and all of which will constitute one and the same agreement.

12.8 Licensee acknowledges that the Software and all related technical information, documents and materials are subject to export controls under the U.S. Export Administration Regulations. Licensee covenants and agrees to comply with all import and export control regulations of the United States with respect to the Software. Licensee acknowledges that it may not re-export or divert the Software or any related technical information, document or material, or direct derivatives thereof, to any country set forth on the U.S. Department of Commerce's list of T-5 countries (currently, Cuba, Iran, North Korea, Sudan and Syria), including any future changes to the government's list of T-5 countries.

12.9 This Agreement is subject to the laws of Texas and the parties submit to the exclusive jurisdiction of the courts in Travis County, Texas. In addition to any other rights and remedies available to the Company for breach of this Agreement, the Company will be entitled to enforcement by court injunction or restraining order.

## Annex A – Open Source Software

The following software is the Open Source Software and that software is subject to the license terms under which it is grouped.

### A.1 Apache License, Version 2.0

The following artefacts are subject to Appendix A.1 to this Annex:

Artefact	Copyright
commons-io 2.4	Copyright 2002-2012 The Apache Software Foundation
joda-time 2.3	Copyright is asserted by the owner(s) of the software
hadoop-core 1.2.1	Copyright is asserted by the owner(s) of the software
hive-jdbc 0.13.1	Copyright is asserted by the owner(s) of the software
ant 1.6.5	Copyright is asserted by the owner(s) of the software
jackson-annotations 2.3.2	Copyright is asserted by the owner(s) of the software
jackson-core2.3.2	Copyright is asserted by the owner(s) of the software
jackson-databind 2.3.2	Copyright is asserted by the owner(s) of the software
jackson-jaxrs-base 2.3.2	Copyright is asserted by the owner(s) of the software
jackson-jaxrs-json-provider 2.3.2	Copyright is asserted by the owner(s) of the software
jackson-module-jaxb-annotations 2.3.2	Copyright is asserted by the owner(s) of the software
jsr305 1.3.9	Copyright is asserted by the owner(s) of the software
guava 11.0.2	Copyright is asserted by the owner(s) of the software
bonecp 0.8.0	Copyright is asserted by the owner(s) of the software
commons-beanutils 1.7.0	Copyright is asserted by the owner(s) of the software
commons-beanutils-core 1.8.0	Copyright is asserted by the owner(s) of the software
commons-cli 1.2	Copyright 2001-2009 The Apache Software Foundation
commons-codec 1.4	Copyright is asserted by the owner(s) of the software
commons-collections 3.2.1	Copyright is asserted by the owner(s) of the software
commons-configuration 1.6	Copyright is asserted by the owner(s) of the software
commons-digester 1.8	Copyright is asserted by the owner(s) of the software
commons-httpclient 3.0.1	Copyright is asserted by the owner(s) of the software
commons-lang 2.4	Copyright is asserted by the owner(s) of the software
commons-logging 1.1.3	Copyright is asserted by the owner(s) of the software
commons-net 1.4.1	Copyright is asserted by the owner(s) of the software
jdo-api 3.0.1	Copyright is asserted by the owner(s) of the software
validation-api 1.1.0.final	Copyright is asserted by the owner(s) of the software
log4j 1.2.17	Copyright is asserted by the owner(s) of the software
jets3t 0.6.0	Copyright is asserted by the owner(s) of the software
jpm 1.1	Copyright is asserted by the owner(s) of the software
ant 1.9.1	Copyright is asserted by the owner(s) of the software
ant-launcher 1.9.1	Copyright is asserted by the owner(s) of the software
avro 1.7.5	Copyright is asserted by the owner(s) of the software
commons-compress 1.4.1	Copyright is asserted by the owner(s) of the software
commons-lang3 3.1	Copyright is asserted by the owner(s) of the software
commons-math 2.1	Copyright is asserted by the owner(s) of the software
derby 10.10.1.1	Copyright is asserted by the owner(s) of the software
geronimo-annotation 1.0 spec 1.1.1	Copyright is asserted by the owner(s) of the software
geronimo-jaspic 1.0 spec 1.0	Copyright is asserted by the owner(s) of the software
geronimo-jta 1.1 spec 1.1.1	Copyright is asserted by the owner(s) of the software
hive-ant 0.13.1	Copyright is asserted by the owner(s) of the software
hive-common 0.13.1	Copyright is asserted by the owner(s) of the software
hive-exec 0.13.1	Copyright is asserted by the owner(s) of the software
hive-metastore 0.13.1	Copyright is asserted by the owner(s) of the software
hive-serde 0.13.1	Copyright is asserted by the owner(s) of the software
hive-service 0.13.1	Copyright is asserted by the owner(s) of the software
hive-shims 0.13.1	Copyright is asserted by the owner(s) of the software
hive-shims-common 0.13.1	Copyright is asserted by the owner(s) of the software
hive-shims-common-secure 0.13.1	Copyright is asserted by the owner(s) of the software
httpclient 4.2.5	Copyright is asserted by the owner(s) of the software
httpcore 4.2.5	Copyright is asserted by the owner(s) of the software
libfb303 0.9.0	Copyright is asserted by the owner(s) of the software
velocity 1.5	Copyright is asserted by the owner(s) of the software
zookeeper 3.4.5	Copyright is asserted by the owner(s) of the software
groovy-all 2.1.6	Copyright is asserted by the owner(s) of the software
jackson-core-asl 1.8.8	Copyright is asserted by the owner(s) of the software
jackson-mapper-asl 1.8.8	Copyright is asserted by the owner(s) of the software
detanucleus-api-jdo 3.2.6	Copyright is asserted by the owner(s) of the software

datanucleus-rdbms 3.2.9	Copyright is asserted by the owner(s) of the software
jetty-all 7.6.0.v20120127	Copyright is asserted by the owner(s) of the software
jetty 6.1.26	Copyright is asserted by the owner(s) of the software
jetty-util 6.1.26	Copyright is asserted by the owner(s) of the software
jsp-api-2.1 6.1.14	Copyright is asserted by the owner(s) of the software
snappy-java 1.0.5	Copyright is asserted by the owner(s) of the software
jasper-compiler 5.5.12	Copyright is asserted by the owner(s) of the software
jasper-runtime 5.5.12	Copyright is asserted by the owner(s) of the software
cpprestsdk	Copyright (c) Microsoft Corporation. All rights reserved.
jackson-databind 2.7.5	Copyright is asserted by the owner(s) of the software
jackson-annotation 2.7.0	Copyright is asserted by the owner(s) of the software
jackson-core 2.7.5	Copyright is asserted by the owner(s) of the software
com.google.guava 16.0.1	Copyright is asserted by the owner(s) of the software
diff-match-patch-cpp-stl	Copyright 2008 Google Inc. All Rights Reserved.

## A.2 MIT License

The following artefacts are subject to Appendix A.2 to this Annex:

Artefact	Copyright
slf4j-log4j12 1.7.2	Copyright © 2004-2014 QOS.ch.
slf4j-api 1.7.5	Copyright © 2004-2014 QOS.ch.
slf4j-api 1.6.1	Copyright © 2004-2014 QOS.ch.
Json.NET 10.0.3	Copyright (c) 2007 James Newton-King

## A.3 Common Development and Distribution License Version 1.0

The following artefacts are subject to Appendix A.3 to this Annex:

Artefact	Copyright	Source code available at:
jersey-container-servlet 2.16	Copyright © 2012-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/project/jersey-container-servlet/">https://jersey.java.net/project/jersey-container-servlet/</a>
jersey-media-json-jackson 2.16	Copyright © 2012-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/project/jersey-media-json-jackson/">https://jersey.java.net/project/jersey-media-json-jackson/</a>
jsp-2.1	Copyright is asserted by the owner(s) of the software	<a href="http://jetty.mortbay.org/project/modules/jsp-2.1">http://jetty.mortbay.org/project/modules/jsp-2.1</a>
javax.annotation-api 1.2	Copyright © 2012-2013 Oracle and/or its affiliates. All rights reserved.	<a href="http://jcp.org/en/jsr/detail?id=250">http://jcp.org/en/jsr/detail?id=250</a>
hk2-utils 2.4.0-b09	Copyright © 2010-2014 Oracle and/or its affiliates. All rights reserved.	<a href="https://hk2.java.net/hk2-utils">https://hk2.java.net/hk2-utils</a>
javax.ws.rs-api 2.0.1	Copyright © 2011-2014 Oracle and/or its affiliates. All rights reserved.	<a href="http://jax-rs-spec.java.net/">http://jax-rs-spec.java.net/</a>
hk2-api 2.4.0-b09	Copyright © 2010-2014 Oracle and/or its affiliates. All rights reserved.	<a href="https://hk2.java.net/hk2-api">https://hk2.java.net/hk2-api</a>
hk2-locator 2.4.0-b09	Copyright © 2010-2014 Oracle and/or its affiliates. All rights reserved.	<a href="https://hk2.java.net/hk2-locator">https://hk2.java.net/hk2-locator</a>
osgi-resource-locator 1.0.1	Copyright © 2010-2011 Sun Microsystems, Inc. All rights reserved.	<a href="http://glassfish.org/osgi-resource-locator/">http://glassfish.org/osgi-resource-locator/</a>
aopalliance-repackaged 2.4.0-b09	Copyright © 2013-2014 Oracle and/or its affiliates. All rights reserved.	<a href="https://hk2.java.net/external/aopalliance-repackaged">https://hk2.java.net/external/aopalliance-repackaged</a>
javax.inject 2.4.0-b09	Copyright © 2010-2014 Oracle and/or its affiliates. All rights reserved.	<a href="https://hk2.java.net/external/javax.inject">https://hk2.java.net/external/javax.inject</a>
jersey-guava 2.16	Copyright © 2014-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/project/project/jersey-guava/">https://jersey.java.net/project/project/jersey-guava/</a>
jersey-container-servlet-core 2.16	Copyright © 2012-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/project/jersey-container-servlet-core/">https://jersey.java.net/project/jersey-container-servlet-core/</a>
jersey-client 2.16	Copyright © 2011-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/jersey-client/">https://jersey.java.net/jersey-client/</a>
jersey-common 2.16	Copyright © 2010-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/jersey-common/">https://jersey.java.net/jersey-common/</a>
jersey-server 2.16	Copyright © 2010-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/jersey-server/">https://jersey.java.net/jersey-server/</a>
jersey-entity-filtering 2.16	Copyright © 2013-2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/project/jersey-entity-filtering/">https://jersey.java.net/project/jersey-entity-filtering/</a>
jersey-media-jaxb 2.16	Copyright © 2015 Oracle and/or its affiliates. All rights reserved.	<a href="https://jersey.java.net/project/jersey-media-jaxb/">https://jersey.java.net/project/jersey-media-jaxb/</a>

## A.4 BSD

The following artefacts are subject to Appendix A.4 to this Annex:

Artefact	Copyright
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asm 3.1	Copyright © 2000-2011 INRIA, France Telecom. All rights reserved.
asm-commons 3.	Copyright © 2000-2011 INRIA, France Telecom. All rights reserved.
asm-tree 3.1:	Copyright © 2000-2011 INRIA, France Telecom. All rights reserved.
paranamer 2.3:	Copyright © 2006 Paul Hammant & ThoughtWorks Inc. All rights reserved.
jline 0.9.94:	Copyright © 2002-2006 Marc Prud'hommeaux <a href="mailto:mwpl@cornell.edu">mwpl@cornell.edu</a> . All rights reserved.
st4 4.0.4:	Copyright © 2012 Terrence Parr. All rights reserved
stringtemplate 3.2.1:	Copyright © 2012 Terrence Parr. All rights reserved
xmlenc 0.52:	Copyright © 2003-2005 Ernst de Haan <a href="mailto:wfe.dehaan@gmail.com">wfe.dehaan@gmail.com</a> . All rights reserved.
antlr-runtime 3.4	Copyright is asserted by the owner(s) of the software
Websocket++ version 0.3.0	Copyright (c) 2013, Peter Thorson. All rights reserved.
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coverity-escapers 1.1	Copyright © 2012-2016 Coverity Inc. All rights reserved.
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  - This License constitutes the entire agreement between the parties with respect to the Work licensed herein. There are no understandings, agreements or representations with respect to the Work not specified herein. The Author shall not be bound by any additional provisions that may appear in any communication from You. This License may not be modified without the mutual written agreement of the Author and You.

# Annex B - Support Agreement

This Support Agreement is made:

between **WhereScape, Inc., a Delaware corporation (the "Company")**

and **You (the "Client")**

## Introduction

The Client has acquired a license for the Software (as defined below). The Company requires that any licensee of the Software acquire Support Services (as defined below) for the initial 12-month period. After that initial 12 months, the Company will continue to provide the Support Services for the period that this Support Agreement continues.

## General Terms

### 1. Interpretation

1.1 In this Support Agreement, unless the context otherwise requires:

**Additional Fees** has the meaning set out in clause 2.4 of this Support Agreement;

**Commencement Date** means the date of the invoice for the License Fee;

**Confidential Information** means all information exchanged between the parties to this Agreement, whether in writing, electronically or orally, including terms of this Agreement, but does not include information which is, or becomes publicly available other than through unauthorized disclosure by the other party. In the case of the Company, the term Confidential Information includes the WhereScape Software and the Documentation;

**Documentation** has the meaning set out in the License Agreement;

**Fault** means a failure of the Software to operate in accordance with the Documentation;

**License Agreement** means the license agreement for the Software, to which this Agreement is annexed;

**License Fee** has the meaning set out in the License Agreement;

**Open Source Software** means the open source software and/or artefacts set out in Schedule A of the License Agreement;

**Software** means the WhereScape Software and the Open Source Software;

**Support Services** means the investigation, diagnosis, repair and correction of faults as detailed in Schedule A in relation to the Software and the provision of new versions or updates of the WhereScape Software (if any) developed and made generally available by the Company;

**Support Charges** means the annual fee payable by the Client for the provision of the Support Services as identified in the invoice for the License Fee, or such amended amount as the Company may advise from time to time in accordance with clauses 3.4 and 3.5 of this Support Agreement, but excludes any Additional Fees;

**Support Hours** means 8.30 am until 5 pm (Texas time) on Working Days;

**Support Period** means the period from the Commencement Date until the date on which this Agreement is terminated pursuant to clause 6 of this Support Agreement;

**WhereScape Software** means the object code version of the WhereScape RED software application excluding the Open Source Software; and

**Working Day** means a day on which businesses and banks in Austin, Texas are generally open for business.

1.2 In this Agreement:

- (a) clause and other headings are for ease of reference only and will not be deemed to form any part of the context or to affect the interpretation of this Agreement;
- (b) the word **person** includes a corporation; and
- (c) words importing the singular include the plural and vice versa.

### 2. Support Services

2.1 In consideration of the Support Charges the Company will provide to the Client Support Services for the Software during the Support Period.

2.2 The Company will not be obliged to provide support or training other than that which it customarily provides to its other clients for similar software.

2.3 Support Services will be provided during the Support Hours. The Company will ensure that suitable qualified personnel are used in the provision of Support Services and will use its reasonable endeavors to provide Support Services promptly.

2.4 The Company may charge additional fees ("**Additional Fees**") at its then current hourly rates (as advised from time to time) for Support Services resulting from:

- (a) Support Services requested by the Client to be provided outside Support Hours;
- (b) improper use or misuse of the Software, including failure to adhere to any written or verbal operating instructions or procedures laid down by the Company;
- (c) preparation and/or provision of additional or replacement software;
- (d) repair of the Client's data in excess of two hours on any one occasion; or
- (e) unauthorized maintenance, alteration or modification made to the WhereScape Software by any person other than the Company.

2.5 Nothing in this Agreement will require the Company to carry out without extra charge any alteration or modification to the Software.

### 3. Support Charges and Other Payments

- 3.1 The Client will pay the Support Charges annually in advance. Any Additional Fees for Support Services will be invoiced monthly in arrears.
- 3.2 The Company may withhold Support Services until all amounts due by the Client to the Company under this Agreement have been paid in full.
- 3.3 If the Client defaults in payment of any instalment of the Support Charges or other moneys payable under this Agreement the Company may (without prejudice to its other rights) charge interest on the unpaid amount from the due date until the date of actual payment at 2% per annum over the base overdraft facility rate charged by the Company's bankers from time to time.
- 3.4 The Company may increase the Support Charges for the Software by giving not less than one month's written notice. Upon giving notice the Support Charges will increase with effect from the next anniversary of the Commencement Date following expiry of the notice period.
- 3.5 Notwithstanding clause 3.4, if the Client alters the system configuration of the WhereScape Software, purchases additional or replacement software or alters the number of seats for the WhereScape Software, the Company may adjust the Support Charges to reflect its then current charges for the new configuration, software or number of seats and the Client will pay the adjusted Support Charges from the date on which the change occurs.
- 3.6 The Client will pay the Support Charges and any Additional Fees, plus sales tax or any other equivalent tax as may be applicable including remittance, sales, use, excise, stamp and value added taxes to the Company within 20 days of the date of the relevant invoice.
- 3.7 The Client is responsible for payment of all duties or taxes. Import duty, where applicable, will be charged by the Company at the rate in effect on the invoice date.
- 3.8 If the Client is required by law to make any deduction or withholding from the Support Charges, Additional Fees or any other amount paid or payable by it under this Agreement then the Support Charges, Additional Fees or other amount payable by the Client in respect of which that deduction, withholding or payment is required to be made shall be increased to the extent necessary to ensure that, after that deduction, withholding or payment is made, the Company receives and retains (free from any liability in respect of any such deduction, withholding or payment) a net amount equal to the amount which it would have received and so retained had no such deduction, withholding or payment been made.
- 4. Confidentiality**
- 4.1 Both parties will preserve the confidentiality of all Confidential Information of the other obtained in connection with this Agreement. Neither party will, without the prior written consent of the other, disclose or make any Confidential Information available to any person, or use the same for its own benefit, other than as contemplated by this Agreement. The Client will require its officers, employees and agents not to use, disclose or copy any Confidential Information for any purpose except as permitted by this Agreement.
- 4.2 Notwithstanding clause 4.1 a party may disclose Confidential Information which it is obliged by law to disclose, provided that it has first advised the other party of this obligation, has allowed the other party reasonable time to avoid the disclosure having to be made, and has given the other party such assistance (at the other party's own cost) as the other party reasonably requests in doing this.
- 4.3 The obligations of the parties to ensure non-disclosure and confidentiality under this clause 4 will survive termination of this Agreement.
- 5. Limitation of liability**
- 5.1 Except as expressly provided in this Agreement all representations or warranties (statutory, express or implied), except any which may not lawfully be excluded, are expressly excluded.
- 5.2 Notwithstanding anything in this Agreement to the contrary, the Company will not be liable under the law of tort, contract or otherwise for any loss of profits or any indirect or consequential loss or damage.
- 5.3 The Company's liability to the Client arising out of all claims for damages under this Agreement will not exceed in aggregate the total annual amount of the Support Charges actually paid by the Client.
- 5.4 The Company will not be in default by reason of any failure to perform its obligations under this Agreement caused by any act or any event beyond the Company's control. In any such event the Company will use its reasonable endeavors to resume its obligations under this Agreement as soon as possible.
- 6. Default and termination**
- 6.1 The Client may terminate this Agreement by giving the Company 90 days' written notice at any time. The Company may terminate this Agreement with effect from the next anniversary of the Commencement Date by giving the Client not less than 90 days' written notice.
- 6.2 Provided that no such notice will have effect prior to the first anniversary of the Commencement Date, the Client may terminate this Agreement with immediate effect by giving the Company written notice within 20 days of the date of an annual invoice for Support Charges.
- 6.3 The Company may by written notice to the Client terminate this Agreement immediately if:
- (a) the Client's license to use the Software is terminated for any reason;
  - (b) the Client breaches any of its obligations under this Agreement and fails to remedy such breach within 14 days after notice from the Company specifying the breach and requiring it to be remedied; or
  - (c) the Client becomes bankrupt or goes into liquidation or has a receiver or statutory manager appointed for its assets or any of them or becomes insolvent, ceases to carry on its business or makes any composition or arrangement with its creditors.
- 6.4 In the event of termination by:
- (a) the Client in accordance with clause 6.1 or 6.2 of this Support Agreement; or
  - (b) the Company in accordance with clause 6.3 of this Support Agreement,
- the Client will not be entitled to a refund of any Support Charges for unused Support Services.
- 6.5 In the event of termination the Client must deliver to the Company all copies of the documentation relating to the Support Services and any materials containing any Confidential Information of the Company in whatever form possessed by the Client.



7. **General**

- 7.1 Any notice to be given in terms of this Agreement must be made in writing, by email or by facsimile transmission sent to the registered office or principal place of business of the other party or to such other address as may be notified by either party to the other from time to time. Any communication by email or facsimile transmission will be deemed to be received when transmitted to the correct email or facsimile transmission address of the recipient. Any other communication in writing will be deemed to be received when left at the specified address of the recipient or on the third day following the date of posting.
- 7.2 No waiver of any breach of this Agreement will be deemed to be a waiver of any other or any subsequent breach. The failure of any party to enforce any provision of this Agreement will not be interpreted as a waiver of the provision.
- 7.3 This Agreement along with the License Agreement constitutes the entire agreement between the parties with respect to the Support Services and supersedes all previous negotiations, commitments and/or writings, provided that, where a confidentiality agreement has previously been signed by the parties, that confidentiality agreement will continue in full force and effect, except to the extent of any inconsistency with this Agreement.
- 7.4 Except as provided in clauses 3.4 and 3.5 of this Support Agreement, no alteration of this Agreement will be binding unless it is in writing and executed by both parties.
- 7.5 The Client may not assign or transfer any of its rights or obligations under this Agreement without the prior written consent of the Company.
- 7.6 If any provision of this Agreement is invalid or unenforceable, the remaining provisions of this Agreement will not be affected and will continue in full force.
- 7.7 This Agreement is subject to the laws of Texas and the parties submit to the exclusive jurisdiction of the courts in Travis County, Texas. In addition to any other rights and remedies available to the Company for breach of this Agreement, the Company will be entitled to enforcement by court injunction or restraining order.

## Schedule A

### A.1 Definitions of Priorities for Faults

**Priority A - Critical Impact:** A Fault which is preventing the undertaking of the Client's business operations and circumvention is not available or appropriate.

**Priority B - Moderate Impact:** A Fault that is impacting on the Client's business operations but circumvention is available and appropriate.

**Priority C - Minimal Impact:** A Fault notified by the Client but which is not having a significant adverse effect on the Client's business operations.

### A.2 Determination of Priorities

The Company shall categorize each Fault in accordance with Clause A.1 as it, in its reasonable opinion, deems appropriate and advise the Client accordingly. If the Client disagrees with the Company's categorization of any Fault the Company and the Client shall discuss within two Working Days and endeavor to resolve the disagreement, failing which the dispute resolution provisions will apply.

### A.3 Fault Notification Procedures

The Client may notify the Company of a Fault via the agreed method at any time during the Support Hours by contacting the Company using the following contact process:

**Support Portal** [www.wherescape.com](http://www.wherescape.com) <http://www.wherescape.com>

**Contact hours** Support Hours

**Details Required** Full description of the Fault, including its requested priority

### A.4 Response Times

The Company shall respond to the Client's Fault notification during the Support Hours within the response times set out below:

**Fault Priority A** 2 Working Days

**Fault Priority B** 5 Working Days

**Fault Priority C** 20 Working days

In the case of Priority A Faults the Company shall provide the Client with updates on the resolution progress at regular intervals not less than every two Working Days unless otherwise agreed by the Client and the Company.

### A.5 Fault Resolution

The Company shall undertake to use all reasonable efforts to resolve Faults through the following mechanism:

**Fault Priority A** Special release

**Fault Priority B** In the next product release cycle

**Fault Priority C** In a future product release cycle