Redgate Retired Software EULA

From time to time Redgate may withdraw products from the market in accordance with the terms of its Standard EULA and/or Subscription EULA available to view at: https://www.red-gate.com/support/license/ ("**Retired Software**"). Where those EULAs permit continued use of the Retired Software beyond the notified retirement date, such use is subject to the terms of this licence agreement ("**Agreement**"). Please read the full Agreement carefully.

You confirm that you accept and agree to be legally bound by all terms and conditions of this Agreement by using the Retired Software. If you do not accept these terms, do not use the Retired Software.

TERMS AND CONDITIONS

1 LICENCE

1.1 We grant you in perpetuity a limited, personal, non-exclusive, and non-transferable licence to use the Retired Software, subject to any applicable Product Specific Terms.

1.2 The Licence is personal to you. You may not rent, lease, sub-license, sell, pledge, assign the benefit or delegate the burden of this Agreement or Retired Software or hold this Agreement on trust for any other person.

1.3 Except as stated in this Licence, you have no right to use, incorporate into other products, copy, publish, display, modify or translate the Retired Software or any modification, adaptation or copy of the Retired Software or any part thereof. You may only decompile, reverse engineer, or disassemble the source code of the Retired Software either in whole or in part, as expressly permitted under the Licence or under Sections 50(A), (B) and (BA) of the Copyright, Designs and Patents Act 1988 (as amended or updated from time to time) or other applicable law.

1.4 You shall not use the Retired Software to manufacture or distribute a product that is substantially similar to or competitive with our software.

2 OWNERSHIP OF INTELLECTUAL PROPERTY RIGHTS

2.1 You acknowledge that i) all Intellectual Property Rights in or relating to the Retired Software are owned by or licensed to us, ii) except as expressly granted under the Licence, you have no rights in the Retired Software and iii) we shall have the right to use your name and/or logo on customer lists on our website and in other marketing material.

2.2 You hereby agree to refrain from any action which would diminish our Intellectual Property Rights in or relating to the Retired Software or which would call those rights into question.

2.3 You agree not to delete, remove or alter any trade marks, logos, copyright notices or similar proprietary devices of ours or our licensors, including without limitation any electronic watermarks or other identifiers that may be incorporated in the Retired Software. All representations of our name or logo must remain as originally distributed.

3 CONFIDENTIALITY

3.1 The structure, organisation, and source code of the Retired Software are proprietary confidential information of ours and our licensors. You agree not to provide or disclose any confidential information of ours (including relating to or derived from the Retired Software) to any third party, including where such confidential information is derived under any applicable law as set out in clause 1.3 (except in, and limited to, the circumstances permitted under paragraph 6 of Schedule 1).

3.2 Other than the disclosures referred to in our Privacy Notice, we agree not to provide or disclose to any third party any information of a confidential nature in any form whatsoever which is disclosed to us by you or on behalf of you.

3.3 The provisions of clauses 3.1 and 3.2 will not apply to the extent that:

3.3.1 such information is in the receiving party's possession free from any restriction as to its use or disclosure; or

3.3.2 the receiving party can demonstrate that such information is in the public domain (other than as a result of an unauthorised disclosure); or

3.3.3 such information is required to be disclosed by law.

3.4 No information to which clause 3.3.3 applies shall be disclosed to a third party unless and until the receiving party has (unless prevented from doing so by law) (i) given the disclosing party reasonable written notice of such proposed disclosure, (ii) consulted with the disclosing party, and (iii) agreed with the disclosing party the content of

the disclosure, provided that it shall not limit the disclosure in a manner which would prevent the receiving party from complying with a statutory or regulatory obligation or court order.

3.5 If you have entered into a separate confidentiality agreement with us, and there are inconsistencies between the terms of the confidentiality agreement and this clause 3, the terms of the confidentiality agreement shall prevail over this clause 3.

4   WARRANTY

4.1 The Retired Software is provided AS IS with no representation, guarantee or warranty of any kind as to their functionality, quality, performance, suitability or fitness for purpose. All other terms, conditions, representations and warranties expressed or implied whether by statute or otherwise are hereby expressly excluded.

5   LIMITATION AND EXCLUSION OF LIABILITY

5.1 Nothing in this Agreement shall limit or exclude either party's liability for: (a) personal injury or death resulting from negligence, (b) fraud; or (c) any other matter for which liability cannot be excluded by law.

5.2 Subject to clause 9.8.1, we shall not be liable for any claim, damages or other liability arising from or in connection with your continued use of the Retired Software after, if applicable, the expiry of any Support Term.

6   LICENCE TERM AND TERMINATION

6.1 The Licence shall commence upon your acceptance of its terms and shall continue in perpetuity unless terminated in accordance with clause 6.2 or 6.3, or otherwise in accordance with this Agreement.

6.2 We may terminate the Licence immediately and without notice if:

6.2.1   we reasonably suspect that you are using the Retired Software for any purpose which contravenes any applicable law; or

6.2.2   you materially fail to comply with any provision of this Agreement including the Product Specific Terms.

6.3 The Licence will terminate automatically: (a) where applicable, at the end of the relevant licence period specified in paragraph 4 of Schedule 1 or (b) if you uninstall and cease use of the Retired Software, or uninstall and destroy or voluntarily return the Retired Software to us.

6.4 Where the Licence is terminated in accordance with clause 6.2 or 6.3, then the Agreement shall terminate in its entirety.

6.5 Upon termination of this Agreement: (a) you must cease use of the Retired Software, and uninstall, destroy or put beyond use all copies of the Retired Software in your possession or control; and (b) the provisions of clauses 1.4, 3, 4.1, 5, 6, 8, 9.1 to 9.7, 10 and paragraph 6.3 of Schedule 1 will remain in effect.

6.6 The termination of this Agreement howsoever arising shall not affect the rights, duties and liabilities of either party accrued prior to termination.

7   DATA COLLECTION AND PRIVACY NOTICE

7.1 Information on the data we collect about you and how we treat that data is set out in our Privacy Notice, which can be viewed at: https://www.red-gate.com/privacy.

8   THIRD PARTY CLAIMS

8.1 You agree to indemnify us from any loss or damage whether in contract, tort (including negligence), breach of statutory duty, restitution or otherwise, if a third party claims that your use of the Retired Software causes any such loss or damage.

9   GENERAL

9.1 **Governing law and settlement of disputes.** This Agreement (and any dispute or claim relating to it, or its formation, existence, construction, performance, validity or termination) will be governed by and construed in accordance with the laws of England. The courts of England and Wales shall have non-exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims). Without prejudice to any other rights or remedies that we may have, you acknowledge and agree that damages alone would not be an adequate remedy for any breach of clauses 1, 2, 3 and/or Schedule 1 by you. Accordingly, we shall be entitled to seek an injunction or other equitable relief for any threatened or actual breach of those clauses.

9.2   **Compliance with applicable law.** You agree that, notwithstanding clause 9.1 above, you may be subject to additional laws in other jurisdictions with respect to your use of the Retired Software in such jurisdictions. You agree to comply with the laws of any such jurisdiction including, without limitation, any applicable export laws or regulations.

9.3   **Severability.** If any provision or part of any provision in this Agreement is found to be illegal, invalid or unenforceable for any reason then the remaining provisions or part provisions remain unaffected and the parties shall meet promptly to discuss in good faith and agree an alternative provision or part provision that provides as closely as possible, the same commercial effect as the original.

9.4   **No waiver.** No failure or delay by any party to exercise any right, power or remedy will operate as a waiver of it, nor will any partial exercise preclude any further exercise of the same, or of some other right, power or remedy.

9.5   **No third party rights.** We and you do not intend that any of this Agreement will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 by any person not a party to it and all rights by virtue of the Contracts (Rights of Third Parties) Act 1999 are hereby excluded.

9.6   **Entire agreement.** This Agreement contains all the terms which the parties have agreed in relation to the subject matter of this Agreement and supersedes any prior oral agreements, representations or understandings between the parties in relation to such subject matter.

9.7   **Revisions to terms.** We reserve the right to revise the terms of this Agreement by updating this Agreement on our website. You are advised to check the website periodically for notices concerning such revisions. If you do not agree with any such revision you may terminate your agreement within 10 days of the relevant revision without liability to us. Your continued use of the Retired Software after this period shall be deemed to constitute acceptance of any revised terms. No revisions will apply retrospectively.

9.8   **Consumer regulations.**

9.8.1   Australian Consumer Law. Despite clause 5 and any other provision in this Agreement, if the Competition and Consumer Act 2010 (Cth) (including the Australian Consumer Law in Schedule 2 of that Act) provides that there is a guarantee in relation to any good or service supplied by us in connection with this Agreement, and our liability for failing to comply with that guarantee cannot be excluded but may be limited, then any limitation of our liability in this Agreement, do not apply to that liability and instead our liability for such failure is limited to (at our election): (i) in the case of a supply of goods, replacing the goods or supplying equivalent goods, repairing the goods, paying the cost of replacing the goods or of acquiring equivalent goods, or paying the cost of having the goods repaired; or (ii) in the case of a supply of services, supplying the services again or paying the cost of having the services supplied again.

9.9   **Notices. References** to notices being "written" or "in writing" includes email.

10   <u>DEFINITIONS</u>

10.1   In this Agreement, capitalised terms shall have the meanings set out below or the relevant Schedule.

"**Intellectual Property Rights**" means patents, registered designs, registered trade and service marks, registered copyright and modifications to and applications for any of the foregoing and the right to apply for protection for such registered rights anywhere in the world and inventions, discoveries, copyright, database right, unregistered trade or service marks, brand names or know-how and any similar or equivalent rights whether capable of registration or not arising, applied for or granted worldwide;

"**Licence**" means the licence to use the Retired Software, set out in clause 1 and/or Schedule 1 as appropriate;

"**OSE**" means an Operating System Environment which is all or part of an operating system instance, or all or part of a virtual (or otherwise emulated) operating system instance which enables separate machine identity (primary computer name or similar unique identifier) or separate administrative rights;

"**Privacy Notice**" means the document entitled Privacy Notice on our website https://www.red-gate.com/privacy;

"**Product Specific Terms**" means the terms applicable to a specific item of Retired Software as set out in Schedule 1;

"**Reseller**" means any third party authorised by us to sell licences to the Software;

"**We**", "**Our**", "**Us**" and the non-capitalised versions means Red Gate Software Limited, a company registered in England with company number 3857576 and registered office at Cavendish House, Cambridge Business Park, Cambridge CB4 0XB,England;

"**You**", "**Your**" and the non-capitalised versions means, whether the Retired Software is obtained directly from us or through a Reseller, (a) where an individual downloads and/or installs the Retired Software on a OSE for his own

personal use, that individual (a "**Consumer**"); or (b) where an individual downloads and/or installs the Retired Software on a OSE for business use, that individual's employer (and we will assume that such individual has the authority to purchase on behalf of their employer); or (c) where an entity or organisation downloads and/or installs the Retired Software on a OSE for use by its employees, that entity or organisation (and such entity shall be responsible for all use by its employees of the Retired Software).

Schedule 1

Product Specific Terms

1 Definitions

1.1 In this schedule, the following definitions shall apply:

"**Bundle**" means a set of more than one of the Software products that are supplied together for a single price;

"**Client Component**" means, where the Retired Software is Per OSE Retired Software, any component of the Per OSE Retired Software directed to or otherwise provided for accessing the Server Component;

"**Distribution**" in the context of the SQL Comparison SDK means an instance of any of the files comprising the SQL Comparison SDK installed on an OSE other than the one on which you are developing your SQL Comparison SDK implementation;

"**Licensed Materials**" has the meaning set out in paragraph 6.1 of this Schedule;

"**Per OSE Retired Software**" means any or all of the Retired Software listed on our website [https://www.red-gate.com/support/license/software-editions], as licensed on a "Per OSE" basis;

"**Per User Retired Software**" means any or all of the Retired Software listed on our website [https://www.red-gate.com/support/license/software-editions], as licensed on a "Per User" basis;

"**Server Component**" means, where the Retired Software licensed to you under this Agreement is Per OSE Retired Software, the server-based components on a single OSE;

"**SQL Comparison SDK**" (also known as "Synchronization Toolkit" or "SQL Toolkit") means any or all of the software, associated documentation and help files comprising an application programming interface as listed in this Schedule; and

"**SQL Clone Entitlement**" means, where the Retired Software is SQL Clone, the usage entitlements you have purchased for the Retired Software.

2 Type of Software

2.1 Where the Retired Software is Per OSE Retired Software or Per User Retired Software, the relevant additional terms below shall apply to limit the Licence granted in clause 1 of this Agreement:

Per OSE Retired Software:

- The Server Component is licensed for use on a single OSE owned, leased and/or controlled by you for internal use.

- Where the Per OSE Retired Software includes a Client Component, you may use and install such Client Component on more than one OSEs leased and/or controlled by you for internal use.

Per User Retired Software:

- The Retired Software is licensed for use by a specific user only.

- Per User Retired Software may be used by the licensed user on more than one OSE.

3 Bundles

3.1 Where the Retired Software is a Bundle, a complete set of the products being licensed as part of that Bundle is listed on our website at https://www.red-gate.com/support/license/software-editions. Each product within the Bundle must be used on the same OSE, unless listed as 'Non-Linked Software' on our website. Non-Linked Software may be installed on a different OSE but is still licensed for use on a single OSE only.

Where the Retired Software is one of the products listed in paragraphs 4 to 6 below, the relevant additional terms shall apply and form part of this Agreement.

4 VISUAL STUDIO 2017 Core Edition Software

4.1 Where the Retired Software is both accessed through Visual Studio 2017 and is (i) SQL Change Automation Core Edition, (ii) SQL Prompt Core Edition, (iii) SQL Change Automation, (iv) SQL Prompt Pro, or (v) SQL Search, the following shall apply:

4.1.1 the rights granted under clause 1 to use the Retired Software shall continue only for the applicable licence period specified below:

<table>
<tr><td>(i)</td><td>SQL Change Automation Core Edition: 28 days from when it is initially installed by or on behalf of you, becoming perpetual if you create a Redgate account when prompted.</td></tr>
<tr><td>(ii)</td><td>SQL Prompt Core Edition (https://www.red-gate.com/support/license/software-editions): 28 days from when it is initially installed by or on behalf of you, becoming perpetual if you create a Redgate account when prompted.</td></tr>
<tr><td>(iii)</td><td>SQL Change Automation: 28 day trial licence from when a trial is commenced through the in-product dialog by or on behalf of you. At the end of 28 days you can decide whether to (a) obtain a paid licence for SQL Change Automation*, or (b) move to a perpetual licence of SQL Change Automation Core Edition, or (c) request a trial extension.</td></tr>
<tr><td>(iv)</td><td>SQL Prompt Pro (https://www.red-gate.com/support/license/software-editions): 28 day trial licence from when a trial is commenced through the in-product dialog by or on behalf of you. At the end of 28 days you can decide whether to (a) obtain a paid up licence for SQL Prompt Pro, or (b) move to a perpetual licence of SQL Prompt Core Edition, or (c) request a trial extension.</td></tr>
<tr><td>(v)</td><td>SQL Search: 28 days from when it is initially installed by or on behalf of you, becoming perpetual if you create a Redgate account when prompted.</td></tr>
</table>

* A licence for SQL Change Automation is only available as part of a licence of the Bundle known as SQL Toolbelt.

**A licence for SQL Prompt Core Edition is only available if you are using the Enterprise version of VISUAL STUDIO 2017.

(vi)   if at any time you obtain a paid up licence of SQL Prompt Pro or SQL Change Automation, your use of SQL Prompt Pro or SQL Change Automation (as applicable) will be governed by this Agreement.

5   SQL Clone (where licensed prior to 15 January 2018)

5.1   SQL Clone is licensed by number of SQL Clone Entitlements per SQL Clone Server. For each SQL Clone Server you wish to install you need a separate licence of SQL Clone.

5.2   A SQL Clone Entitlement is required by anyone creating clone databases using the SQL Clone Server, as well as anyone connecting to clone databases to develop software.

5.3   Where 20 or fewer SQL Clone Entitlements are required, the SQL Clone Entitlements may only be purchased in licence packs, as specified on our website.

5.4   For each SQL Clone Server:

5.4.1   use is limited to and shall not exceed the number of SQL Clone Entitlements you have purchased for that SQL Clone Server;

5.4.2   there is no limit on the number of agents you may download or clones you may create.

5.4.3   SQL Clone Entitlements cannot be shared between SQL Clone Servers.

5.5   SQL Clone Entitlements may not be shared by users, except where the SQL Clone Entitlement is permanently re-assigned to a new user.

6   SQL Comparison SDK, RedGate.SQLCompare.Engine.dll and RedGate.SQLDataCompare.Engine.dll (and their dependencies)

6.1   Subject to paragraphs 6.3 and 6.4 of this Schedule, you may use or incorporate up to 10 copies of any set of the files which comprise the Retired Software and which are listed in this paragraph 6 (the "**Licensed Materials**") into up to 10 future products for onward Distribution or internal use (the "**Licensed Products**") on Licence terms substantially similar to those contained in the Licence.

6.2   If you use and/or distribute any of the Licensed Materials in accordance with paragraphs 6.1, 6.3 and 6.4 of this Schedule, you agree to comply with the following provisions:

6.2.1   you will distribute such files solely as part of a specific-purpose application program written using an authorised copy of the Retired Software;

6.2.2   you remain solely responsible for support, service, upgrades and technical or other assistance relating to such files;

6.2.3   you will not use our name or logo without our prior written permission;

6.2.4   you will indemnify and keep indemnified and hold us harmless from and against all costs (including the costs of enforcement and reasonable legal costs), expenses, liabilities, injuries, direct, indirect or

consequential loss, pure economic loss, loss of profits, loss of business, loss of employment, or depletion of goodwill and like loss arising out of the use, reproduction or distribution of Licensed Products incorporating Licensed Materials;

6.2.5   you will ensure that all your third party licensees of the Licensed Products comply with the terms of the License; and

6.3   You will keep full and accurate records for copies and supplies of Licensed Products and shall, if requested, supply us with a statement giving details of all Licensed Products supplied to any person.

6.4   You shall only be permitted to distribute a maximum of 10 copies of the SQL Comparison SDK or any part thereof in Licensed Products. If you wish to distribute more than 10 copies of the SQL Comparison SDK or any part thereof in Licensed Products, then you must apply in writing to us, at our registered office, requesting a full commercial licence which will be subject to the payment of royalties as agreed between the parties.