

DATASPARC INC. SOFTWARE LICENSE AGREEMENT FOR DBHawk™

IMPORTANT: THIS SOFTWARE LICENSE AGREEMENT CONSTITUTES A CONTRACTUAL AGREEMENT BETWEEN YOU AND DATASPARC INC. PLEASE READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY.

By installing and/or using the DBHawk, you indicate your acceptance of the following DATASPARC INC's software license agreement ("Agreement"). If you do not agree to the terms of this agreement, promptly delete the software from your computer and cease use of the software.

If you have any questions regarding the terms of this agreement, please send electronic mail to: sales@datasparc.com.

THIS SOFTWARE LICENSE AGREEMENT (the "Agreement") governs your use of the Software and Documentation (as hereinafter defined), and your responsibilities as a User (as hereinafter defined).

1. DEFINITIONS.

For purposes of this Agreement, the following terms shall have the respective meanings set forth below:

"Software" means the object code version of the DATASPARC INC. software DBHawk, and other software components included in DBHawk, as well as any software updates, add-on components, services, and/or supplements provided subsequent to the initial copy of the Software, to the extent that such items are not accompanied by a separate license agreement or terms of use.

"User License" means single license copy of the DBHawk software.

"User" means you, the entity you represent and your or its representatives, successors, assigns and affiliates.

"Software Subscription" means Customer's right to use the applicable Software, subject to the License Type restrictions for which such right has been purchased.

"Software Subscription Key" means a logical code that activates and controls a Software Subscription based on (i) the applicable License Type, (ii) the Software edition for which a Software Subscription has been purchased, and (iii) the Subscription Term.

A Software Subscription Key is "attached" to a specific hardware machine identified by a MAC address or other unique server identification, and may be installed on only one machine at a time.

"Term of license" Time period subscription licenses are valid

"Authorized User" means those uniquely identified individuals for whom the applicable license fees have been paid, as stated on the Ordering Document, who are authorized by you to install and/or use the functionality in the Software for any purpose regardless of whether those individuals are actively using the programs at any given time.

Licenses granted on an Authorized User basis may be reassigned between uniquely identified individuals over time, but may not be reassigned so frequently as to enable the sharing of a single license between multiple users.

"Unique Server" is identified by a MAC address or other unique server id. Unique server licenses cannot be shared or used across multiple servers. If your Software license is designated as User-Based, the total count of Authorized Users enabled to use such Server Software across all Production and Non-Production Environments must not exceed the number of licenses purchased.

"Confidential Information" means all confidential, proprietary or secret information of DATASPARC INC, including without limitation the Software, Documentation, components, parts, drawings, data, sketches, flow charts, plans, reports, handbooks, programs, data, source code, object code, screen displays, feedback, evaluation results, evaluation reports, test results, test reports, reports of errors, problems, defects or suggestions, specifications, features, techniques, processes, algorithms, inventions, other information or material, which is provided or disclosed by DATASPARC INC to User for the purposes specified in this Agreement, or is derived or produced by User pursuant to this Agreement, whether such information is disclosed by DATASPARC INC or User, as the case may be, (a) in writing or other tangible medium, (b) visually, or (c) orally.

"Documentation" means the user guide(s) and other documentation delivered by DATASPARC INC in paper or digital form to User with the Software.

"Fees" means license fees corresponding to the type of User License in conjunction with which User shall use the Software (as set forth in DATASPARC INC's price schedule) and support fees.

2. LICENSE GRANT

2.1 EVALUATION VERSION.

If you ordered a license to an Evaluation Version, you may install and use one copy of the Evaluation Version Software solely for the purpose of evaluating the Software to determine whether to purchase a non-Evaluation Version copy of the Software. You may not use the Evaluation Version for any other purposes, including but not limited to competitive analysis, commercial, professional, or for-profit purposes. You may only use the Evaluation Version for twenty (20) days from the date you activate and/or register via the Product Key or otherwise, unless otherwise specified by Datasparc in the Documentation or a separate writing from Datasparc ("Evaluation Period"). Unless you pay the applicable license fee for the Software (and Datasparc issues you a Product Key in exchange), the Evaluation Version Software may become inoperable and, in any event, your right to use the Evaluation Version Software automatically expires at the end of the Evaluation Period. Notwithstanding any other provision of this Agreement, the Evaluation Version Software is provided "AS IS" without warranty or support of any kind, express or implied. Datasparc may terminate your license to the Evaluation Version Software upon written notice at any time for any reason and without liability of any kind.

IF YOU SUBSEQUENTLY LICENSE A NON-EVALUATION VERSION OF THE SOFTWARE, YOUR LICENSE TO THE EVALUATION VERSION SOFTWARE SHALL IMMEDIATELY TERMINATE AND YOU EXPRESSLY AGREE THAT, UNLESS YOU HAVE A SEPARATE SIGNED LICENSE AGREEMENT GOVERNING YOUR USE OF THE SOFTWARE, THIS AGREEMENT, AND THE TERMS AND CONDITIONS HEREIN, SHALL GOVERN YOUR USE OF SUCH NON-EVALUATION VERSION.

2.2 SOFTWARE & DOCUMENTATION.

Subject to the terms and conditions contained herein, DATASPARC INC grants to User, and User accepts, a non-exclusive, non-sublicensable, non-transferable right and license (a) to use the Software for User's internal business purposes only (except in the case of a Service Provider), and only in conjunction with that number of user Licenses for which User purchased a corresponding number of Software licenses.

User may not copy the additional copies of the licenses for additional user Licenses, each subject to the same limitations as set forth herein, may be purchased from DATASPARC INC at DATASPARC INC's then current prices.

Except as specifically permitted in this Agreement, User shall not directly or indirectly

- (i) use any Confidential Information to create any software or documentation that is similar to any of the Software or Documentation;
- (ii) encumber, transfer, rent, lease, time-share or use the Software in any service bureau arrangement; or
- (iii) copy (except for archival purposes), distribute, manufacture, adapt, create derivative works of, translate, localize, port or otherwise modify the Software or permit any third party to engage in any of the acts proscribed in clauses (i) through (iii).

User shall be solely responsible for the implementation, configuration, and operation of the Software, including but not limited to, all of the cost and expense in obtaining and preparing the site and any computer machine for the Software and obtaining Oracle Licenses. User may not install or use the Software on any computer machine or other computer system/network environment not configured and conforming to DATASPARC INC's specifications.

2.3 DBHAWK SOFTWARE LICENSES.

Software licenses are sold on a User-based, Server-Based and Enterprise Models or any combination of these models. One software user license is required for each unique user on a unique server connecting to any database and one software server license is required for each unique server used to connect to any databases.

2.3.1 User-Based Licenses: If your Server Software license is designated as User-Based, the total count of Authorized Users enabled to use such Server Software across all Production and Non-Production Environments must not exceed the number of user-based licenses purchased on the applicable Ordering Document(s).

2.3.2 Server-Based Licenses: If your Server Software license is designated as Server-Based the total count of unique servers enabled to use such Server Software across all Production and Non-Production Environments must not exceed the number of server-based licenses purchased on the applicable Ordering Document(s)

2.3.3- Enterprise Licenses: Enterprise licenses are a combination of user-based and server-based licenses. The total count of unique-users and servers enabled to use such Server Software across all Production and Non-Production Environments must not exceed the number of user-based and server-based licenses purchased on the applicable Ordering Document(s)

3. REVERSE ENGINEERING.

User is not permitted (a) to decompile, disassemble, reverse compile, reverse assemble, reverse translate or otherwise reverse engineer the Software, (b) to use any similar means to discover the source code of the Software or to discover the trade secrets in the Software, or (c) to otherwise circumvent any technological measure that controls access to the Software.

4. OWNERSHIP.

The enclosed Software and documentation and all copies thereof are owned by DATASPARC, INC. and are protected by copyright, trademark and trade secret laws and international treaty provisions. THIS SOFTWARE IS LICENSED AND NOT SOLD.

5. PAYMENT.

You shall pay all fees associated with the Software licensed and any services purchased hereunder as set forth in the applicable Ordering Document. All payments shall be made in the currency noted on the applicable Ordering Document within thirty (30) days of the date of the applicable electronic invoice. Except as expressly set forth herein, all fees are non-refundable once paid. Unless timely provided with a valid certificate of exemption or other evidence that items are not taxable, Datasparc will invoice you for all applicable taxes including, but not limited to, VAT, GST, sales tax, consumption tax and service tax.

6. UPGRADES.

From time to time Datasparc, Inc. may release new versions of the Software which contain improvements. If you purchase, receive or download an upgrade, this Agreement will be extended to include both the original version of the Software and the new version.

7. DISCLAIMER OF WARRANTY.

THE SOFTWARE IS NOT ERROR-FREE AND IS BEING PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. DATASPARC INC HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, ORAL OR WRITTEN, WITH RESPECT TO THE DATASPARC INC SOFTWARE INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AND ALL WARRANTIES IMPLIED FROM ANY COURSE OF DEALING OR USAGE OF TRADE. DATASPARC INC DOES NOT WARRANT THAT ANY LOST COMPUTER OR THE DATA STORED THEREON WILL BE RECOVERED BY USE OF THE SOFTWARE.

8. LIMITATION OF LIABILITY.

DATASPARC INC'S LIABILITY FOR DAMAGES TO USER OR ANY THIRD PARTY FOR ANY CAUSE WHATSOEVER, REGARDLESS OF THE FORM OF ANY CLAIM OR ACTION, SHALL NOT EXCEED THE AGGREGATE FEES PAID BY USER FOR THE TWELVE (12) MONTHS PRIOR TO THE CLAIM. DATASPARC INC SHALL IN NO EVENT BE LIABLE FOR ANY LOSS OF DATA, PROFITS OR USE OF THE SOFTWARE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE DATASPARC INC SOFTWARE OR SERVICE WITHOUT REGARD TO WHETHER DATASPARC INC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THESE LIMITATIONS ARE INDEPENDENT FROM ALL OTHER PROVISIONS OF THIS AGREEMENT AND SHALL APPLY NOTWITHSTANDING THE FAILURE OF ANY REMEDY PROVIDED HEREIN.

9. COMPLIANCE WITH LAWS.

User is only being granted the rights to use the Software and Documentation and shall not export or re-export, directly or indirectly (including via remote access), Software, Documentation or other information or materials provided by DATASPARC INC hereunder, to any country for which the United States or any other relevant jurisdiction requires any export license or other governmental approval at the time of export without first obtaining such license or approval. It shall be User's responsibility to comply with the latest United States export regulations, and User shall defend and indemnify DATASPARC INC from and against any damages, fines, penalties, assessments, liabilities, costs and expenses (including reasonable attorneys' fees and court costs) arising out of any claim that Software, Documentation, or other information or materials provided by DATASPARC INC hereunder were exported or otherwise accessed, shipped or transported in violation of applicable laws and regulations. In the event that this Agreement is required to be registered with any governmental authority, User shall cause such registration to be made and shall bear any expense or tax payable in respect thereof.

10. REDISTRIBUTION

Redistribution of the software, even modified, in any form, is strictly prohibited.

11. THIRD PARTY SOFTWARE

DBHawk is trademarks or registered trademarks of DATASPARC, INC. in the United States. Third party trademarks, trade names, product names and logos may be the trademarks or registered trademarks of their respective owners.

12. GENERAL PROVISIONS.

12.1 Publicity. User shall not originate any publicity, news release or other public announcement relating to the Software, this Agreement, its terms or the existence of an arrangement between the parties without the prior written approval of DATASPARC INC, except as otherwise required by law.

12.2 Waiver. The waiver by either party of a breach or a default of any provision of this Agreement by the other party shall not be construed as a waiver of any succeeding breach of the same or any other provision, nor shall any delay or omission on the part of either party to exercise or avail itself of any right, power or privilege that it has, or may have hereunder, operate as a waiver of any right, power or privilege by such party.

12.3 No Agency; Independent Contractors. Nothing contained in this Agreement shall be deemed to constitute either party as the agent or representative of the other party, or both parties as joint ventures or partners for any purpose.

12.4 Audit Rights. Upon Datasparc's written request, you shall certify in a signed writing that your use of the Software is in full compliance with the terms of this Agreement (including any server and user limitations) and provide a current list of Authorized Users for User-Based Server licenses. With reasonable prior notice, Datasparc may audit your use of the Software, software monitoring system and records, provided such audit is during regular business hours. If such inspections or audits disclose that you have installed, accessed or permitted access to the Software in a manner that is not permitted under this Agreement, then Datasparc may terminate this Agreement and you are liable for the reasonable costs of the audit in addition to any other fees, damages and penalties Datasparc may be entitled to under this Agreement and applicable law.

12.5 Governing Law; Jurisdiction & Venue. This Agreement shall be governed by and construed in accordance with the laws of the State of California, USA, without regard to its choice of law provisions. In the event of any conflict between foreign laws, rules and regulations and those of the United States, the laws, rules and regulations of the United States shall govern.

12.6 Entire Agreement; Amendment. This Agreement and the Support Policy (if applicable) constitute the entire agreement between the parties with regard to the subject matter hereof. No waiver, consent, modification or change of terms of this Agreement shall bind either party unless in writing signed by both parties, and then

such waiver, consent, modification or change shall be effective only in the specific instance and for the specific purpose given. Terms set forth in any purchase order of User (or other similar document) that are in addition to or at variance with the terms of this Agreement are specifically waived by User. All such terms are considered by DATASPARC INC to be proposed material alterations of this license and are rejected. User's purchase order is only effective as User's unqualified commitment to pay for a license to the DATASPARC INC Software upon the terms (and only the terms) set forth herein.

12.7 Costs, Expenses and Attorneys' Fees. User shall reimburse DATASPARC INC for all reasonable costs (including attorneys' fees) incurred by DATASPARC INC in collecting late payments from User.

12.8 Assignment. This Agreement and the rights and obligations hereunder, may not be assigned in whole or in part by User without the prior written consent of DATASPARC INC and any unauthorized assignment or transfer shall be null and void.

12.9 Acknowledgment. User acknowledges that (a) it has read and understands this Agreement; (b) it has had an opportunity to have its legal counsel review this Agreement; (c) that this Agreement has the same force and effect as a signed agreement; (d) DATASPARC INC requires identification of the User before issuing this license; (e) issuance of this license does not constitute general publication of the Software, the Documentation or other Confidential Information; and (f) the individual accepting this Agreement on behalf of a corporation or other legal entity personally represents that he or she is duly authorized to accept this Agreement on behalf of such entity and that this Agreement is binding upon such entity.

If you have any questions regarding the terms of this Agreement, please send electronic mail to: support@datasparc.com