

Backplane, Inc. SOFTWARE LICENSE AGREEMENT

THIS SOFTWARE LICENSE AGREEMENT (the "**Agreement**"), is entered into on _____, 200_____
 ("**Effective Date**") by and between Backplane, Inc. ("**Backplane, Inc.**"), and

 ("**Licensee**").

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties agree as follows:

AGREEMENT

1. **Definitions.** In addition to the terms defined in the text, the following terms shall have the following meanings:

a. "**Intellectual Property Rights**" shall mean all worldwide, current or future (a) patents, patent applications and patent rights; (b) rights associated with works of authorship, including copyrights; (c) rights relating to the protection of trade secrets; (d) trademarks and tradenames; (e) rights analogous to those set forth herein and any other proprietary rights relating to intangible property; and (f) divisions, continuations, renewals, reissues and extensions of the foregoing (as applicable) now existing or hereafter filed, issued or acquired.

b. "**Licensed Software**" shall mean the Backplane database software, provided as a tar file, incorporated by reference herein, together with any documentation relating to such Licensed Software made generally available to licensees by Backplane, Inc..

c. "**Pricing Terms**" shall mean the terms specified in Exhibit A, attached hereto and incorporated by reference herein.

2. **License and Ownership.**

a. **License Grant.** Subject to the terms of this Agreement, and the restrictions in Section 2(b), Backplane, Inc. hereby grants Licensee a nonexclusive, nonsublicensable, nontransferable, license to use the Licensed Software on the designated number of servers or clients identified in the Pricing Terms, solely for Licensee's internal use during the Term. Should it so desire in the future, Licensee shall submit a written request for license of additional licenses on additional servers or clients, which licenses may be granted at an additional cost, all solely to be determined in Backplane, Inc.'s discretion.

b. **Restrictions.** Licensee shall not (and shall not allow any end user or third party to) (i) remove any product identification, copyright or other notices embedded within

or on the Licensed Software (ii) relicense, provide, lease or lend the Licensed Software to any third party (iii) copy the Licensed Software or any portion thereof except as provided herein.

c. **Ownership.** As between the parties, Backplane, Inc. shall retain all rights, title and interest in and to the Licensed Software.

3. **Fees and Payment.**

a. **Fees.** Licensee shall pay (i) the "License Fees" within 10 days of downloading the Backplane Software in accordance with the Pricing & Payment information in Exhibit A (ii) the maintenance fees in accordance with the amounts and payment schedule set forth in the Pricing Terms (the "**Maintenance Fees**"); and (iii) any other fee specified hereunder or set forth in a written and executed agreement between the parties (collectively, the "**Fees**").

b. **Audit.** Backplane, Inc. shall have the right at least once annually to examine Licensee's relevant books, records, accounts and equipment for the purpose of verifying the number of servers or clients using the Licensed Software. Backplane, Inc. shall pay the fees and expenses of any auditor required for the examination.

4. **Maintenance and Support.**

a. **Mandatory Maintenance and Support.** Licensee shall receive maintenance and support for no additional cost to its first year Licensing Fees. Thereafter, Licensee may elect to continue to receive maintenance at its option, at the then-current standard rates established by Backplane, Inc. for such maintenance, or as otherwise expressly set forth in the Pricing Terms.

b. **Maintenance and Support Services.** In consideration for the payment of Licensed Fees in the first year or subsequent year Maintenance Fees, as specified in the Pricing Terms, Backplane, Inc. shall maintain the Licensed Software by providing support as specified in

Exhibit B, attached hereto and incorporated by reference herein.

5. **Professional Services.** Licensee may request professional services from Backplane, Inc. at the rate specified in the Pricing Terms, or if no rate is specified, at Backplane, Inc.'s then-current fees for professional services or as otherwise mutually agreed upon by the parties in writing. Except as expressly agreed upon by the parties in writing, Backplane, Inc. shall retain all rights, title and interest in and to all development work performed by Backplane, Inc. within the scope of such professional services, including all derivative works thereof and all Intellectual Property Rights therein.

6. Confidentiality.

a. Confidential Information. The parties agree that the Licensed Software, Documentation, pricing, discounts and other terms offered to Licensee, including, without limitation, the material terms of this Agreement, any functional limitations of, or errors in, the Licensed Software, and any other materials provided by Backplane, Inc. are the confidential property of Backplane, Inc., and that any confidential business, technical, financial or other information disclosed by one party to the other pursuant to this Agreement is the confidential information of the disclosing party (collectively, "Confidential Information"). Except as expressly allowed in Section 6(b) or elsewhere herein, each party shall hold in confidence and shall not use for purposes unrelated to this Agreement or disclose to any third party any Confidential Information of the other party.

b. Permitted Disclosure. A party shall not be obligated under Section 6(a) with respect to information that it can document: (i) is or has become readily publicly available without restriction through no fault of such party or its personnel, (ii) is received, without restriction, from a third party lawfully in possession of such information and lawfully empowered to disclose such information, or (iii) was rightfully in such party's possession without restriction prior to its disclosure by the other party.

7. **Warranty Disclaimer.** LICENSEE ACKNOWLEDGES AND AGREES THAT THE LICENSED SOFTWARE IS PROVIDED ON AN "AS-IS" BASIS. BACKPLANE, INC. DOES NOT WARRANT THAT THE LICENSED SOFTWARE IS FAULT TOLERANT OR ERROR FREE. BACKPLANE, INC. DISCLAIMS ALL WARRANTIES RELATING TO THE LICENSED SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO, NON-INFRINGEMENT, MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

8. Limitation of Liabilities. EXCEPT FOR A

BREACH OF SECTIONS 2, OR 6, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, EXEMPLARY, PUNITIVE, INCIDENTAL, INDIRECT, OR SPECIAL DAMAGES, OR FOR ANY LOSS OF PROFITS OR LOSS OF GOODWILL, LOST DATA, COSTS OF RE-CREATING LOST DATA, OR DAMAGES ARISING FROM THE INSTALLATION OR THE USE OF OR THE INABILITY TO USE THE LICENSED SOFTWARE, HOWSOEVER ARISING FROM OR RELATED TO THE LICENSED SOFTWARE OR THIS AGREEMENT, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR COSTS. BACKPLANE, INC.'S AGGREGATE LIABILITY TO LICENSEE UNDER THIS AGREEMENT SHALL NOT EXCEED THE LICENSE FEES PAID TO BACKPLANE, INC. HEREUNDER.

9. Term and Termination.

a. Term. This Agreement shall commence on the Effective Date and shall remain in full force and effect for a period of twelve (12) months, unless terminated earlier as provided herein (the "*Initial Term*").

b. Termination. This Agreement may be terminated as follows: (i) by Backplane, Inc., immediately and without notice, for any violation by Licensee of the scope of the license rights granted herein, or for any infringement of Backplane, Inc.'s Intellectual Property Rights; (ii) by either party for cause, upon thirty (30) days written notice if the other party shall be in breach or default of any material provision of this Agreement; provided however that the breaching party may avoid termination if, before the end of such thirty (30) day period, the breaching party cures such breach; (iii) by either party, with written notice if the other party ceases to do business, or otherwise terminates its business operations, except as a result of an assignment, as permitted under the terms and conditions of this Agreement; or (iv) by either party, with written notice if the other party seeks protection under any bankruptcy, receivership, trust deed, creditors arrangement, composition or comparable proceeding, or if any such proceeding is instituted against such party (and not dismissed within ninety (90) days)).

c. Effect of Termination. Except to the extent expressly provided to the contrary in this Agreement, any rights to accrued payments, any right of action for breach of the Agreement prior to termination, and the following provisions shall survive the termination of this Agreement: Sections 1, 2(b), 2(c), 6, 7, 8, 10 and 11.

10. Indemnification.

a. Backplane, Inc. shall defend or settle at its expense any claim or suit, including without limitation any proceeding, investigation or claim (an "**Action**") against Licensee, arising out of or in connection with an assertion that the Licensed Software or the use thereof as specifically authorized by Backplane, Inc., infringes any U.S. patent in existence as of the Effective Date, U.S. copyright or trademark rights or misappropriates a trade secret of any third party; provided that Backplane, Inc. shall have no obligation under this Section to the extent any claim of infringement or misappropriation results from (i) use of the Licensed Software in combination with any other hardware or software supplied by any third person or entity other than Backplane, Inc.; (ii) any alteration or modification of the Licensed Software not provided or authorized by Backplane, Inc.; or (iii) use of the Licensed Software in a way not intended by Backplane, Inc. or not provided for or described in the applicable technical documentation, if such infringement would not have occurred but for such combination, alteration, modification or unintended or unauthorized use of the Licensed Software (collectively the "**Indemnification Exceptions**").

b. Licensee shall defend or settle at its expense any Action against Backplane, Inc., and each of its directors, officers, agents, employees and sublicensees to the fullest extent permitted by law, arising out of or in connection with or related to (i) any of the foregoing Indemnification Exceptions; (ii) any breach by Licensee of the terms and conditions herein; or (iii) any claim brought by Licensee's end users or customers.

c. As an express condition to the foregoing indemnity obligations, the party seeking indemnity shall (i) promptly notify the indemnifying party in writing of any such actual or threatened loss, suit, claim, liability, expense or proceeding, (ii) allow the indemnifying party, at its own expense, to direct the defense of such suit, claim or proceeding, (iii) give the indemnifying party all information and assistance the indemnifying party considers reasonably useful to defend such suit, claim or proceeding, and (iv) not enter into any settlement of any such suit, claim or proceeding without the indemnifying party's written consent.

d. Should Licensed Software become, or in Backplane, Inc.'s opinion be likely to become, the subject of a claim for which Backplane, Inc. is required to indemnify pursuant to this Section, Backplane, Inc. may, at its discretion, (i) obtain for Licensee, at no additional cost to Licensee, the right to continue using the Licensed Software under this Agreement; (ii) modify or replace the Licensed Software or part of the Licensed Software, at no additional cost to Licensee, to avoid such claim, or (iii) if neither (i) or (ii) is commercially feasible, terminate the license to the Licensed Software and refund the amounts paid for the Licensed Software, prorated over a five (5) year term from the Effective Date. THIS SECTION 10 STATES BACKPLANE, INC.'S ENTIRE LIABILITY AND LICENSEE'S EXCLUSIVE REMEDY FOR ANY CLAIMED, POTENTIAL OR ACTUAL

INFRINGEMENT.

11. General Provisions.

a. Governing Law. This Agreement shall be governed by and construed under the federal laws of the United States of America and the laws of the State of California, without regard to its conflicts of law provisions. In any action to enforce this Agreement, the prevailing party will be entitled to costs and attorneys' fees from the non-prevailing party. The parties hereby submit to the exclusive personal jurisdiction of, and agree that any legal proceeding with respect to or arising under this Agreement shall be brought in, the United States District Court for the Northern District of California or the state courts of the State of California for the County of San Francisco.

b. Assignment. Neither this Agreement nor any rights, licenses or obligations hereunder, may be assigned by Licensee without the prior written consent of Backplane, Inc., provided such approval shall not be unreasonably withheld or denied. Notwithstanding the foregoing, Licensee may assign this Agreement to any acquirer of all or of substantially all of Licensee's equity securities, assets or business related to the subject matter of this Agreement without the prior approval of Backplane, Inc.. Any attempted assignment in violation of this Agreement shall be void and without effect. Subject to the foregoing, this Agreement will benefit and bind the parties' successors and assigns.

c. U.S. Government End Users. If the Licensed Software is acquired by or on behalf of a unit or agency of the United States government, this provision applies. The Licensed Software is (a) existing computer software, and was developed at private expense, (b) is a trade secret of Backplane, Inc. for all purposes of the Freedom of Information Act, (c) is "commercial computer software" subject to limited utilization as expressly stated in this Agreement, (d) in all respects is proprietary data belonging to Backplane, Inc., and (e) is unpublished and all rights are reserved under the copyright law of the United States. For civilian agencies and entities acquiring Licensed Software under a GSA Schedule, Licensed Software is licensed only with "Restricted Rights" and use, reproduction or disclosure is subject to restrictions set forth in subparagraph (a) through (d) of the Commercial Computer Software – Restricted Rights clause at 52.227-19 of the Federal Acquisition Regulations and its successors. For units of the Department of Defense (DoD), this Licensed Software is licensed only with "Restricted Rights" and use, duplication, or disclosure is subject to restrictions as set forth in subdivision (c)(1)(ii) of the Rights in Technical Data and Computer Software clause at 252.227-7013 of the DoD Supplement to the Federal Acquisition Regulations and its successors.

d. Relationship of the Parties. The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement, is solely responsible for all of

its employees and agents and its labor costs and expenses arising in connection therewith. Neither party nor its agents or employees are the representatives of the other party for any purpose and neither party has the power or authority as agent, employee or any other capacity to represent, act for, bind or otherwise create or assume any obligation on behalf of the other party for any purpose whatsoever.

e. Entire Agreement. This Agreement contains the entire understanding of the parties with respect to the matters contained herein and supersedes all prior agreements or discussions between the parties with respect to the matters contained herein.

f. Severability. The invalidity or unenforceability of any provision of this Agreement shall not affect any other provision of this Agreement, and the remaining provisions shall continue with the same effect as if such unenforceable or invalid provision had not been included in this Agreement.

g. Modification and Waiver. Except as otherwise expressly provided herein, any provision of this Agreement may be amended and the observance of any provision of this Agreement may be waived (either generally or any particular instance and either retroactively or prospectively) only with the written consent of the party against whom

such modification or waiver will be enforced.

h. Force Majeure. Neither party shall be liable to the other for any delay or failure to perform any obligation under this Agreement if the delay or failure is due to unforeseen events, which occur after the signing of this Agreement and which are beyond the reasonable control of the parties including but not limited to strikes, blockade, war, revolutions or riots, natural disasters, refusal of license by the government or other governmental agencies or other stipulations or restrictions by the authorities, insofar as such an event prevents or delays the affected party from fulfilling its obligations and such party is not able to prevent or remove the force majeure at reasonable costs.

i. Counterparts. This Agreement may be executed in two counterparts, each of which shall be an original, and which together shall constitute one and the same instrument.

j. Notices. Any notice required or permitted to be given by either party under this Agreement shall be in writing and shall be personally delivered or sent by nationally recognized overnight commercial courier service (e.g., DHL) to the other party at its address set forth below, or such new address as may from time to time be supplied hereunder by the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BACKPLANE, INC.

Principal Place of Business:

Backplane, Inc.

1563 Solano Ave. #356

Berkeley, Ca 94707

info@backplane.com

By _____

Name (Print)

Title

LICENSEE: _____

Principal Place of Business:

Tel. & E-mail address _____

No. of databases licensed (see Exhibit A): _____

By _____

Name (Print)

Title

**EXHIBIT A
PRICING TERMS & PAYMENT INFORMATION**

Licensing Fees (Please complete table)

Number of Licenses:	Price Per Copy:	Quantity:	Extended Price:
1.....9	\$300		\$
10.....50	\$250		\$
50+	\$200		\$
		TOTAL:	\$

Pricing is per server or client that installs the Backplane database.

Support Fees

For email support, included free of charge in licensing fee for first year.

Maintenance Fees

Note, included with the first year's license fees is a perpetual license for the precise version of the database originally downloaded. Backplane may offer in the future upgrade and maintenance plans.

Payment information

Make checks payable to Backplane, Inc., include two signed copies of this agreement, and mail to

Backplane, Inc.
1563 Solano Ave #356
Berkeley, CA 94707

One countersigned copy of the agreement will be returned to you.

EXHIBIT B
MAINTENANCE & SUPPORT

Note, included with the first year's license fees is a perpetual license for the precise version of the database originally downloaded. Backplane may offer in the future upgrade and maintenance plans.

For Support, email to info@backplane.com. Questions will be answered on a reasonable efforts basis.