END USER LICENCE AGREEMENT
for BWUnit

INTRODUCTION

A.   The Licensee wishes to use certain software owned by the Licensor.

B.   The Licensor has agreed to grant the Licensee a licence to use the software, subject to the terms and conditions set out below.

C   BY CLICKING ON THE "*I ACCEPT THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT*" BUTTON, OR OTHERWISE USING, DOWNLOADING, INSTALLING, COPYING OR ASSESSING THE SOFTWARE YOU THE LICENSEE ARE INDICATING YOUR ACCEPTANCE OF THIS SOFWARE LICENSE AGREEMENT AND AGREE TO BE LEGALLY BOUND BY IT.

IT IS AGREED

1.   **INTERPRETATION**

1.1.   In this Agreement, unless otherwise indicated by the context:

   (a)   *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in New South Wales.

   (b)   *Confidential Information* means the confidential information of a party which relates to the subject matter of this Agreement and includes information relating to:

   (I)   the design, specification and content of the Licensed Software;

   (II)   the personnel, policies or business strategies of the Licensor; and

   (III)   the terms upon which the Licensed Software is being licensed under this Agreement;

   (c)   *Designated Equipment* means the computer equipment Computer Equipment owned by the Licensee, under the exclusive control of the Licensee, upon which the Licensed Software may be used;

   (d)   *Documentation* means all operating manuals and other materials including users' manuals, programming manuals, modification manuals, flow charts, drawings and software listings as provided electronically to the Licensee by the Licensor accompanying the Licensed Software which may assist or supplement the understanding or application of the Licensed Software;

   (e)   *Licensed Software* means the BWUnit software product consisting of a set of instructions or statements in machine readable medium and any enhancement, modification, update or new release of the that software or part thereof;

   (f)   *Test* means each individual group of testing logic, written into a testing source code.

   (g)   *TIBCO Designer* means the software product used for the configuration of TIBCO products, providing the user a graphical interface for the creation of integration products, allowing the user to drag and drop components into a project and specify configuration information for each component. TIBCO Designer is owned by the TIBCO Software Inc corporation, and is used to write TIBCO BusinessWorks code and BWUnit tests.

1.2.   In this Agreement, unless otherwise indicated by the context:

    (a)   words importing the singular include the plural and vice versa;

    (b)   headings are for convenience only and do not affect interpretation of this Agreement;

    (c)   a reference to a clause, paragraph or schedule is a reference to a clause, paragraph or schedule of this Agreement;

    (d)   where any word or phrase is given a definite meaning in this Agreement, any part of speech or other grammatical form of that word or phrase has a corresponding meaning;

    (e)   an expression importing a natural person includes a body corporate, partnership, joint venture, association or other legal entity;

    (f)   a reference to a statute, statutory provision or regulation includes all amendments, consolidations or replacements thereof;

    (g)   a reference to a party to a document includes that party's legal personal representatives, successors and permitted assigns;

    (h)   a covenant or agreement on the part of or for the benefit of two or more persons binds or benefits them jointly and severally;

    (i)   a reference to a body, whether statutory or not:

        (I)   which ceases to exist; or

        (II)   whose powers or functions are transferred to another body, is a reference to the body which replaces it or which substantially succeeds to its powers or functions; and

    (j)   *including* and similar expressions are not words of limitation.

2.   GRANT AND TERM OF LICENCE

2.1.   Subject to the other terms of this Agreement, the Licensor non-exclusively licenses the Licensee to use the Licensed Software from the date of this Agreement on an ongoing basis.

3.   DOCUMENTATION

3.1.   The Licensor non-exclusively licenses the Licensee to use the Documentation in connection with the Licensed Software, for the duration of the Agreement.

3.2.   The Licensor will provide the Licensee with access to the Documentation. The Licensee will not copy or reproduce the Documentation except to the extent otherwise authorised by this Agreement.

4.   LICENCE CONDITIONS

4.1.   The Licensee may only use the Licensed Software in accordance with the normal operating procedures as notified by the Licensor.

4.2.   The Licensed Software may not be used on equipment other than Designated Equipment save that at the sole risk of the Licensee it may be used on alternative equipment if:

    (a)   the Designated Equipment is temporarily inoperable due to malfunction, maintenance or change of installation site; or

    (b)   the Licensor has otherwise given its consent in writing to such alternate use.

4.3.   The Licensee must not copy, reverse engineer, alter, modify, reproduce, create a derivative work of, decompile, or otherwise attempt to extract the source code of the Licensed Software except to the extent otherwise authorised by this Agreement or with the prior written permission of the Licensor.

4.4. In addition to any other remedies available to the Licensor under this Agreement or otherwise, any unauthorised use, alteration, modification, reproduction, publication, disclosure or transfer of the Licensed Software will entitle the Licensor to any available equitable remedy against the Licensee.

4.5. Unless the Licensor has given you specific written permission to do so, you may not assign or grant a sub-license of your rights to use the Software, grant a security interest in or over your rights to use the Software, or otherwise transfer any part of your rights to use the Software.

4.6. The Licensee acknowledges that there is no transfer of title or ownership to the Licensee of the Licensed Software or the Documentation.

5. SECURITY OF THE SOFTWARE

5.1. The Licensee will be solely responsible for the use, supervision, management and control of the Licensed Software and Documentation.

5.2. The Licensee will ensure that the Licensed Software is protected at all times from misuse, damage, destruction or any form of unauthorised use.

5.3. The Licensee will keep accurate records of use and any permitted copying, modification and disclosure of the Licensed Software. The Licensee will permit the Licensor to inspect such records at any time during the Licensee's normal business hours. If the Licensor requests, the Licensee will furnish to the Licensor a copy of all or any part of such records.

6. UPDATES AND NEW RELEASES

6.1. The Licensor is under no obligation to provide updates or new releases of the Licensed Software.

6.2. The Licensee will provide the Licensor with all reasonable assistance in the event that the Licensor wishes to provide an update or new release of the Licensed Software.

7. LICENSEE OBLIGATIONS

7.1. This License is granted for the use by the Licensee only.

7.2. This License does not extend to authorise use of the Licensed Software product by any other person, including any employee, servant, officer, agent, subcontractor, non-employee third party, or any non-employee person affiliated with the Licensee, other than the Licensee.

8. LICENSOR OBLIGATIONS

8.1. The Licensor warrants that is has the full right, power and authority to grant to the Licensee any and all rights which are conferred upon the Licensee under this Agreement.

8.2. The Licensor makes no warranty or representation in relation to the Licensed Software and the Licensee acknowledges that any use by the Licensee of such software will be at the Licensee's sole risk.

8.3. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT WHEN OTHERWISE STATED IN WRITING THE LICENSOR AND/OR OTHER PARTIES PROVIDE THE LICENSED SOFTWARE "AS IS" WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESSED OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

8.4. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE LICENSED SOFTWARE IS WITH YOU THE LICENSEE. SHOULD THE

PROGRAM PROVE DEFECTIVE, YOU ASSUME THE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION.

8.5. THE ENTIRE LIABILITY OF THE LICENSOR UNDER ANY PROVISION OF THIS AGREEMENT OR AT LAW SHALL BE LIMITED TO THE PRICE PAID FOR THE LICENSED SOFTWARE, OR THE PRICE OF REPLACING THE LICENSED SOFTWARE.

8.6. IN NO EVENT UNLESS REQUIRED BY APPLICABLE LAW OR AGREED TO IN WRITING WILL THE LICENSOR, OR ANY OTHER PARTY WHO MODIFIES AND/OR CONVEYS THE LICENSED SOFTWARE AS PERMITTED ABOVE, BE LIABLE TO YOU FOR DAMAGES, INCLUDING ANY GENERAL, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE LICENSED SOFTWARE (INCLUDING BUT NOT LIMITED TO LOSS OF DATA OR DATA BEING RENDERED INACCURATE OR LOSSES SUSTAINED BY YOU OR THIRD PARTIES OR A FAILURE OF THE LICENSED SOFTWARE TO OPERATE WITH ANY OTHER PROGRAMS), EVEN IF SUCH HOLDER OR OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. **CONFIDENTIALITY**

9.1. Each party will not, without the prior written approval of the other party, disclose the other party's Confidential Information.

9.2. A party will not be in breach of clause 9.1 in circumstances where it is legally compelled to disclose the other party's Confidential Information.

9.3. Each party will take all reasonable steps to ensure that its employees and agents, and any subcontractors engaged for the purposes of this Agreement, do not make public or disclose the other party's Confidential Information.

9.4. This clause 9 will survive the termination of this Agreement.

10. **IMPLIED TERMS**

10.1. Subject to clause 10.2, any condition or warranty which would otherwise be implied in this Agreement is excluded.

10.2. Where legislation implies in this Agreement any condition or warranty, and that legislation avoids or prohibits provisions in a contract excluding or modifying the application of or exercise of or liability under such condition or warranty, the condition or warranty will be deemed to be included in this Agreement. However, the liability of the Licensor for any breach of such condition or warranty will be limited, at the option of the Licensor, to one or more of the following:

    (a)   if the breach relates to goods (including software):

        i.   the replacement of the goods or the supply of equivalent goods;

        ii.   the repair of such goods;

        iii.   the payment of the cost of replacing the goods or of acquiring equivalent goods; or

        iv.   the payment of the cost of having the goods repaired; and

    (b)   if the breach relates to services:

        i.   the supplying of the services again; or

        ii.   the payment of the cost of having the services supplied again.

11. **LIABILITY OF THE LICENSOR**

11.1. The Licensee will at all times indemnify the Licensor and its officers, employees and

agents (*Those Indemnified*) from and against any loss (including reasonable legal costs and expenses) or liability reasonably incurred or suffered by any of Those Indemnified arising from any proceedings against Those Indemnified where such loss or liability was caused by:

(a)   a breach by the Licensee of its obligations under this Agreement which has continued for 7 days after notice of breach; or

(b)   any wilful, unlawful or negligent act or omission of the Licensee.

11.2.   The Licensor will at all times indemnify the Licensee and its officers, employees and agents (*Those Indemnified*) from and against any loss (including reasonable *legal* costs and expenses) or liability reasonably incurred or suffered by any of Those Indemnified arising from any proceedings against Those Indemnified where such loss or liability was caused by:

(a)   a breach by the Licensor of its obligations under this Agreement; or

(b)   any wilful, unlawful or negligent act or omission of the Licensor.

12.   TERMINATION

12.1.   Without limiting the generality of any other clause in this Agreement, the Licensor may terminate this Agreement immediately by notice in writing if:

(a)   the Licensee is in breach of any term of this Agreement and such breach is not remedied within 30 days of notification by the Licensor; and

(b)   the Licensee for any reason destroys or disposes of or loses custody of the Licensed Software.

12.2.   If notice is given to the Licensee pursuant to clause 12.1, the Licensor may, in addition to terminating the Agreement:

(a)   repossess any copies of the Licensed Software and Documentation in the possession, custody or control of the Licensee;

(b)   be regarded as discharged from any further obligations under this Agreement; and

(c)   pursue any additional or alternative remedies provided by law.

13.   ASSIGNMENT

13.1.   None of the rights or obligations under this Agreement may be assigned or transferred without the written consent of the parties.

14.   COSTS AND DISBURSEMENTS

14.1.   Each party must pay its own legal costs and disbursements in relation to the negotiation, preparation and completion of this Agreement and other documents referred to in it, unless expressly stated otherwise.

14.2.   The Licensee must pay all duty (including all fines, interest and penalties except those arising from the default of another party) in respect of this Agreement and any transactions contemplated under this Agreement or otherwise arising out of, or incidental to, this Agreement.

15.   NOTICES

15.1.   A notice, consent, approval or other communication (each a Notice) under this Agreement must be in writing and in English signed by or on behalf of the party giving it, addressed to the party to whom it is to be given and:

(a)   delivered to that party's address; or

(b)   sent by registered pre-paid mail to that party's address; or

(c)   transmitted by facsimile to that party's facsimile number; or

(d)   sent electronically by e-mail to that party's e-mail address with acknowledgement of delivery.

15.2.   A Notice given to a party in accordance with this clause is treated as having been given and received only if:

(a)   delivered to a party 's address, on the day of delivery if a Business Day, otherwise on the next Business Day; or

(b)   sent by registered pre-paid mail, on the second Business Day after posting;

(c)   transmitted by facsimile before 4 pm on a Business Day at the place of receipt, on the day of transmission if a Business Day, otherwise on the next Business Day; or

(d)   sent electronically by e-mail delivery is acknowledged in writing by the recipient, on the day of that acknowledgment.

16.   WAIVER OR VARIATION

16.1.   A party's failure or delay to exercise a power or right does not operate as a waiver of that power or right.

16.2.   The exercise of a power or right does not preclude:

(a)   its future exercise; or

(b)   the exercise of any other power or right.

16.3.   The variation or waiver of a provision of this Agreement or a party's consent to a departure from a provision by another party will be ineffective unless in writing executed by the parties.

17.   GOVERNING LAW AND JURISDICTION

17.1.   This Agreement is governed by the laws of New South Wales, Australia.

17.2.   Each party irrevocably submits to the non-exclusive jurisdiction of the courts of New South Wales, Australia.

18.   FURTHER ASSURANCE

18.1.   Each party will from time to time do all things (including executing all documents) necessary or desirable to give full effect to this Agreement.

19.   WHOLE AGREEMENT

19.1.   In relation to the subject matter of this Agreement:

(a)   this Agreement is the whole agreement between the parties; and

(b)   this Agreement supersedes all oral and written communications by or on behalf of any of the parties.

20.   NO RELIANCE ON WARRANTIES AND REPRESENTATIONS

20.1.   In entering into this Agreement, each party:

(a)   has not relied on any warranty or representation (whether oral or written) in relation to the subject matter of this Agreement made by any person; and

(b)   has relied entirely on its own enquiries in relation to the subject matter of this Agreement.

20.2.   This clause does not apply to warranties and representations that this Agreement expressly sets out.

21.   SEVERANCE

21.1.   If any part of this Agreement is invalid or unenforceable, this Agreement does not include it. The remainder of this Agreement continues in full force.

22. **NO MERGER**

22.1. Nothing in this Agreement merges, extinguishes, postpones, lessens or otherwise prejudicially affects any right, power or remedy that a party may have against another party or any other person at any time.

23. **CONSENTS AND APPROVALS**

23.1. Where this Agreement gives any party a right or power to consent or approve in relation to a matter under this Agreement, that party may withhold any consent or approval or give consent or approval conditionally or unconditionally. The party seeking consent or approval must comply with any conditions the other party imposes on its consent or approval.

24. **SPECIAL CONDITIONS – PERMITTED USE**

24.1. BWUnit as licensed under this agreement:

   (a) Is a limited product;
   (b) Permits the licensee to create an unlimited number of Tests using BWUnit and TIBCO Designer, provided that the Licensee holds a valid license to use TIBCO Designer directly with TIBCO Software Inc;
   (c) Permits the licensee to run individual BWUnit Tests from within TIBCO Designer, provided that the Licensee holds a valid license to use TIBCO Designer directly with TIBCO Software Inc;
   (d) DOES NOT permit the licensee to run multiple Tests in an automated fashion (such as via a calling process). For certainty, multiples of individual Tests placed sequentially within BWUnit remain individual Tests and do not merge to form one Test;
   (e) Provides the capability to execute and produce reports for up to five Tests using an external program; however, under this Agreement, this capability may only be used for evaluation and demonstration purposes.

24.2. Permission to waive any of these limitations within this clause may be granted solely by contacting sales@windyroad.com.au and obtaining permission from the Licensor in writing, which may include the parties entering a new Software Licence Agreement.