

EMBARCADERO ALL-ACCESS TERMS AND CONDITIONS

These terms are an agreement (the "Agreement") between Embarcadero Technologies, Inc. (or based on where you are located, one of its affiliates) ("Embarcadero") and you ("You"). Please read them. They apply to the software products ("Eligible Products") identified in the particular Embarcadero All-Access offering ("All-Access") and All-Access Membership ("Membership") which You have purchased, and to the support and maintenance identified in here as well as to the license provisioning technology, if any, provided with the Eligible Products.

BY USING ANY SOFTWARE PRODUCT PROVIDED IN CONNECTION WITH ALL-ACCESS, YOU ACCEPT THESE TERMS. IF YOU DO NOT ACCEPT THEM, DO NOT USE THE SOFTWARE PRODUCT. INSTEAD, RETURN IT TO EMBARCADERO OR ITS AUTHORIZED RESELLER FOR A REFUND OR CREDIT.

IF YOU COMPLY WITH THESE TERMS, YOU HAVE THE RIGHTS BELOW FOR EACH ALL-ACCESS PASS THAT YOU ACQUIRE:

Each All-Access offering includes support and maintenance services for the specified Membership Term and the right to obtain and use one or multiple products from within Embarcadero's product portfolio. The particular Eligible Products and editions that shall be made available to You, and the additional terms of use for those products, depends on the level of All-Access which You have purchased. Embarcadero reserves the right at any time, at its sole discretion, to add or remove particular software products or the edition provided, from the Eligible Products available under All-Access; provided that if a particular product has been made available to You during the particular All-Access Membership Term, You will have the right to continue to use that Eligible Product; however, new versions of that Eligible Product may no longer be provided to You during any future Membership Term.

The Membership grants You the right to the InstantOn deployment feature ("InstantOn") for Eligible Products, where InstantOn is available. It also grants You the right to use any earlier versions ("Earlier Versions") of Eligible Products that Embarcadero may choose to provide You as part of the Membership. An Earlier Version is one whose general availability pre-dates the start of your Membership.

The Eligible Products, additional features and eligibility for Earlier Versions will be indicated on the All-Access feature matrix found at www.embarcadero.com/products/all_access/membership_levels.

Certain Eligible Products shall be restricted in use to those database management system platforms ("DBMS platforms") that are specified in the All-Access purchasing document. These include ER/Studio, Rapid SQL, RapidSQL Developer, DB Optimizer, Change Manager, and DBArtisan. Other products may be used without such restriction unless otherwise specified. For ER/Studio, DBMS platform restrictions pertain only to those platforms that have been designated as "Premium" under All-Access. Such platforms are: Oracle, Sybase ASE, Microsoft SQL Server, and IBM DB2 for LUW.

To the extent the Eligible Products contain third party programs; the license terms identified with those programs apply to your use of them.

1. GRANT OF LICENSE AND SCOPE OF USE.

1.1 LICENSE. Each license to All-Access will be provided to you in what is called a "Pass" or an "All-Access Pass". The Pass will indicate the type of license that You have purchased for the Eligible Products which are licensed based on one of the following license types:

Licensors grants to You a non-exclusive, non-transferable right to use the Eligible Products within the territory specified by your business address listed in the ordering document for the Eligible Products solely in the following manner:

- (a) If You have purchased a Single Seat License (also called a Workstation License) of All-Access this will allow You to install the Eligible Products on one computer for one user.
- (b) If You have purchased a Network Named User License of All-Access this will allow You to designate one person in your organization ("Named User") the right to install the Eligible Products on one or more computers and use the Eligible Products, provided that only the Named User uses the Eligible Products.
- (c) If You have purchased a Concurrent User License of All-Access this will allow You to install the Eligible Products and/or product key on a network to be used concurrently on different computers by up to the authorized number of simultaneous users for whom You have purchased All-Access, provided that if You check out one product within the Eligible Products, all of the software associated with that Concurrent User License is checked out to that user.

Regardless of the license type, and subject to the other restrictions of the particular license type, one user (concurrent, named or seat) may use any of the Eligible Products per each All-Access Pass purchased (each a "Licensed User"). You agree that You will not designate more users than the number of licenses that Embarcadero or an Embarcadero authorized reseller has expressly granted to You, and You will not allow the Eligible Products to be used by any individuals other than the users for whom You have purchased a license to All-Access.

If the license terms that accompany any of the Eligible Products (the "EULA") give You other rights that do not expressly conflict with this Agreement, You also have those rights subject to any additional restrictions applicable to the rights that are indicated in such EULA. For example, the particular software product may contain redistributables and specific license rights and restrictions regarding those redistributables. If You elect to exercise those rights contained in the EULA, your rights shall be as defined in the EULA and subject to any restrictions contained in the EULA. In addition, the EULA for the particular Eligible Product may contain additional license types and restrictions. These license types and restrictions also apply to your usage and may require You to purchase additional licenses to receive additional usage rights.

If You are a system integrator You may use the Eligible Products to provide services to your end user customers, provided that the Eligible Products may not be installed on the end user customer machine, but only on the system integrator machine. The end user customer receives no rights to use the Eligible Products or benefit from the support provided herein or the terms and conditions of this Agreement.

1.2 ADDITIONAL USAGE RIGHTS AND RESTRICTIONS. The following rights and restrictions apply to your use of the Eligible Products.

ER/Studio Enterprise Portal

The ER/Studio Enterprise Portal software (if included) may be installed on one or multiple machines that may or may not be the same machine as that to which the Eligible Products is locked. The license granted in association with All-Access grants users the right to connect to a Portal server from a web browser. This right is granted to the Licensed User of the Eligible Products and may be used at any one time by the number of users for whom You have purchased licenses.

Performance Center Client

The Performance Center Client (if included) may be used by the Licensed User, on the machine to which the Eligible Product is locked. It may be used to connect to any Performance Center Server.

Performance Center Server

The Performance Center Server (if included) may only be installed on the machine to which the Eligible Product is locked, and accessed only by the Licensed User. Performance Center data sources licensed in conjunction with All-Access may not be pooled together: either with each other or with separately-purchased data sources (*i.e.*, You cannot combine data sources obtained through one All-Access Pass to data sources obtained through another All-Access Pass, nor combine data sources obtained through an All-Access Pass with Performance Center data sources that You have purchased outside of All-Access).

InterBase

InterBase (if included) may be installed on a separate machine, and is restricted to the user connection count specified by that level. User connections may not be pooled with other All-Access or standalone product entitlements.

Change Manager Professional

Change Manager Professional is restricted to 25 data sources per DBMS platform (up to 100 for 4 platforms) unless the All-Access Gold edition is purchased and in that event there are no data source restrictions.

All-Access Client and Server

The All-Access Server component may be installed on one (1) machine for access by the number of Licensed Users. The software identified as the All-Access Client may be installed and used only by Licensed Users and only in connection with Eligible Products licensed in connection with a Membership.

Earlier Versions

You may be provided access to Earlier Versions of Eligible Products. In such case, You may install and use such Earlier Versions of products subject to the terms, conditions and limitations set forth in this agreement, with the additional restriction that the license granted to You for such versions of products shall be valid only during the Membership Term, and may cease to function after such term has expired and not been renewed. If the earlier version includes different components, any license terms that came with the earlier version apply to your use of them. Embarcadero is not obligated to supply earlier versions to You, or to provide Support for those earlier versions.

InstantOn

You may be provided access to InstantOn. In such case, You may install and use InstantOn solely in connection with the Eligible Products provided in connection with the Membership, with the additional restriction that the license granted to You for such versions of products shall be valid only during the Membership Term, and may cease to function after such term has expired and not been renewed.

3. OWNERSHIP. The Eligible Products are proprietary to Embarcadero. The Eligible Products are licensed, not sold, to You notwithstanding any reference herein to "purchases." You acknowledge and agree that: (a) any Embarcadero products You use in connection with All-Access are protected under U.S. Copyright and other laws; (b) Embarcadero and its licensors retain all copyrights and other intellectual property rights in the Eligible Products; (c) there are no implied licenses under this Agreement, and any rights not expressly granted to You hereunder are reserved by Embarcadero; (d) You acquire no ownership or other interest (other than Your license rights) in or to the Eligible Products; and (e) Embarcadero owns all copies of the Eligible Products, however made. You agree that You will not, at any time, contest anywhere in the world Embarcadero's ownership of the Eligible Products, nor will You challenge the validity of Embarcadero's rights in the Eligible Products. You have no rights hereunder to use any trademark or service mark belonging to Embarcadero.

4. LIMITATIONS. You may not: (a) modify, adapt, alter, translate, or create derivative works of the Eligible Products or merge the Eligible Products with other software other than as described in the Eligible Products' accompanying documentation or as approved of in writing by Embarcadero; (b) lease, rent or loan the Eligible Products to any third party; (c) sublicense, distribute or otherwise transfer the Eligible Products or any component thereof to any third party except as expressly authorized in this Agreement; (d) reverse engineer, decompile, disassemble, or otherwise attempt to derive the source code of the Eligible Products; (e) remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of Embarcadero or its suppliers on the Eligible Products; or (f) allow third parties to access or use the Eligible Products such as in a time-sharing arrangement or operate the Eligible Products as part of a service bureau or, except as expressly authorized under Sections 1.2 otherwise for the use or benefit of third parties. The rights granted under this Agreement apply only to this Eligible Products.

5. LIMITED WARRANTY AND DISCLAIMER. Embarcadero warrants to You, the original purchaser, and to no other party, that any physical media included with the Eligible Products, as and when provided to You, will be free of physical defects in materials and workmanship for a period of ninety (90) days after the date that You initially acquire the Eligible Products. Your exclusive remedy and Embarcadero's sole liability for breach of this warranty is that Embarcadero will replace any defective media returned to Embarcadero within the ninety (90)-day warranty period. This warranty does not apply to damages resulting from misuse, abuse or neglect. Any replacement media will be warranted as above for the remainder of the original warranty period or twenty (20) days from the date product is shipped to You, whichever is longer. EXCEPT FOR THIS EXPRESS LIMITED WARRANTY, THE PRODUCT(S) AND SERVICES ARE PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. EMBARCADERO HEREBY EXCLUDES AND DISCLAIMS ALL IMPLIED OR STATUTORY WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, RESULTS, EFFORTS OR QUIET ENJOYMENT. THERE IS NO WARRANTY THAT THE PRODUCT OR SERVICES WILL BE ERROR-FREE OR WILL FUNCTION WITHOUT INTERRUPTION. YOU ASSUME THE ENTIRE RISK FOR THE RESULTS OBTAINED USING THE PRODUCT AND SERVICES. TO THE EXTENT THAT EMBARCADERO MAY NOT

DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

SOME STATES DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS, AND YOU MAY ALSO HAVE OTHER LEGAL RIGHTS, WHICH VARY FROM STATE TO STATE.

6. SUPPORT, MAINTENANCE AND ENHANCEMENTS ("SUPPORT"). You are entitled to the Support defined below as part of each annual Membership fee.

6.1 ELECTRONIC SERVICES. To the extent that electronic services are available, You may electronically access, at no charge, Support services which will be available twenty four (24) hours a day, seven (7) days per week. Such electronic services may include, but are not limited to: user forums, Product-specific information, hints and tips; bug fix retrieval via the Internet or World Wide Web access; Product maintenance and demonstration code retrieval via a WAN-accessible FTP server; and access to a problem resolution database via the Licensor customer support system.

6.2 SUPPORT. Support shall be applicable only to the Eligible Products licensed or sold under this Agreement for which Support fees have been paid.

Support shall consist of:

(a) Supplying telephone or other electronic support to You in order to help You locate and, on its own, correct problems with the Product. Upon mutual agreement by both parties, Licensor shall: (i) supply code corrections to You to correct Product malfunctions in order to bring the Product into substantial conformity with the published operating specifications for the most current version of the Product unless your unauthorized modifications prohibit or hamper such corrections or cause the malfunction; or (ii) supply code corrections to correct insubstantial problems at the next general release of the Product; and

(b) Supplying all extensions, enhancements and other changes that Licensor, at its sole discretion, makes or adds to the Product and which Licensor furnishes, without charge, to other licensees generally of the Product that are enrolled in Support.

If Embarcadero provides You with a new release, error correction, update, upgrade or other modification to the Eligible Products, such modification will be deemed part of the Eligible Products, and subject to the terms of this Agreement, unless the modification is expressly provided subject to a separate license agreement. Embarcadero reserves the right at any time not to release or to discontinue release of any Eligible Products and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Eligible Products.

7. REGISTRATION; DATA PRIVACY; SOFTWARE UPDATES. You must register All-Access, as well as the Eligible Products with Embarcadero as a condition to your rights to use the Eligible Products. Registration of Eligible Products will only be permitted during the Membership Term and will not be allowed after such term has expired and not been renewed. You will be prompted to register the Eligible Products at the time of your installation or first use of the Eligible Products, at which time You will be notified (or directed to online resources

explaining) how registration information provided by You may be used and You will be afforded the opportunity to opt out of certain uses of such information. In order to activate and use the Eligible Products as set forth in this Agreement, You must follow the instructions when prompted by the Eligible Products. You may be required to obtain multiple keys and register one or more software products. The software requires a key to install or access it. You are responsible for the use of keys assigned to You. You should not share the keys with third parties.

The Eligible Product may now or in the future communicate with Embarcadero or its contracted service providers' servers for the purpose of checking for and performing updates and ensuring that you are using the Eligible Product with a valid key code that Embarcadero has created and directly provided to you. This process may also collect non-proprietary information which may include, for example, information regarding how many times the Eligible Product was opened and how long it was opened for. Embarcadero shall not provide any of the information it gathers in connection with this process to any third party, except (i) as may be required by law or legal process or (ii) to enforce compliance with the key code requirement described above.

8. CONFIDENTIALITY. You acknowledge that the Eligible Products in source code form remain a confidential trade secret of Embarcadero. You agree to hold this information in confidence, not disclose it to any person, and not use it for any purpose other than the use and operation of the Eligible Products as permitted under this Agreement.

9. LIMITATION OF LIABILITY. IN NO EVENT WILL EMBARCADERO BE LIABLE TO ANY PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY LOSS OF PROFIT, REVENUE, BUSINESS OPPORTUNITY OR DATA, ARISING FROM OR RELATING TO THIS AGREEMENT OR THE PRODUCT, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, EVEN IF EMBARCADERO KNEW, SHOULD HAVE KNOWN OR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EMBARCADERO'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, IN TORT OR OTHERWISE, WILL NOT EXCEED THE FEES ACTUALLY PAID BY YOU FOR ALL-ACCESS. THIS SECTION WILL APPLY EVEN IF AN EXCLUSIVE REMEDY HEREUNDER HAS FAILED OF ITS ESSENTIAL PURPOSE.

SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

10. THIRD PARTY CLAIMS. Embarcadero will defend and settle any suit brought against You by a third party (not your affiliate), based on a claim that the Eligible Products infringes upon any U.S. Copyright, and Embarcadero will pay those costs and damages finally awarded against You in such suit that are specifically attributable to such claims or those amounts payable by You under a settlement of such suit. The foregoing obligations are conditioned on your: (a) notifying Embarcadero promptly in writing of such action; (b) giving Embarcadero sole control of the defense thereof and any related settlement negotiations; and (c) cooperating and, at Embarcadero's request and expense, assisting in such defense. If the Eligible Products become, or, in Embarcadero's opinion, are likely to become, the subject of an infringement claim that Embarcadero is required to defend, then Embarcadero may (at its option and expense) either: (a) procure for You the right to continue using the Eligible Products; (b) replace or modify the Eligible Products so that it becomes non-infringing; or (c) terminate this Agreement and your rights hereunder to use the Eligible Products and refund a pro rata portion of any license fee You paid under this Agreement, based on a three (3)-year product life.

Notwithstanding the foregoing, Embarcadero will have no obligation under this Section or otherwise with respect to any infringement claim based upon: (a) any use of the Eligible Products not in accordance with this Agreement or the products accompanying documentation; (b) any use of the Eligible Products in combination with other products, equipment, software, or data not provided by Embarcadero; (c) any use of any version of the Eligible Products other than the most current version made available to You; or (d) any modification of the Eligible Products by any person other than Embarcadero or its authorized agents ("Excluded Claims"). You will indemnify Embarcadero against all liability, damages and costs (including reasonable attorneys' fees) resulting from or related to an Excluded Claim. This section states Embarcadero's entire liability and your sole and exclusive remedy for third-party claims relating to the Eligible Products.

11. TERM AND TERMINATION.

a) Term. Each Membership is for a one (1)-year term beginning on the date You purchased All-Access, unless otherwise indicated on the ordering documents ("Membership Term"). Upon expiration of the Membership Term, the rights to receive Support (including any updates or upgrades) will expire, as will the rights to InstantOn for Eligible Products. All rights granted hereunder to any Earlier Versions of Eligible Products shall also expire at the end of the Membership Term, unless Membership is renewed. Provided You comply with the terms and conditions of this Agreement, You will have a perpetual license to use the Eligible Products (excluding Earlier Versions) registered during the Membership Term, via standard installation only, and not InstantOn. In the event All-Access is purchased as a term license, then the licenses will expire at the end of the term indicated at the time of purchase. At the expiration of the term license all rights to use the Eligible Products and all associated products and services shall cease, and You shall destroy all software installed on your systems or in your possession.

b) Termination for Cause. Embarcadero may terminate this Agreement if You breach your obligations hereunder. Embarcadero will effect such termination by giving You notice of termination, specifying therein the alleged breach. If Your breach is curable, You will have a grace period of thirty (30) days after such notice is served to cure the breach described therein. If the breach is cured within the thirty (30) day grace period, then this Agreement will remain in effect; otherwise, this Agreement will automatically terminate upon the conclusion of the thirty (30)-day grace period.

c) Effect of Termination for Cause. Upon the termination for cause of this Agreement for any reason, the following terms shall apply: (a) all rights granted under this Agreement will immediately terminate and You must stop all use of the Eligible Products; (b) You must return to Embarcadero (or destroy) all copies of the Eligible Products provided to or made by You, and You will, within ten (10) days after the effective date of termination, provide Embarcadero with written certification that all such copies have been returned or destroyed, as applicable.

(d) Survival. Subject to Section 11(a), in the event of termination or expiration of this Agreement the provisions from Sections 3, 4, 5, 8, 9, 11 and 12 will survive.

12. GENERAL PROVISIONS.

a) Audit. If You are entering into this license as an entity other than an individual (e.g., as a corporation, partnership, or other organization), during the term of this Agreement and for one

(1) year thereafter, Embarcadero or its outside auditors will have the right to conduct an audit of Your records and computer systems to verify that You have paid to Embarcadero the correct amounts owed under this Agreement and determine whether the Eligible Products are being used in accordance with the terms of this Agreement. Any audit will be conducted during regular business hours at Your facilities, with reasonable notice. You agree to provide the audit team access to the relevant records and facilities and to provide reasonable assistance to Embarcadero in connection with this provision. You further agree to pay the cost of the audit if any underpayments during the period covered by the audit amount, to more than five percent (5%) of the fees actually owed or if the number of deployments of the Eligible Products is more than five percent (5%) in excess of that licensed.

b) Hazardous Uses. The Eligible Products are not intended for use, and You may not use or allow others to use the Eligible Products in connection with any application requiring fail-safe performance such as the operation of nuclear power facilities, air traffic control, or navigation systems, weapons control systems, life support systems, or any other system whose failure could lead to injury, death, environmental damage or mass destruction. You agree that Embarcadero will have no liability of any nature, and You are solely responsible for any expense, loss, injury or damage incurred as a result of such use of the Eligible Products.

c) Governing Law. This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California, as applicable, without giving effect to any conflicts or choice of laws principles that would require the application of the laws of a different jurisdiction. The parties expressly exclude the application of the 1980 United Nations Convention on the International Sale of Goods (if applicable).

d) Entire Agreement; Severability. This Agreement in conjunction with the EULA for each individual product belonging to the Eligible Products constitutes the entire, final and exclusive agreement between You and Embarcadero regarding the specific license transaction described herein. If any provision of this Agreement is held to be illegal, invalid or unenforceable for any reason, then such provision will be enforced to the maximum extent permissible and the remainder of the provisions of this Agreement will remain in full force and effect.

e) Assignment. You may not transfer the Software media, assign this Agreement or assign any of your rights or delegate any of your obligations under this Agreement, by operation of law or otherwise (including by merger, change of control, sale of assets or consolidation, or for any other reason whatsoever), without Embarcadero's prior written consent. Any attempted assignment in violation of this Section will be void and of no effect and shall constitute an incurable breach of this Agreement resulting in the automatic termination of this Agreement and all rights and licenses granted to You hereunder.

f) Export Control. You may not directly or indirectly transfer the Eligible Products, including its documentation, to any country if such transfer would be prohibited by applicable law, including the U.S. Export Administration Act and the regulations issued thereto. You agree to the foregoing and You are representing and warranting that You are not located in, under the control of, or a national or resident of any such country. You will be solely responsible for identifying and complying with all laws of any jurisdiction outside of the United States regarding the import, export or use of Eligible Products and technical data supplied by Embarcadero. You will obtain at Your own expense all licenses, permits or approvals required by any government to use the Eligible Products.

g) U.S. Government Rights. The Eligible Products is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Eligible Products with only those rights set forth in this Agreement.

h) Waiver and Modifications. All waivers must be in writing. Any waiver or failure to enforce a provision of this Agreement on one occasion shall not be deemed a waiver of any other provision or such provision on any other occasion. This Agreement may only be amended by a written document signed by both parties.

If You would like to alter the type or usage parameters of any license You have acquired from Embarcadero, You must first contact Embarcadero to obtain written approval and pricing for any such modifications to your license. If You have any questions about this Agreement, please contact your Embarcadero authorized reseller or Embarcadero.