

## Software License and Support Agreement

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**1. SCOPE.** This Software License and Support Agreement (this “Agreement”) is made and entered into as of the date of the earlier of Licensee’s (as defined below) purchase of a license to use a Product (as defined below) or Licensee’s installation and use of a Product (such date, the “Effective Date”) and establishes the terms and conditions to which Embarcadero Technologies, Inc., a Delaware corporation with offices at 10801 N Mopac Expressway, Building 1, Suite 100, Austin, Texas 78759 (“Licensor”) and Licensee have agreed for the licensing of Licensor’s software products and accompanying documentation (“Products”) and Support (as defined below). For purposes of this Agreement the term “Licensee” means the person or entity, as applicable, designated on the purchase order, price quote or online order form (each, a “Purchase Order”) pursuant to which the Support and/or licenses for the Product were purchased. In the event of a conflict between the terms of this Agreement and any Purchase Order, the terms of this Agreement will govern and control unless Licensor expressly agrees in writing otherwise. Delivery if made by any means other than electronic delivery, shall be made *FCA* (Incoterms 2010) Licensor’s shipping point. All deliveries of Product shall be deemed accepted upon delivery. If Licensee is evaluating Licensor software, only the provisions of Section 22 below will govern such evaluation.

**2. LICENSE GRANT.** Licensor grants to Licensee a non-exclusive, non-transferable, perpetual license (the “License”) to install this Product within the country (or in the case of a country within the European Union within the European Union) specified by Licensee’s ship to address provided by Licensee in the ordering documentation for the Product at the time of purchase (“Licensed Country”) and solely for the development of software programs and/or management of its internal systems and data in the following manner:

- (a) If Licensee has purchased a Single Seat License (also called a Workstation License), Licensee may install the Product on one computer for use by one end user within the Licensed Country.
- (b) If Licensee has purchased a Concurrent Users License, Licensee may install the Product on a network within the Licensed Country to be used concurrently on different computers by up to the authorized number of users for which Licensee has purchased a license provided that the Product is accessed and used only in the Territory. “Territory” means the geographical area in which the Product may be accessed and used. The use in the Territory shall be subject to the export restrictions set forth below. Territory may be any one, and only one, of the following three geographic areas: Americas Territory, EMEA Territory or AsiaPac Territory each as defined below.

The geographic Territories are: ‘Americas Territory’ including and limited to those geographical areas found within the boundaries of North and South America (but excluding Cuba). ‘Europe, Middle East and Africa Territory’ or ‘EMEA Territory’ including and limited to those geographical areas found within the boundaries of Europe, Middle East and Africa, including countries in the former Soviet Union (but excluding Syria, Iran and Sudan); ‘Asia Pacific Territory’ or ‘AsiaPac Territory’ including and limited to those geographical areas found within the boundaries of Asia and Australia/Pacific (but excluding North Korea).

- (c) If Licensee has purchased a Network Named User or Named User License, Licensee may install the Product on one or more computers and designate one person in Licensee’s organization (“Named User”) the right to use the Product within the Licensed Country, provided that only the Named User uses the Product.
- (d) If Licensee has purchased a CPU License, Licensee may use the Product on any number of computers within the Licensed Country, provided that at no time may the Product be used to monitor more than the authorized number of CPUs for which Licensee has purchased a license.

(e) If Licensee has purchased a Bronze, Silver, Gold or Platinum edition license for DBArtisan Team Server it is a capacity based license. Under this license Licensee may use the Product to monitor and manage databases provided that the total cumulative amount of data that is monitored and managed at any one point in time does not exceed the total data capacity licensed under the applicable edition license.

(f) If Licensee has purchased a license for ER/Studio Team Server or ER/Studio Portal it is an exclusive connection license. Under this exclusive connection license, Licensee may install the Product on client computers up to the total number of licenses purchased to connect to a single server. Licenses may be reapportioned to different users up to the total number of license purchased.

Except where prohibited by applicable law, transfer of the Product into a country (or in the case of the European Union, outside the EU) not identified on the ordering documentation at the time of purchase is prohibited and will void the license. Temporary usage of a Product outside the Licensed Country or Territory not to exceed thirty (30) days while a user is traveling, is permitted. Licensee usage of the Product may be restricted to DBMS platforms please look to the Purchase Order for the specific platforms licensed. Licensee may not mix and match ER/Studio Team Edition licenses with ER/Studio Enterprise licenses or other ER/Studio editions which can connect to the repository. Licensee shall not connect non-Team Edition products, such as ER/Studio Enterprise, to the Team Edition repository. If Licensee has purchased a license for ER/Studio Team Edition, Licensee must upgrade all licenses with repository connectivity to ER/Studio Team Edition. Certain editions of the Product may include ToolCloud and/or InstantOn features. Additional restrictions applicable to those features may be found in supplemental terms accompanying them.

**3. TERM.** This Agreement shall be effective on the Effective Date and shall continue for the term(s) set forth in this Agreement or in the Purchase Order, unless earlier terminated in accordance with the terms hereof.

**4. TERMINATION.** Licensor may immediately terminate this Agreement without further obligation or liability:

(a) with respect to a License, if Licensee fails to pay the license fee due for the License hereunder and continues to be delinquent for a period of thirty (30) days after the last day on which payment is due;

(b) if a petition alleging insolvency is filed by or against Licensee and not stayed within 60 days, or a receiver is appointed for any part of Licensee's business, or its assets are assigned for the benefit of creditors; or

(c) if Licensee commits any material breach of this Agreement and fails to remedy such breach within thirty (30) days after written notice by Licensor of such breach.

The termination of this Agreement shall not affect: (i) the obligation of either party pursuant to any License which has not been terminated, and which shall therefore remain in effect in accordance with its terms; or (ii) the survival of the representations and warranties contained herein. Within sixty (60) days of the termination of any License, Licensee shall return to Licensor the terminated Product and all related documentation, and copies thereof. Licensee shall promptly certify in writing to Licensor that all copies of the Product have been removed from each computer upon which the Product was installed, and that any copies not returned have been destroyed.

## **5. TITLE AND PROPRIETARY INFORMATION.**

**5.1 TITLE AND COPYRIGHT.** Licensor represents and warrants that it has the full rights to license the Product to Licensee and to perform its obligations under this Agreement. All title and copyrights and other industrial, intellectual and marketing rights in and to the Product(s), including but not limited to all modifications thereto made by or for any person, are owned by Licensor and/or its affiliates and licensors, and are protected by both United States copyright law and applicable international copyright treaties. Licensee agrees not to claim or assert title to or ownership of the Product. Except as expressly set forth herein, Licensee may copy the Product only for backup or archival purposes, and for no other purpose. Licensee will not remove or alter any copyright or proprietary notice from copies of the Product, and copies made by or for Licensee shall bear all copyright, trade secret, trademark and any other intellectual property right notices on the original copies. All rights not specifically granted to licensee herein are retained by Licensor.

**5.2 RESTRICTIONS.** Licensee acknowledges and agrees that the Product contains valuable trade secrets of Licensor and/or its affiliates and licensors, and that this Agreement establishes a confidential relationship between the parties with respect to this information. Subject to applicable law, Licensee agrees:

(a) not to decompile, disassemble, reverse engineer or otherwise attempt to derive the Product source code from object code except to the extent expressly permitted by applicable law or treaty despite this limitation;

(b) not to sell, rent, lease, license, sublicense, display, modify, time share, outsource or otherwise transfer the Product to, or permit the use of the Product by, any third party; and

- (c) to preserve the confidential nature of the proprietary and trade secret information by retaining and using the Product in trust and confidence, solely for its internal use, and using the degree of care and protection that Licensee would use for its own information of similar importance, but in no event less than a reasonable degree of care and protection, to prevent the unauthorized use, copying, publication or dissemination of the Product and Licensor's confidential information learned from Licensee's use of the Product.

Licensee will not export or re-export the Product without both the written consent of Licensor and the appropriate U.S. and / or foreign government license(s) or license exception(s). Licensor shall have the right to seek injunctive relief against any actual or threatened violation of these restrictions, in addition to any other available remedies. Additional restrictions may apply to certain files, programs or data supplied by third parties and embedded in the Product; consult the Product installation instructions or release notes for details. Licensee agrees to promptly report to Licensor any violations of these provisions by Licensee's employees, consultants or agents of which Licensee is aware.

**6. SUPPORT, MAINTENANCE AND ENHANCEMENTS ("Support").** Licensee is entitled to the Support services defined below as part of an annual Support fee.

**6.1 ELECTRONIC SERVICES.** To the extent that electronic services are available, Licensee 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 Product licensed or sold under this Agreement for which Support fees have been paid. In the United States, Support is provided from 8:00 AM through 6:00 PM (Central Standard Time) Monday through Friday, excluding United States public and bank holidays. Support shall consist of:

- (a) Supplying telephone or other electronic support to Licensee in order to help (i) Licensee locate and, on its own, correct problems with the Products and (ii) provide product licensing assistance. Upon mutual agreement by both parties, Licensor shall: (i) supply code corrections to Licensee 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 Licensee's 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.

**6.3 TERMINATION OF SUPPORT.** Licensee may cancel enrollment in Support upon written notice to Licensor at least thirty (30) days prior to the next Support Anniversary Date. If Licensee has failed to renew or terminated its enrollment in Support, for a period of up to three years from the Support expiration date, Licensee may re-enroll in Support by paying a reinstatement fee to be calculated based on Licensor's then current reinstatement policy and due for the period during which Licensee was not enrolled in Support. In addition, Licensee must pay the annual charge for Support for the next year in advance. Such reinstatement date shall then be considered the Support Anniversary Date. For the avoidance of doubt, Support reinstatement will not be permitted after three years of lapsed Support. Licensee agrees not to modify the Product without the prior written approval of Licensor. Unapproved alterations to the Product shall void any obligation by Licensor to provide Support for the Product, pursuant to this Section 6, during the warranty period and any subsequent period in which Licensee is enrolled in Support. Licensor may elect to cease offering support services at any time (i) for a particular Product version in the case where it has been replaced by newer release(s) and (ii) in the case where a particular Product has reached its end of life.

**6.4 CHANGE OF SUPPORT FEES.** Licensor reserves the right to change its then current published list prices for the Products and its charge for Support at any time upon thirty (30) days written notice to Licensee. Any such change to Support shall not take effect until the completion of the then current support term.

**6.5 SERVICES; UPDATES; PRODUCT CHANGES.** Licensor is not required under this Agreement to provide any installation, training or other services to Licensee. Such services, if available, must be purchased separately. If Licensee purchases support and Licensor provides Licensee with a new release, error correction, update, upgrade or other modification to the Product, such modification will be deemed part of the Product, and subject to the License and the terms of this Agreement, unless the modification is expressly provided subject to a separate license agreement. If Licensee have acquired an upgrade version of the Product, such upgrade constitutes a single Product together with the copy of the Product that Licensee upgraded. This means that, although Licensee may have two sets of Product media and/or two license keys, Licensee still has only one license. Therefore, Licensee may not transfer the original copy of the Product or license key to any other party or user. Licensor reserves the right at any time not to

release or to discontinue release of any Product and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of any future releases of the Product.

**7. PAYMENT SCHEDULE.** Payment for all License and Support fees shall be due thirty (30) following the date of an invoice issued by Licensor specifying the amounts due, unless otherwise set forth in an ordering document accepted by Licensor in writing. Unless otherwise expressly set forth herein, all fees are non-refundable. Licensor shall invoice Licensee for the initial Support fees upon the initial order of the licensed Products (the "Support Anniversary Date"). Sixty (60) days prior to each annual Support Anniversary Date of the licensed Products, Licensor shall invoice Licensee the then-current fee for the next year of Support. Annual Support fees are payable in advance and are non-refundable.

**8. LIMITED WARRANTY AND CONDITIONS.** Licensor represents and warrants to Licensee that for a period of sixty (60) days from the date of the delivery of the Product (i) the media on which the Product is furnished will be, under normal use, free from defects in material and workmanship; and (ii) the Product will perform in all material respects with the operating specifications contained in the accompanying Product documentation, which is current at the effective date of this Agreement. Other than with respect to any indemnification hereunder, Licensor's entire liability and Licensee's exclusive remedy under this provision will be for Licensor to use commercially reasonable efforts to remedy defects covered by this warranty and condition within a reasonable period of time or, at Licensor's option, either to replace the defective Product or to refund the amount paid by Licensee to license the use of the Product. Licensor does not warrant or condition that the operation of the Product will be uninterrupted or error free or that all software defects can be corrected. This warranty and condition shall not apply if (A) the Product is not used in accordance with applicable documentation; (B) the Product defect has been caused by Licensee's malfunctioning equipment; or (C) Licensee has made modifications to the Product not expressly authorized in writing by Licensor. No employee, agent, or representative of Licensor has the authority to bind Licensor to any oral representations, warranties or conditions concerning the Product. Any written representation, warranty or condition not expressly contained in this Agreement shall not be enforceable.

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**9. LIMITATION OF LIABILITY.** Neither Licensor nor Licensee shall be liable to the other party for consequential, indirect, incidental, exemplary, special or punitive damages from any cause, whether in contract, tort (including negligence) or otherwise, arising out of or in any way connected with the design, manufacture, sale, support or use of the Product. Except as provided in Section 10 below, in no event shall Licensor's or Licensee's liability for direct damages resulting from the use of the Product exceed the amount paid by the Licensee to license the use of the Product.

**10. INDEMNIFICATION FOR INFRINGEMENT.** Licensor will defend or settle, at its own expense, any claim against Licensee asserting a patent, copyright, trademark, trade secret or proprietary right violation which concerns the Product used within the scope of the License hereunder. Licensor shall indemnify Licensee against any loss, expense or liability including reasonable attorney's fees from any damages alleged against Licensee. Licensor shall have no obligations under this Section unless (i) Licensee notifies Licensor in writing within ten (10) days after Licensee first receives notice of any such claim, action or allegation of infringement and (ii) Licensor is given sole control of the defense of any action and all negotiations for its settlement or compromise, with the reasonable assistance of Licensee. Licensor shall not be liable for any costs or expenditures incurred by Licensee without Licensor's prior written consent. If an injunction or order is obtained against Licensee's use of the Product by reason of the allegations of infringement, or if in Licensor's opinion the Product is likely to become the subject of a claim of infringement, Licensor shall, at its expense:

- (a) Procure for Licensee the right to continue using the Product; or
- (b) Modify or replace the Product with a compatible, functionally equivalent, non-infringing Product(s); or
- (c) If neither (a) nor (b) is reasonably practical in Licensor's judgment, remove the Product and issue Licensee a pro rata credit based upon the License fees paid for the Product prorated over a thirty-six (36) month period from the date of shipment of the Product. Thereafter, termination shall proceed in accordance with the terms of Section 4.

Licensor shall have no obligation under this Section to the extent the alleged infringement results from (i) modification of the Product other than by Licensor; (ii) the combination of the Product with products not provided by Licensor; or (iii) use of any older version of the Product when use of a newer version made available to Licensee would have avoided the infringement. This Section 10 is Licensor's entire liability and Licensee's sole and exclusive remedy in the event of intellectual property infringement of any kind.

**11. VERIFICATION.** Licensor may, at its expense, audit the number of copies of the Product in use by Licensee and the designated CPU(s) on which the Product(s) is / are installed. Any such audit shall be conducted during regular business hours at Licensee's facilities and shall not unreasonably interfere with Licensee's business activities. If an audit reveals that Licensee has

underpaid fees to Licensor, Licensee shall be invoiced for such underpaid fees (based on the list prices in effect at the time the audit is completed); and if the underpaid fees exceed five percent (5%) of the License fees already paid, then Licensee shall also pay Licensor the reasonable costs of conducting the audit.

**12. ASSIGNMENT.** Neither this Agreement nor any of Licensee's rights, licenses or obligations hereunder may be assigned or delegated by Licensee to any third party, including without limitation in connection with a merger, acquisition, reorganization, outsourcing, change of control or under any other circumstance. Any such purported assignment or delegation shall 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 Licensee hereunder.

**13. U.S. GOVERNMENT RESTRICTED RIGHTS; EXPORT COMPLIANCE.** Use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in FAR Section 52.227-14 Alt. III (g)(3), FAR Section 52.227-19, DFARS 252.227-7014 (b) or DFARS 227.7202, as amended from time to time. Contractor/Manufacturer is Embarcadero Technologies, Inc., located at 10801 N Mopac Expressway, Building 1, Suite 100, Austin, Texas 78759. Any contract notices should be sent to this address. Licensee may not download, use, transfer, export or re-export the Product except as authorized by United States law and the laws of the jurisdiction in which the Product was obtained. In particular, but without limitation, Product may not be, downloaded, used, exported or re-exported (i) in or to (or by or to a national or resident of) any country then under U.S. economic embargo (currently including, but not necessarily limited to, Cuba, Iran, North Korea, Sudan, and Syria), (ii) any end user who Licensee's knows or has reason to know will utilize them in the design, development or production of nuclear, chemical or biological weapons, or rocket systems, space launch vehicles, and sounding rockets, or unmanned air vehicle systems or (iii) to any person or entity on the U.S. Treasury Department's list of Specially Designated Nationals or on the U.S. Department of Commerce's Denied Persons List or Entity List. By downloading or using Products, Licensee represents and warrants that it is not located in, under control of, or a national or resident of any such country or on any such list.

**14. SEVERABILITY.** Should any provision of this Agreement be determined to be invalid, ineffective, or unenforceable, under present or future laws, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**15. NOTICE.** Notices to either party shall be in writing to the address indicated in this Agreement (or as later amended) and deemed effective when received, or twenty-four (24) hours following the date of the postmark, if sent by prepaid certified mail, return receipt requested or by express overnight courier.

**16. REFERENCING.** Licensee agrees that Licensor may refer to the corporate name of Licensee as a customer of Licensor, both internally and in externally published media; any additional disclosure by Licensor with respect to Licensee shall be subject to the prior written approval of Licensee.

**17. FORCE MAJEURE.** Neither party will be in default of its obligations under this Agreement to the extent its performance is delayed or prevented by causes beyond its reasonable control, including but not limited to acts of God, earthquake, flood, embargo, riots, sabotage, utility or transmission failures, fire or labor disturbances. The party facing an event of force majeure shall use its commercially reasonable efforts in order to remedy that situation as well as to mitigate its effects.

**18. WAIVER.** The waiver by a party of one breach or default by another party under this Agreement will not constitute the waiver of any subsequent breach or default. No waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**19. SURVIVAL.** In the event of expiration or termination of this Agreement for any reason, the provisions of Sections 1, 4, 5, 7, 9, 11 through 21 shall survive in accordance with their respective terms.

**20. ENTIRE AGREEMENT:** Licensee acknowledges that this Agreement has been read and agrees that this is the complete and exclusive statement of the agreement between the parties, and supersedes all prior proposals and understandings, oral and written, relating to the subject matter of this Agreement. This Agreement shall not be modified or rescinded except in writing signed by the parties. The terms and conditions of any present or future documents submitted by Licensee which conflicts with, or in any way purports to amend this Agreement, or which includes any terms or conditions that are in addition to those contained herein or in the Purchase Order, are specifically objected to by Licensor (unless expressly agreed to by Licensor in a written instrument signed by the parties hereto), and shall be of no force or effect.

**21. GOVERNING LAW.** This Agreement shall be governed by and construed in accordance with the laws of State of Texas without regard to conflicts of law principles. The provisions of the UN Convention on Contracts for the International Sale of Goods shall not apply. Licensor and Licensee hereby irrevocably agree on behalf of themselves that the sole and exclusive jurisdiction and venue for any litigation arising from or relating to this Agreement or the subject matter hereof shall be in an appropriate federal or state court in the State of Texas located in Travis county.

**22. EVALUATION LICENSE.** Licensor is the owner and provider of certain proprietary software and documentation that Licensee desires to have tested and evaluated on the terms and conditions of this Section 22 (“Software”). For a term not to exceed fourteen (14) days (“Evaluation Period”) without Licensor’s written authorization, the Software will be provided solely for evaluation purposes for Licensee’s own internal use (“Evaluation”) and Licensee is hereby granted a non-transferable, nonexclusive, limited license to operate and use the Software for such Evaluation. The Evaluation Period begins on the date Licensee downloads or unseals the Software. At the end of the Evaluation Period, Licensee shall cease using and shall return the Software to Licensor in original condition or certify to Licensor in writing that such Software has been uninstalled and destroyed. This requirement applies to copies of the Software in all forms (partial and complete) on all types of media and computer memory and whether or not merged into other materials. Licensee agrees not to cause or permit the reverse engineering, disassembly, modification, translation or decompilation of the Software. Licensee shall not copy the Software, or write or develop any derivative software. Licensee shall not release the results of any Evaluation testing or other performance results of the Software conducted under this Section 22 to any third party without Licensor’s prior written consent for each such release.

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*[END OF AGREEMENT]*

