

Limited Use Software License Agreement

IMPORTANT - READ CAREFULLY

This Limited Use Software License Agreement ("Agreement") is a legal document between you ("Customer") and EnterpriseDB Corporation ("EnterpriseDB"). It is important that you read this document before using the EnterpriseDB-provided software ("Software"). By clicking the "I ACCEPT" button, or by installing, or otherwise using the Software, Customer agrees to be bound by the terms of this Agreement, including, without limitation, the warranty disclaimers, limitations of liability and termination provisions below. Customer agrees that this Agreement is enforceable like any written agreement negotiated and signed by Customer. If Customer does not agree with the terms and conditions of this Agreement, Customer is not licensed to use the Software, and Customer must destroy any downloaded copies of the Software in its possession or control. This Agreement will not apply if Customer has: a) a valid, paid subscription to Postgres Plus Solution Pack or Postgres Plus Advanced Server, and in that case, the terms of the Full Use Software License Agreement will apply, or b) purchased a Full Use Software License, and in that case, the terms of the Full Use Software License Agreement will apply.

1. Scope of License. Subject to the terms and conditions of this Agreement, EnterpriseDB grants to Customer a non-exclusive, non-transferable right to install a single instance of the Software on one (1) server. Notwithstanding the previous sentence, under the terms of this Agreement, Postgres Enterprise Manager may be installed on multiple computers. The Software may only be used solely for internal evaluation purposes ("Authorized Use") during the time that Customer is current in the payment of the applicable subscription fees or if no subscription fees are due, then this license will remain in effect until this agreement is terminated as set forth in Section 9. Evaluation purposes do not include the right to use the Software for production use, sublicensing, resale, or distribution, including without limitation, operation on a time sharing, software as a service or service bureau basis or distributing the Software as part of an ASP, VAR, OEM, distributor or reseller arrangement.

2. License Restrictions. Customer agrees not to: (a) copy or use the Software in any manner except as expressly permitted in this Agreement; (b) transfer, sell, rent, lease, distribute, or sublicense the Software; (c) use the Software for providing time-sharing services, service bureau services or as part of an application services provider or software as a service offering; (d) reverse engineer, disassemble, decompile the Software; (e) alter or remove any proprietary notices in the Software; (f) make available to any third party any analysis of the results of operation of the Software, including

benchmarking results, without the prior written consent of EnterpriseDB. Customer may make one additional copy of the Software for backup or archival purposes provided that the Authorized Use is not exceeded. If Customer would like to change the level of Authorized Use, Customer will need to enter into the appropriate EnterpriseDB license and pay the applicable fees.

3. Ownership. EnterpriseDB and its licensors retain all right, title and interest in and to the Software and any modifications and enhancements to the Software and all Upgrades, including all intellectual property rights that are not expressly granted in this Agreement.

4. Open Source Programs. The Software may be distributed with third party open source software programs as described in the licenses directory of the Software. These open source programs are distributed under open source licenses and not this Agreement.

5. Verification. Customer acknowledges that the Software may include functionality that notifies Customer of the availability of updates and collects and reports certain information about the use of the Software to EnterpriseDB. Customer will provide EnterpriseDB with documentation concerning transactions related to the Software within thirty (30) days after written request. In addition, upon at least thirty (30) days prior written notice, EnterpriseDB or its designated agent may inspect and review Customer's facilities and records in order to verify Customer's compliance with this Agreement.

6. DISCLAIMER OF WARRANTIES. ENTERPRISEDB PROVIDES THE SOFTWARE TO YOU "AS IS". ENTERPRISEDB DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, AND ALL WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE.

7. LIMITATIONS OF LIABILITY. Notwithstanding any other clause in this Agreement, in no event will EnterpriseDB be liable for any special, indirect, incidental, punitive or consequential damages (including, without limitation, any failure to realize savings or other benefits; any loss of use; or any claims made by or any payments made to any third person), any loss of revenue or profits, any loss and/or damage arising from or in connection with a virus, or any loss of data and/or damage arising there from or relating thereto, in each case arising from or in connection with this Agreement or the use or performance of any Software whether in an action based on contract, tort or any other legal theory, whether or not EnterpriseDB has been notified of the possibility thereof.

Notwithstanding any other clause in this Agreement, in no event will EnterpriseDB's total aggregate liability for any damages arising from or in connection with this Agreement or the use or performance of any Software whether in actions based on contract, tort or any other legal theory, and whether or not EnterpriseDB has been notified of the possibility thereof, exceed the amount paid under this Agreement during the twelve (12) month period preceding the date of the claim. The foregoing limitations, exclusions and disclaimers are an allocation of the risk between the parties and will apply to the maximum extent permitted by applicable law, even if any remedy fails in its essential purpose.

8. Government Rights. The Software under this Agreement is "commercial computer software" as that term is described in DFAR 252.227-7014(a)(1). If acquired by or on behalf of a civilian agency, the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms and this Agreement as specified in 48C.F.R. 12.212 (Computer Software) and 12.11 (Technical Data) of the Federal Acquisition Regulations (.FAR.) and its successors. If acquired by or on behalf of any agency within the Department of Defense (.DOD.), the U.S. Government acquires this commercial computer software and/or commercial computer software documentation subject to the terms of this Agreement as specified in 48 C.F.R. 227.7202 of the DOD FAR Supplement and its successors.

9. Term and Termination. This Agreement is effective as of the date this Agreement is accepted by Customer and will continue for (i) sixty (60) days, (ii) forty-five (45) days for Postgres Enterprise Manager, or (iii) until terminated by either party by giving written notice to the other, whichever circumstance occurs first. In the event of a termination of this Agreement, Customer must de-install all Software and cease all use of the Software. Sections 2, 3, 4, 5, 6, 7, 8, 9 and 10 will survive the termination of this Agreement. In addition, Customer will pay EnterpriseDB all monies that become due prior to the date of termination.

10. Miscellaneous.

10.1 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof, notwithstanding any different or additional terms that may be contained in the form of purchase order or other document used by Customer to place orders or otherwise effect transactions hereunder. This Agreement supersedes all prior or contemporaneous discussions, proposals and agreements between the parties relating to the subject matter of this Agreement. No amendment, modification or waiver of any provision of this Agreement will be effective unless in writing and signed by both parties.

10.2 Severability. If any provision of this Agreement is held to be invalid or unenforceable, the remaining portions will remain in full force and effect and such provision will be enforced to the maximum extent possible so as to effect the intent of the parties and will be reformed to the extent necessary to make such provision valid and enforceable provided, however, that if Sections 6 and 7 cannot be modified to be valid and enforceable, this Agreement will be deemed invalid in its entirety.

10.3 Force Majeure. Neither party will be liable or deemed to be in breach for any delay or failure in performance of this Agreement (except for the payment of money) or interruption of services resulting directly or indirectly from acts of God, civil or military authority, war, riots, civil disturbances, accidents, fire, earthquake, floods, strikes, lock-outs, labor disturbances, foreign or governmental order, or any other cause beyond the reasonable control of such party.

10.4 Governing Law and Venue. This Agreement will be governed by the laws of New York without regard for its choice of law provisions. All disputes arising out of or relating to this Agreement will be submitted to the exclusive jurisdiction of the state or federal courts of New York, and each party irrevocably consents to such personal jurisdiction and waives all objections to this venue.

10.5 Export Regulations. Customer will comply fully with all export control laws and regulations of the United States and all other jurisdictions.

10.6 Assignment. Neither party may assign this Agreement without the prior written consent of the other party, which consent will not be unreasonably withheld, provided that no consent will be necessary if this Agreement is being assigned by a party to an acquirer of all or substantially all of the party's assets (or the assets of the party's applicable business unit), whether by merger, sale or exchange of stock, sale of assets or otherwise and in this case, the party may assign this Agreement by providing written notice to the other party.

10.7 Marketing. EnterpriseDB may use Customer's name and company logo on its customer list and web site, and link to Customer's web site.

10.8 Independent Contractor. The relationship of the parties is that of independent contractors. Neither party will be deemed to be the legal representative of the other nor will it have any right to bind the other party to any contract or commitment. This Agreement does not, and will not, be construed to create an employer-employee, agency, joint venture or partnership relationship between the parties. Each party agrees to assume complete responsibility for its own employees regarding federal or state

laws, including employers' liability and tax withholding, worker's compensation, social security, unemployment insurance, and OSHA requirements.

10.9 Notice. All notices and other communications herein permitted or required under this Agreement will be sent by postage prepaid, via registered or certified mail or overnight courier, return receipt requested, or delivered personally to the parties at their respective addresses, or to such other address as either party will give to the other party in the manner provided herein for giving notice. Notice will be considered given upon receipt.

Version 2.5