

Pervasive Software Inc. Pervasive PSQL™ v11 Server Edition License Agreement

IMPORTANT: DO NOT INSTALL THE ENCLOSED OR DOWNLOADED SOFTWARE UNTIL YOU HAVE READ THIS PERSVASIVE PSQL LICENSE AGREEMENT (“AGREEMENT”). BY INSTALLING THE SOFTWARE, OR AUTHORIZING ANY OTHER PERSON TO DO SO, YOU, AND SUCH OTHER PERSON, IF APPLICABLE, ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT INSTALL OR USE THE SOFTWARE AND WITH RESPECT TO SOFTWARE DELIVERED (I) ON PHYSICAL MEDIA, RETURN THE ENTIRE PACKAGE WITHIN TEN DAYS OF PURCHASE FOR A REFUND, OR (II) ELECTRONICALLY, DESTROY ANY DOWNLOADED FILES.

AS DESCRIBED BELOW, USING THE SOFTWARE OPERATES AS YOUR CONSENT TO THE TRANSMISSION OF CERTAIN COMPUTER INFORMATION DURING ON-LINE ACTIVATION AND VALIDATION OF THE SOFTWARE.

1. DEFINITIONS

1.1 “Pervasive” means Pervasive Software Inc., a Delaware corporation, 12365 Riata Trace Parkway, Building B, Austin, Texas (U.S.A.) 78727.

1.2 “You” or “Your” means the person or business entity which is licensing the Software pursuant to this Agreement.

1.3 “Communications Network” means a data communication system, which allows a number of independent devices to communicate with each other, including its internal bridges and the workstations physically attached to it.

1.4 “Local Area Network” or “LAN” means privately accessible Communications Network for information distribution within Your company but does not include Your Intranet or the Internet.

1.5 “Client Software” means the software provided pursuant to a separate Pervasive license agreement that operates on a Terminal and allows the Terminal to be incorporated into a Communications Network and access the Server Software through the Communications Network.

1.6 “Terminal” means a single computing system that runs the Client Software, including but not limited to a virtual (or otherwise emulated) device.

1.7 “Server Software” or “Software” means the software You have received from Pervasive with this Agreement that operates on a Network Server which is incorporated into a Communications Network, including all Updates.

1.8 “Trial Software” means any Server Software downloaded or otherwise received from Pervasive for a limited time period for the purposes set forth in Section 2.3 below.

1.9 “Network Server” means a single computing system that runs Server Software to permit access by Client Software located either on such single computing system or remotely over a Communications Network, including but not limited to a primary network server, a fail over server, or a virtual (or otherwise emulated) server.

1.10 “Documentation” means the manuals and any other material provided by Pervasive with the Software in electronic or print form.

1.11 “Intranet” means a privately accessible Communications Network for information distribution within Your company, its subsidiaries or remote offices, and does not include connection to the Internet.

1.12 “Internet” means the publicly accessible computer Communications Network for information distribution.

1.13 “Concurrent User” means an end user authorized by You to access and use the Software or a non-human operated device configured by or for You to access and use the Software.

1.14 “User Count” means the number of Concurrent Users specified for the license purchased by You that are authorized to simultaneously access and use the Server Software, whether such Concurrent Users access the Network Server via a LAN, Intranet, the Internet, or through multiplexing, pooling or otherwise. Notwithstanding the number of Concurrent Users licensed, the number of Concurrent Users able to access a Network Server is technically limited by the maximum number of concurrent connections allowed by Your operating system.

1.15 “Updates” means any maintenance releases, updates, upgrades or other modifications to the Software.

1.16 “Concurrent User License” means a type of license granted hereunder limited by Concurrent Users and otherwise subject to the terms and conditions of this Agreement.

1.17 “Intranet License” means a type of license granted hereunder which has the same rights and restrictions as a Concurrent User License, except that the Intranet License has unlimited Concurrent Users.

1.18 “Internet License” means a type of license granted hereunder which has unlimited Concurrent Users, may be used for commercial hosting as more particularly set forth in Section 3.3, and is otherwise subject to the terms and conditions of this Agreement.

2. LICENSE

2.1 License Grant. You have ordered either a Concurrent User License, Intranet License, or Internet License. Subject to the terms and conditions of this Agreement, Pervasive grants to You a nonexclusive, nontransferable, nonsublicensable and revocable right to (i) use the Server Software on a single Network Server; (ii) use the Documentation in connection with Your use of the Software; and (iii) with respect to a Concurrent User License, permit a total number of Concurrent Users that is not greater than the User Count to simultaneously access and use the Server Software; (iv) with respect to an Intranet License, have an unlimited User Count, and otherwise subject to the same terms and conditions as a Concurrent User License; and (v) with respect to an Internet License, have an unlimited User Count and the right to use the Software in a “software as a service” or application service provider environment.

2.2 Multiplexing. With respect to a Concurrent User License (but not applicable to an Internet or Intranet License), hardware or software You use to pool connections, reroute information, and reduce the number of Terminals, Network Servers or users that directly access or use the Software, or reduce the number of Terminals, Network Servers or users the Software directly manages (sometimes referred to as “multiplexing” or “pooling”), does not reduce the User Count that You need; the required User Count equals the number of distinct inputs to the multiplexing or pooling software or hardware “front end.”

2.3 Use of Trial Software. Trial Software is licensed for the purpose of evaluation, testing and benchmark runs of the Software only. In no event shall You use the Trial Software for development, production or commercial purposes.

2.4 Pre-Release Software. Notwithstanding anything to the contrary in this Agreement, if the Software provided to You under this Agreement is pre-release or beta Software, then You may not distribute or deploy such pre-release or beta Software outside Your testing environment. Neither Pervasive nor its suppliers will be liable for any damages whatsoever relating to Your use of such pre-release or beta Software.

2.5 Open Source Software. The Software includes third party open source code software (“Open Source Software”). Any Open Source Software provided hereunder is provided pursuant to such Open Source Software license terms and conditions. Upon reasonable notice to You, Pervasive has the right to replace software provided to You as part of Open Source Software with software that has similar functionality. The license terms associated with Open Source Software require that Pervasive provide copyright and license information to You. A list of the Open Source Software included in the Software and available to You from Pervasive, the applicable license terms, and how to obtain the Open Source Software (if not already provided to You as part of the Software) are provided in the Software notice.txt file or similar file, and / or accompanying documentation. Any provisions in this Agreement which differ from any Open Source Software license are offered by Pervasive alone and not by any other party. ALL OPEN SOURCE SOFTWARE IS PROVIDED ON AN “AS IS” BASIS, AND PERVASIVE DISCLAIMS ALL WARRANTIES WITH REGARD TO OPEN SOURCE SOFTWARE, INCLUDING, WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. IN NO EVENT WILL PERVASIVE OR ITS LICENSORS BE LIABLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR SPECIAL DAMAGES OR ANY OTHER DAMAGES WHATSOEVER, WHETHER IN AN ACTION OF CONTRACT, NEGLIGENCE, OR OTHER TORTIOUS ACTION, ARISING OUT OF OR IN CONNECTION WITH THE USE OR PERFORMANCE OF THE OPEN SOURCE SOFTWARE EVEN IF PERVASIVE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. THIS LIMITATION WILL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM PERVASIVE’S OR ITS LICENSORS’ NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION.

2.6 Update License Terms. Any Updates made available to You by Pervasive shall be considered part of the

Software and subject to the terms and conditions of this Agreement. Additional license terms may accompany Updates. By installing, copying, or otherwise using any Update, You agree to be bound by the terms accompanying each such Update. If You do not agree to the additional license terms accompanying such Updates, do not install, copy, or otherwise use such Updates.

3. RESTRICTIONS

3.1 Protection of Software. You will take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Software source code represents and embodies trade secrets of Pervasive or its licensors. The source code and embodied trade secrets are not licensed to You and any modification or addition thereto, or deletion therefrom is strictly prohibited. You will not disassemble, decompile, or otherwise reverse engineer the Software, except and only to the extent that applicable law expressly permits such actions, despite this limitation.

3.2 Use with Other Software Applications. If You received this Software bundled with or embedded with any other software application (e.g., from an Authorized Reseller or OEM of Pervasive), You may only use the Software with such software application.

3.3 No Rental; No Commercial Hosting for Concurrent User Licenses and Intranet Licenses; Other Limitations.

Except as expressly authorized in this Agreement, You will not use, rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify, create derivative works of, time share or dispose of the Software or Documentation or any part thereof. You may use the Software and Documentation solely in accordance with the Documentation. With respect to Concurrent User Licenses and Intranet Licenses, you may use the Software solely for your internal business purposes. Except with the express written consent of Pervasive, or as expressly permitted in Section 2 with respect to Internet Licenses, You may not use the Software to host applications for third parties or to provide service bureau, time-sharing or other computer services to third parties.

4. ACTIVATION; VALIDATION. In order to use the Software, You will need to activate the Software.

Activation associates the use of the Software with a specific Network Server. During activation, the Software will send information about the Software and the Network Server to Pervasive, and Pervasive will then validate the Software. Validation verifies that the Software has been activated and is properly licensed as either a Concurrent User License, Internet License, or an Intranet License. The information sent to Pervasive includes, but is not limited to, (i) information derived from the hardware configuration of the Network Server, such as Hard Drive serial number, NIC card MAC address, BIOS firmware, CPU type and OS type, and (ii) information about existing or past Pervasive installations and items of a similar nature. By using the Software and Documentation, You consent to the transmission of this information during any validation check. Validation may also occur during installation, un-installation, updates and license management activities. For more information about what is sent during a validation check, see <http://www.pervasive.com/activation>. Before You activate, You have the right to use the version of the Software installed during the installation process, however Your right to use the Software without activation and validation after a certain amount of time is governed by a limiting device in the Software, unless it is activated. This is to prevent its unlicensed use. You will not be able to continue using the Software after that time if You do not activate and validate it. If the Network Server is connected to the Internet, the Software may automatically connect to Pervasive for activation. You can also activate the Software manually by Internet or telephone. In the event You transfer the Software to a different Network Server, during the transfer itself or during a subsequent upgrade process You may be required to re-activate and/or validate your Software. This may be done by contacting Pervasive at the support email address or telephone number located at <http://www.pervasive.com/company/contact/>.

5. OWNERSHIP. Ownership of all right, title, and interest in and to the Software and Documentation (including any copies) and any and all intellectual property rights embodied therein will be vested solely in Pervasive and its licensors. Copies are provided to You only to allow You to exercise Your rights under this Agreement. The Software is being licensed, not sold. Pervasive and its licensors reserve all rights not expressly granted to You. Subject to the rights expressly granted to You herein, nothing in the Agreement shall be construed directly or indirectly to assign or grant to You any right, title or interest in or to trademarks, copyrights or trade secrets of Pervasive or its licensors.

6. TRADEMARKS. You will not remove or in any manner alter or obscure the copyright, trademark, and other proprietary rights notices of Pervasive and its licensors appearing on the Software or documentation. You will have no right to register or seek to register any of Pervasive's or its licensors' trademarks, service marks, or trade names, or add any other notices or markings to the Software or Documentation.

7. ASSIGNMENT. You may not assign or otherwise transfer in whole or in part or in any manner any rights, obligations, or any interest in or under this Agreement without Pervasive's prior written consent and any attempted assignment will be void. A merger or other acquisition by a third party will be treated as an assignment. Pervasive may at any time and without Your consent assign all or a portion of its rights and duties under this Agreement.

8. TERM AND TERMINATION. This Agreement is effective from the date You download or install the Software and will remain in force until terminated. The term of this Agreement with respect to Trial Software is governed by the key delivered with the Trial Software at the time of download. However, in no event will the term of the license for Trial Software be more than thirty (30) days from the date of installation without express written approval from Pervasive. You may terminate this Agreement at any time by destroying the Documentation and the Software together with all copies and adaptations thereof. This Agreement will terminate immediately without notice from Pervasive if You fail to comply with any terms of this Agreement. You will destroy all copies of the Software and Documentation, and upon request, certify such destruction to Pervasive upon termination of this Agreement. Sections 2.3 - 2.5, 3, 5, 7, 8, 9.2, 9.3, 10, and 11 of this Agreement, and the terms of Section 12, will survive any termination hereof.

9. LIMITED WARRANTY

9.1 Magnetic Media and Documentation. Pervasive warrants that if the magnetic media or Documentation are in a damaged or physically defective condition at the time that the Software is delivered to You and if they are returned to Pervasive within ten (10) days of delivery, then Pervasive will provide You with replacements at no charge.

9.2 DISCLAIMER OF WARRANTY. PERVASIVE LICENSES THE SOFTWARE TO YOU UNDER THIS AGREEMENT SOLELY ON AN "AS IS" BASIS. EXCEPT AS EXPRESSLY PROVIDED IN SECTION 9.1, PERVASIVE MAKES NO REPRESENTATIONS, CONDITIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, REGARDING THE SOFTWARE AND DOCUMENTATION; PERVASIVE EXPRESSLY STATES AND YOU ACKNOWLEDGE THAT PERVASIVE DOES NOT MAKE ANY REPRESENTATIONS, CONDITIONS OR WARRANTIES, INCLUDING, FOR EXAMPLE, WITH RESPECT TO MERCHANTABILITY, TITLE, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, AMONG OTHERS.

9.3 High Risk Activities. The Software is not fault-tolerant and is not designed, manufactured or intended for use or resale as on-line control equipment in hazardous environments regarding fail-safe performance, such as in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, direct life support machines, or weapons systems, in which the failure of the Software could lead directly to death, personal injury, or severe physical or environmental damage ("High Risk Activities"). Pervasive and its suppliers specifically disclaim any express or implied warranty of fitness for High Risk Activities.

10. LIMITATION OF LIABILITY

10.1 PERVASIVE'S AGGREGATE LIABILITY ARISING FROM OR RELATED TO THIS AGREEMENT OR THE SOFTWARE OR DOCUMENTATION IS LIMITED TO THE TOTAL OF ALL PAYMENTS MADE BY OR FOR YOU FOR THE SOFTWARE UNDER THIS AGREEMENT.

10.2 CONSEQUENTIAL DAMAGES. IN NO EVENT WILL PERVASIVE OR ITS LICENSORS BE LIABLE TO YOU FOR INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, SPECIAL, OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER UNDER THEORY OF WARRANTY, TORT, PRODUCTS LIABILITY OR OTHERWISE EVEN IF PERVASIVE OR ITS LICENSORS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND WHETHER OR NOT SUCH LOSSES OR DAMAGES ARE FORESEEABLE. THIS LIMITATION WILL NOT APPLY TO LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM PERVASIVE'S OR ITS LICENSORS' NEGLIGENCE TO THE EXTENT APPLICABLE LAW PROHIBITS SUCH LIMITATION.

11. GENERAL CONDITIONS

11.1 Governing Law. This Agreement will be governed by, and interpreted in accordance with, the laws of the State of Texas (U.S.A.) exclusive of its choice of law provisions. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods.

11.2 Complete Understanding. This Agreement sets forth the entire understanding and agreement between You and Pervasive with respect to the subject matter hereof and may be amended only in writing signed by both parties. NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THIS AGREEMENT ABOUT THE SOFTWARE.

11.3 Waiver. No waiver of any right under this Agreement will be effective unless in writing, signed by a duly authorized representative of Pervasive. No waiver of any past or present right arising from any breach or failure to perform will be deemed to be a waiver of any future right arising under this Agreement.

11.4 Audit. You are responsible for ensuring that the number of Concurrent Users accessing the Software does not exceed the User Count, and You will maintain sufficient records, logs and other materials ("Records") sufficient to document that Your use of the Software is in accordance with the terms of this Agreement for a minimum of five years after You cease to use the Software. Pervasive has the right to audit such Records upon reasonable notice.

11.5 Severability. If any provision in this Agreement is held invalid or unenforceable, then that provision will be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement will remain unaffected.

11.6 Export Controls. None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into (or to a national or resident of) any country to which the U.S. has embargoed goods; or (ii) to any person or entity on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Orders, or the U.S. Commerce Department's Entity List of Missile, Nuclear, and Chemical and Biological Weapons Proliferators, or the U.S. Department of State's Foreign Terrorist Organization List. You agree to the foregoing and You represent and warrant that You are not located in, under the control of, or a national or resident of such country or on any such list. The Software may also be subject to U.S. laws and export regulations of the U.S. Government that require an explicit export license before any export or re-export of the Software. You will obtain any such explicit export license that may be required.

11.7 U.S. Government End Users. If You are an agency, department, or other entity of the U. S. Government ("Government"), then the use, duplication, reproduction, release, modification, disclosure or transfer of the Software and Documentation is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies. The Software and Documentation are commercial computer software and commercial computer software documentation. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto. The Contractor/Manufacturer is Pervasive Software Inc., 12365 Riata Trace Parkway, Building B, Austin, Texas, 78727.

11.8 Operating System. It is Your responsibility to fully comply with applicable license agreements for any operating systems or other software You may use with the Software.

11.9 Results of benchmark tests or other performance tests run on the Software may not be disclosed to any third party without Pervasive's prior written consent.

11.10 English is the controlling language of this Agreement.

12. JAVA RUNTIME ENVIRONMENT.

Depending on installation options, the Pervasive PSQL v11 Software may include the JAVA SE RUNTIME ENVIRONMENT (JRE) 6 from Oracle Corporation ("Oracle"). The Binary Code License Agreement from Oracle governs the JAVA SE RUNTIME ENVIRONMENT (JRE) Version 6. By accepting the Pervasive PSQL v11 Server Edition License Agreement, You also agree to accept the terms and conditions of the Binary Code License Agreement and the Supplemental License Terms from Oracle for the JAVA SE RUNTIME ENVIRONMENT (JRE) VERSION 6 and JAVAFX RUNTIME, a copy of which is in the Software "about box," notice.txt file or similar file, or accompanying documentation.

