

AppAnalytics Terms of Service

These Embarcadero AppAnalytics Terms of Service (this "Agreement") are entered into by Embarcadero Technologies, Inc. ("Embarcadero") and the entity executing this Agreement ("You"). This Agreement governs Your use of AppAnalytics (the "Service"). BY CLICKING THE "I ACCEPT" BUTTON, COMPLETING THE REGISTRATION PROCESS, OR USING THE SERVICE, YOU ACKNOWLEDGE THAT YOU HAVE REVIEWED AND ACCEPT THIS AGREEMENT AND ARE AUTHORIZED TO ACT ON BEHALF OF, AND BIND TO THIS AGREEMENT, THE OWNER OF THIS ACCOUNT. In consideration of the foregoing, the parties agree as follows:

1. Definitions.

"**Account**" refers to the billing account for the Service.

"**App(s)**" means the App under Your control that sends data to AppAnalytics.

"**Customer(s)**" means your end user customer who is using the App.

"**Customer Data**" or "AppAnalytics Data" means the data You collect, process or store using the Service concerning the characteristics and activities of Customers.

"**Event**" means the base unit that the AppAnalytics system processes and consists of a single unit of data that is sent from a Customer App to the Embarcadero servers. For example an Event may consist of identifying when the App is opened and a second Event would be identifying when the App is closed.

"**TAppAnalytics**" means the AppAnalytics tracking software, which is installed on an App for the purpose of collecting Customer Data.

"**Processing Software**" means the AppAnalytics server-side software, which stores the Customer Data and generates the Reports.

"**Privacy Policy**" means the privacy policy for an App.

"**Report**" means the resulting analysis shown at appanalytics.embarcadero.com.

"**Software**" means TAppAnalytics and the Processing Software.

2. Fees and Service.

The Service is provided without charge to You for use in a single App up to 10,000 Events per month. All other use requires payment of the published current Embarcadero fee. The fee is an annual subscription, based upon estimated usage, payable in advance. Embarcadero may change its fees and payment policies for the Service from time to time. The changes to the fees or payment policies are effective upon Your acceptance of those changes which will be posted at appanalytics.embarcadero.com/terms-of-service. Unless otherwise stated, all fees are quoted in U.S. Dollars. Any outstanding balance becomes immediately due and payable upon termination of this Agreement and any collection expenses (including attorneys' fees)

incurred by Embarcadero will be included in the amount owed, and may be charged to the credit card or other billing mechanism associated with Account.

3. Member Account, Password, and Security.

To register for the Service, and create your Account, You must sign into the AppAnalytics dashboard through an Embarcadero Developer Account and accept this Agreement. You will protect Your passwords and take full responsibility for Your own, and third party, use of Your accounts. You are solely responsible for any and all activities that occur under Your Account. You will notify Embarcadero immediately upon learning of any unauthorized use of Your Account or any other breach of security. Embarcadero's (or its wholly-owned subsidiaries') support staff may, from time to time, log in to the Service and view your AppAnalytics data in order to maintain or improve service, including to provide You assistance with technical or billing issues.

4. Nonexclusive License.

Subject to the terms and conditions of this Agreement, (a) Embarcadero grants You a limited, revocable, non-exclusive, non-sublicensable license to install, copy and use the TAppAnalytics solely as necessary for You to use the Service on Your Apps; and (b) You may remotely access, view and download Your Reports stored at appanalytics.embarcadero.com. You will comply with all applicable laws and regulations in Your use of and access to the Software, Service and Reports.

5. Information Rights and Publicity.

Embarcadero and its wholly owned subsidiaries may retain and use, subject to the terms of its privacy policy (located at <http://www.embarcadero.com/privacy-statement>), information collected in Your use of the Service. Embarcadero will not share Customer Data with any third parties unless Embarcadero (i) has Your consent for any Customer Data; (ii) concludes that it is required by law or has a good faith belief that access, preservation or disclosure of Customer Data is reasonably necessary to protect the rights, property or safety of Embarcadero, its users or the public; or (iii) provides Customer Data in certain limited circumstances to third parties to carry out tasks on Embarcadero's behalf (e.g., billing or data storage) with strict restrictions that prevent the data from being used or shared except as directed by Embarcadero. When this is done, it is subject to agreements that oblige those parties to process Customer Data only on Embarcadero's instructions and in compliance with this Agreement and appropriate confidentiality and security measures.

6. Privacy.

You will not (and will not allow any third party to) use the Service to track, collect or upload any data that personally identifies an individual (such as a name, email address or billing information), or other data which can be reasonably linked to such information by Embarcadero. You will have and abide by an appropriate Privacy Policy and will comply with all applicable laws, policies, and regulations relating to the collection of information from Customers. You must post a Privacy Policy and that Privacy Policy must provide notice of Your use of cookies that are used to collect data. You must adhere to local law in which your App is distributed and disclose the use of AppAnalytics, and how it collects and processes data. You will use commercially reasonable efforts to ensure that a Customer is

provided with clear and comprehensive information about, and consents to, the storing and accessing of cookies or other information on the Customer's device where such activity occurs in connection with the Service and where providing such information and obtaining such consent is required by law.

You must not circumvent any privacy features (e.g., an opt-out) that are part of the Service.

7. Indemnification.

To the extent permitted by applicable law, You will indemnify, hold harmless and defend Embarcadero and its wholly owned subsidiaries, at Your expense, from any and all third-party claims, actions, proceedings, and suits brought against Embarcadero or any of its officers, directors, employees, agents or affiliates, and all related liabilities, damages, settlements, penalties, fines, costs or expenses (including, reasonable attorneys' fees and other litigation expenses) incurred by Embarcadero or any of its officers, directors, employees, agents or affiliates, arising out of or relating to (i) Your breach of any term or condition of this Agreement, (ii) Your use of the Service, (iii) Your violations of applicable laws, rules or regulations in connection with the Service, (iv) any representations and warranties made by You concerning any aspect of the Service, the Software or Reports to any Third Party; (v) any claims made by or on behalf of any Third Party pertaining directly or indirectly to Your use of the Service, the Software or Reports; (vi) violations of Your obligations of privacy to any Third Party; and (vii) any claims with respect to acts or omissions of any Third Party in connection with the Service, the Software or Reports. Embarcadero will provide You with written notice of any claim, suit or action from which You must indemnify Embarcadero. You will cooperate as fully as reasonably required in the defense of any claim. Embarcadero reserves the right, at its own expense, to assume the exclusive defense and control of any matter subject to indemnification by You.

8. Third Parties.

If You use the Service on behalf of the third party or a third party otherwise uses the Service through Your Account, whether or not You are authorized by Embarcadero to do so, then You represent and warrant that (a) You are authorized to act on behalf of, and bind to this Agreement, the third party to all obligations that You have under this Agreement, (b) Embarcadero may share with the third party any Customer Data that is specific to the third party's Apps, and (c) You will not disclose third party's Customer Data to any other party without the third party's consent.

9. DISCLAIMER OF WARRANTIES.

TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EMBARCADERO MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE AND NONINFRINGEMENT.

10. LIMITATION OF LIABILITY.

TO THE EXTENT PERMITTED BY APPLICABLE LAW, EMBARCADERO WILL NOT BE LIABLE FOR YOUR LOST REVENUES OR INDIRECT, SPECIAL, INCIDENTAL,

CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES, EVEN IF EMBARCADERO OR ITS SUBSIDIARIES AND AFFILIATES HAVE BEEN ADVISED OF, KNEW OR SHOULD HAVE KNOWN THAT SUCH DAMAGES WERE POSSIBLE AND EVEN IF DIRECT DAMAGES DO NOT SATISFY A REMEDY. EMBARCADERO'S (AND ITS WHOLLY OWNED SUBSIDIARIES') TOTAL CUMULATIVE LIABILITY TO YOU OR ANY OTHER PARTY FOR ANY LOSS OR DAMAGES RESULTING FROM CLAIMS, DEMANDS, OR ACTIONS ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE LESSOR OF THE TOTAL FEES PAID FOR THE SERVICE OR \$500 USD.

11. Proprietary Rights Notice.

The Service, which includes the Software and all Intellectual Property Rights therein are, and will remain, the property of Embarcadero. All rights in and to the Software not expressly granted to You in this Agreement are reserved and retained by Embarcadero and its licensors without restriction, including, Embarcadero's right to sole ownership of the Software. Without limiting the generality of the foregoing, You agree not to (and not to allow any third party to): (a) sublicense, distribute, or use the Service or Software outside of the scope of the license granted in this Agreement; (b) copy, modify, adapt, translate, prepare derivative works from, reverse engineer, disassemble, or decompile the Software or otherwise attempt to discover any source code or trade secrets related to the Service; (c) rent, lease, sell, assign or otherwise transfer rights in or to the Software or the Service; (d) use, post, transmit or introduce any device, software or routine which interferes or attempts to interfere with the operation of the Service or the Software; (e) use the trademarks, trade names, service marks, logos, domain names and other distinctive brand features or any copyright or other proprietary rights associated with the Service for any purpose without the express written consent of Embarcadero; (f) remove, obscure, or alter any notice of copyright, trademark, or other proprietary right appearing in or on any item included with the Service.

12. U.S. Government Rights.

If the use of the Service is being acquired by or on behalf of the U.S. Government or by a U.S. Government prime contractor or subcontractor (at any tier), in accordance with 48 C.F.R. 227.7202-4 (for Department of Defense (DOD) acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DOD acquisitions), the Government's rights in the Software, including its rights to use, modify, reproduce, release, perform, display or disclose the Software, will be subject in all respects to the commercial license rights and restrictions provided in this Agreement.

13. Term and Termination.

Either party may terminate this Agreement at any time with notice. Upon any termination of this Agreement, Embarcadero will stop providing, and You will stop accessing the Service; and You will delete all copies of TAppAnalytics from all Apps and certify such deletion in writing to Embarcadero within 3 business days of such termination. In the event of any termination (a) You will not be entitled to any refunds of any usage fees or any other fees, and (b) any (i) outstanding balance for Service rendered through the date of termination, and (ii) other unpaid payment obligations during the remainder of the Initial Term will be immediately due and payable in full and (c) all of Your historical Report data will no longer be available to You.

14. Modifications to Terms of Service and Other Policies.

Embarcadero may modify these terms or any additional terms that apply to the Service to, for example, reflect changes to the law or changes to the Service. You should look at the terms regularly. Embarcadero will post notice of modifications to these terms at appanalytics.embarcadero.com/terms-of-service. Changes will not apply retroactively and will become effective no sooner than 14 days after they are posted. If You do not agree to the modified terms for the Service, You should discontinue Your use AppAnalytics. No amendment to or modification of this Agreement will be binding unless (i) in writing and signed by a duly authorized representative of Embarcadero, (ii) You accept updated terms online, or (iii) You continue to use the Service after Embarcadero has posted updates to the Agreement or to any policy governing the Service.

15. Miscellaneous, Applicable Law and Venue.

Embarcadero will be excused from performance in this Agreement to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control. This Agreement (including any amendment agreed upon by the parties in writing) represents the complete agreement between You and Embarcadero concerning its subject matter, and supersedes all prior agreements and representations between the parties. If any provision of this Agreement is held to be unenforceable for any reason, such provision will be reformed to the extent necessary to make it enforceable to the maximum extent permissible so as to effect the intent of the parties, and the remainder of this Agreement will continue in full force and effect. This Agreement will be governed by and construed under the laws of the state of California without reference to its conflict of law principles. In the event of any conflicts between foreign law, rules, and regulations, and California law, rules, and regulations, California law, rules and regulations will prevail and govern. Each party agrees to submit to the exclusive and personal jurisdiction of the courts located in Santa Clara County, California. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transactions Act do not apply to this Agreement. The Software is controlled by U.S. Export Regulations, and it may not be exported to or used by embargoed countries or individuals. Any notices to Embarcadero must be sent to: 275 Battery St. Suite 1000 San Francisco, CA 94111 via first class or air mail or overnight courier, and are deemed given upon receipt. A waiver of any default is not a waiver of any subsequent default. You may not assign or otherwise transfer any of Your rights in this Agreement without Embarcadero's prior written consent, and any such attempt is void. The relationship between Embarcadero and You is not one of a legal partnership relationship, but is one of independent contractors. This Agreement will be binding upon and inure to the benefit of the respective successors and assigns of the parties hereto. The following sections of this Agreement will survive any termination thereof: 1, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, and 15.

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