

ProModel®

Better Decisions—Faster

This agreement pertains to software and documentation for:



License Agreement

Version 9, or subsequent versions, hereinafter referred to as "the software package."

By opening this container, or by clicking the appropriate icon below, or by installing, or copying, or otherwise using the software package you, the end-user, are entering into a legal agreement with ProModel Corporation and you are agreeing to be bound by the terms of the agreement as set forth below. This legal agreement is a complete and exclusive statement of the agreement, excluding all prior written and oral agreements. If you do not agree to the terms of this agreement, promptly return the software, along with the accompanying items (including written materials, manuals, and containers) to the place from which you obtained them, for a refund or other appropriate consideration.

1. Grant of license. ProModel Corporation grants you, the purchaser, a nontransferable, non-exclusive license to USE the software package subject to the terms set forth in this License Agreement. You may use the software package on a single computer or computer terminal at any given time.

2. Software Distribution.

- No part of the software may be re-sold or commercially distributed, either separately or as part of a commercial product. If you desire to distribute the software as part of a commercial product, you must contact ProModel Corporation and sign a royalty/license agreement permitting such distribution;
- The software and accompanying documentation may not be transmitted electronically, including over the Internet, rented, loaned, leased, sold, distributed, made available, directly or indirectly, for use by any other entity not covered by this License Agreement, or otherwise transferred without the prior written approval of ProModel Corporation.
- The license cannot be transferred or sublicensed without prior written approval by ProModel Corporation.
- This software, without installation code or hardware key, is a RunTime License - Silver Edition (RT-Silver). RT-Silver licenses may only be installed on computers within the purchasing company if the maintenance and support contract is current.

3. Other restrictions.

- You may not:
 - sell, rent, lease, assign, sublicense or transfer the software package, with the exception of Software Distribution as provided above in section two;
 - modify, translate, reverse engineer, decompile, disassemble, or create derivative works based on the software package;
 - remove any proprietary notices, labels, or marks on the software package and accompanying documentation;
- If you purchase an upgrade version, or receive an upgrade version as part of a maintenance and support agreement or renewal, this upgraded version of the software package constitutes a single product. Therefore, the upgrade and the software that you upgraded cannot (both) be available for use by two different people at the same time.

4. Copyright. The software package is owned by ProModel Corporation and contains valuable unpublished, confidential information and trade secrets, including algorithms, innovations, and concepts. The software package is protected by various intellectual property laws, including, without limitation, copyright law, trademark law, trade secret law, and international treaty provisions. You acknowledge and agree that the software package constitutes proprietary information and trade secrets of ProModel, whether or not any portion thereof is or may be the subject of a valid copyright or patent. Therefore, you specifically agree to treat the software package like any other copyrighted material (e.g., a book or musical recording), except that you may copy the software diskettes for limited Software Distribution, as provided above in section two. Among other things, you may not copy the written materials accompanying the software package and you may not copy or attempt to copy the hardware or software key.

5. Defective materials. If a CD or hardware key is defective within the limited warranty period, it will be replaced at no charge.

6. Limited warranty. With proof of payment, for a period of sixty (60) days from your receipt, ProModel Corporation warrants that (a) the software package will perform substantially in accordance with the accompanying written materials; and (b) any hardware accompanying the software package will be free from defects in materials and workmanship under normal use and service. You agree to assume all responsibility for the installation, use, and results obtained from the use of the software package. Further, this Limited Warranty is void if failure of the software package or hardware has resulted from accident, abuse, misapplication, or failure to comply with the documentation or instructions provided by ProModel Corporation.

EXCEPT FOR THE LIMITED WARRANTY DESCRIBED ABOVE, THERE ARE NO WARRANTIES TO YOU OR ANY OTHER PERSON OR ENTITY FOR THE SOFTWARE PACKAGE, EXPRESS OR IMPLIED, AND PROMODEL CORPORATION SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. PROMODEL CORPORATION DOES NOT WARRANT THAT THE OPERATION OF THE SOFTWARE PACKAGE WILL BE UNINTERRUPTED OR ERROR FREE.

If the software package was purchased in the United States, the above exclusions may not apply to you as some states do not allow the exclusion of implied warranties.

7. Customer remedies; Indemnification. ProModel Corporation's entire liability and your exclusive remedy shall be, at ProModel Corporation's option, either (a) return of the price paid, or (b) repair or replacement of the software package or hardware that does not meet ProModel Corporation's Limited Warranty and which is returned to ProModel Corporation with a copy of your receipt. Any replacement software will be warranted for an additional period of 30 days. **PROMODEL CORPORATION WILL NOT BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES FROM THE USE OF THE SOFTWARE PACKAGE OR ANY SERVICES PROVIDED IN CONNECTION THEREWITH, EVEN IF PROMODEL CORPORATION HAS BEEN ADVISED OF THE POSSIBILITY.** You agree to defend, indemnify, and hold ProModel, and its officers, directors, agents, and employees, harmless against any and all claims or losses (including reasonable attorney fees and costs) incurred through claims of third parties against ProModel as a result of relating to your actions (or omissions), including breach of this Agreement, your or their use of the software package or any information associated with the same, whether authorized or unauthorized under this Agreement, including, but not limited to, actions founded on product liability.

8. Term. This Agreement is effective immediately, and continues in effect for 50 years or until otherwise terminated. Notwithstanding anything to the contrary, this Agreement will terminate automatically and immediately if you (i) fail to comply with any term or condition of this Agreement, without prejudice to any other rights that ProModel may have arising from your noncompliance, or (ii) if you become bankrupt or insolvent, but only to the extent permitted by law. In such events, no notice shall be required by ProModel to you to effect such termination. Upon termination of this Agreement for any reason, you agree to (i) immediately discontinue all use of the software package; (ii) deliver to ProModel all CDs, media, or devices containing the software package and all other physical copies of the software package; (iii) promptly destroy the software package together with all output generated by the software package along with all backup copies, modifications, printed or written materials, and merged portions; and certify in a writing to ProModel within one week after termination of this Agreement that you have either delivered to ProModel or destroyed the software package and all copies of the software package in accordance with this Agreement.

All provisions of this Agreement relating to ProModel's proprietary rights, disclaimers, and limits of liability or duty, your required actions upon termination, payment of fees by you, or your indemnification of ProModel shall survive the termination of this Agreement.

9. Privacy Policy. The details and most up-to-date content of ProModel's privacy policy can be found online at <http://www.promodel.com/privacy>.

10. U.S. Government restricted rights. The software package and documentation are provided with restricted rights. Use, duplication, or disclosure by the Government is subject to restrictions set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (c)(1) and (2) of the Commercial Computer Software-Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is ProModel Corporation, 556 Technology Ave, Orem, UT 84097.

11. General. This agreement is governed by and interpreted under the laws of the State of Utah (without regard to conflict of law principles) and the United States of America. All disputes hereunder shall be resolved in the applicable state or federal courts in either the State of Utah or the State of Pennsylvania. The parties consent to the jurisdiction of such courts, agree to accept service of process by mail, and waive any jurisdictional or venue defenses otherwise available. In the event that any one or more provisions of this Agreement shall for any reason be held by any tribunal of competent jurisdiction to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall be unimpaired, and each invalid, illegal, or unenforceable provision shall be treated by the tribunal as modified to the least extent necessary to rectify its invalidity, illegality, or unenforceability and shall be enforced as so modified. If any legal action is necessary to enforce this Agreement, the prevailing party shall be entitled to reasonable attorney fees, costs, and expenses in addition to any other relief to which it may be entitled. The failure of either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach hereunder shall not be deemed to be a waiver by that party as to subsequent enforcement of rights or subsequent actions in the event of continuing or future breaches. This Agreement will be binding upon and inure to the benefit of the parties' successors and permitted assigns. ProModel may assign its rights and obligations under this Agreement without your permission. You may not assign your rights or obligations under this Agreement. This Agreement is personal to you and any attempt by you to assign your rights or obligations shall be null and void. This Agreement shall be deemed to control and constitute the entire understanding of the parties with respect to the software package and the subject matter of this Agreement. Any amendment or modification of this Agreement must be in a signed writing executed by both parties. Further, both parties have carefully read and understand the terms and conditions of this Agreement and, as such, the terms and conditions contained herein shall not be construed against a party because such party drafted, or primarily drafted, such language or provision.