



End User Licence Agreement

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1.4 THESE TERMS AND CONDITIONS CONTAIN CAPITALISED TERMS WHICH ARE GIVEN SPECIFIED MEANINGS WHICH ARE SET OUT IN CLAUSE 23 OF THESE TERMS AND CONDITIONS. YOU SHOULD FAMILIARISE YOURSELF WITH THESE TERMS AND THEIR MEANINGS SO THAT YOU UNDERSTAND THE TERMS AND CONDITIONS OF THIS AGREEMENT PROPERLY.

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Documentation on Our website by clicking www.madewithmarmalade.com/devnet/docs/reference-en.

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- 4.1.3 strictly in accordance with the Licence Restrictions; and,
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- 4.1.6 on the Licensed Computer System only; and,
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- 4.8 The Licensee warrants that it has in place (and shall continue to do so throughout the duration of this Software Product Licence) adequate security measures to safeguard the Software Product(s) (and all other materials (including, without limit, the Documentation) supplied to the Licensee under or in connection with this Software Product Licence) from theft or access by any third party. In any event, the Licensee shall procure that all authorised persons who have access to the Software Product(s) shall comply in all respects with the provisions of this Software Product Licence and hold a valid Licence. The Licensee shall promptly inform Licensor in writing of any unauthorised use or disclosure of the Software Product(s) and/or any other materials (including, without limit, the Documentation) supplied to the Licensee under or in connection with this Software Product Licence. The Licensee's obligations under this clause 4.7 shall survive termination of this Software Product Licence.
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- 4.10 Should the Licensee wish to change the Licensed Computer System to which the Licence is attached, the Licensee can do this by transferring the benefit of the Licence to an alternative Licensed Computer System using the administrator functions within the Software Product(s) which must then be verified by the Licensor's licensing and registration system by the Licence Utility before the Software Product(s) can be operated on the alternative Licensed Computer System.
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5. Warranties of the Licensee

- 5.1 The Licensee hereby warrants and represents to the Licensor:
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 - 5.1.2 at all times to comply with the security measures set out in clause 4.7 of these Terms and Conditions;
 - 5.1.3 maintain a suitable data communications link between the Licensed Computer System and Licensor's licensing and registration system to enable Licensor to gain access to the Licensed Computer System for the purposes of enabling Licensor to verify that a valid Licence exists in respect of the Licensed Computer System;
 - 5.1.4 that the software operating system and compiler and any other software with which the Software Product(s) will be used (whether directly or indirectly) is either the property of the Licensee or is legally licensed to the Licensee;
 - 5.1.5 (save as expressly permitted by this Software Product Licence) not to (nor to allow any third party to) copy, make error corrections or to otherwise modify and/or enhance the Software Product(s) nor create derivative works based upon the Software Product(s);
 - 5.1.6 at all reasonable times and upon reasonable advance notice, to permit (or procure the permission for) the Licensor or its authorised representatives to inspect and have access to any premises and the computer systems (including, without limit, the Licensed Computer System) located at such premises on or at which the Software Product(s) is being used or kept and to any records required to be kept pursuant to this Software Product Licence to ensure that the Licensee is in compliance with its obligations under this Software Product Licence; and,
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- 6.1 Subject to clause 6.2 of these Terms and Conditions, the Licensor hereby warrants:
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 - 6.1.2 (during the Warranty Period and only where (if at all) the Software Product(s) is supplied on physical media) the media on which the Software Product(s) is supplied shall in all material respect be free from defects in materials and workmanship when used under normal conditions.
 - 6.1.3 (in the event that the Support Services are included with the purchase of the applicable Licence) the Licensor will use all reasonable endeavours to perform the Support Services in accordance with the provisions of the Support Agreement.
- 6.2 The warranties set out in clause 6.1 of these Terms and Conditions shall not apply to defects or failures in the Software Product(s) which arise in whole or in part from:
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 - 6.2.4 the improper use, operation or neglect of the hardware and/or the Licensee's network or computer systems (including, but not limited to, the Licensed Computer System) on or through which the Software Product(s) is installed or operated; or
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 - 6.2.9 unusual stress or storage, transportation, handling, repairing and/or housekeeping by the Licensee (or on its behalf) in a manner which does not reflect normal IT practice or recommended practice as indicated in the Documentation or as otherwise indicated in writing by the Licensor (including but not limited to within the Specification); or
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- 6.3 The Licensee shall, within the Warranty Period or (if applicable) the relevant Support Period, promptly give notice to Licensor on becoming aware of a breach of any of the warranties contained at clause 6.1.1 and/or (if applicable) 6.1.2 of these Terms and Conditions. The Licensee's remedies in respect of breach by Licensor of such warranties are set out at clause 14.5 of these Terms and Conditions.



6.4 EXCEPT FOR THE EXPRESS WARRANTIES CONTAINED WITHIN THESE TERMS AND CONDITIONS, THE LICENSOR DISCLAIMS AND EXCLUDES ALL OTHER WARRANTIES, CONDITIONS AND STIPULATIONS WHETHER EXPRESSED OR IMPLIED, STATUTORY, CUSTOMARY OR OTHERWISE TO THE FULLEST EXTENT PERMITTED BY LAW AND THE ABOVE WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS AND LIABILITIES ON THE PART OF THE LICENSOR FOR DAMAGES ARISING OUT OR IN CONNECTION WITH THE SOFTWARE PRODUCT(S) SUPPLIED TO THE LICENSEE. IN PARTICULAR, THE LICENSEE WARRANTS THAT IT HAS ASSESSED FOR ITSELF THE SUITABILITY OF THE LICENSED PRODUCT(S) FOR ITS REQUIREMENTS AND ACCEPTS AND AGREES THAT THE LICENSOR DOES NOT MAKE ANY REPRESENTATIONS OR WARRANTIES THAT THE SOFTWARE PRODUCT(S) WILL BE FIT FOR ANY PARTICULAR PURPOSE (WHETHER OR NOT MADE KNOWN TO LICENSOR) OR THAT THE USE OF THE SOFTWARE PRODUCT(S) WILL BE UNINTERRUPTED OR ERROR FREE OR THAT ANY ERRORS FOUND IN THE SOFTWARE PRODUCT(S) CAN BE CORRECTED. THE LICENSEE ACKNOWLEDGES THAT THE EXISTENCE OF ERRORS IN THE SOFTWARE PRODUCT(S) WILL NOT CONSTITUTE A BREACH OF THIS SOFTWARE PRODUCT LICENCE.

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7.1 The Licensor and the Licensee (respectively) agree during the Licence Term and for 6 (six) months after its conclusion, not to directly or indirectly solicit for employment any of the staff of the other at any time engaged directly in the performance of this Software Product Licence without the prior written consent from that other party (nor to attempt or knowingly assist or procure any other person to do the same). Furthermore should the soliciting party breach this condition, then the soliciting party expressly agrees to pay the other party as a recruitment fee a sum equal to 12 (twelve) months' gross salary offered by the new employer to the relevant member of staff.

8. Licence Fee

8.1 The Licence Fee for the Software Product(s) constitutes the fee payable by the Licensee in consideration of the rights granted by Licensor under this Software Product Licence and is dependent on the relevant Licence which the Licensee (or (if applicable) where the Licensee is an employee, contractor or agent to a corporate entity who has purchased the Licence in respect of the Licensed Product(s), the relevant corporate entity) has purchased. Dependent on the relevant Licence purchased, the Licence Fee also constitutes (in part) the fee payable by the Licensee in consideration of the performance of the Support Services by the Licensor.

8.2 All prices quoted by Licensor are exclusive of VAT and all other taxes and duties properly chargeable by Licensor in connection with this Software Product Licence. All such taxes and duties which Licensor will have to pay or collect in connection with this Software Product Licence will be paid by the Licensee in addition to the Licence Fee and/or other sums which may become due under this Software Product Licence.

9. Payments

9.1 The Licence Fee payable in accordance with clause 8.1 of these Terms and Conditions shall become due and payable immediately upon purchase of the relevant Licence by the Licensee (or (if applicable) where the Licensee is an employee, contractor or agent to a corporate entity who has purchased the Licence in respect of the Licensed Product(s), the relevant corporate entity).

9.2 All fees payable under this Agreement shall be payable in full, without deduction, counterclaim, set-off or withholding whatsoever. In the event that the Licensee is required by law to make any withholding, the Licensee shall (notwithstanding any such withholding required to be made) pay to the Licensor such increased sums equivalent to the amount of the withholding such that the amount paid to the Licensor is equal to the amount which would have been payable had the withholding not been required to have been made. The Licensee shall also be liable to pay to the relevant taxation authority the amount required to be withheld.



- 9.3 All payments which are not received when payable will be considered overdue and remain payable by the Licensee together with interest for the late payment calculated at the rate of 2% above Barclays Bank plc base rate from the date payable until payment is received. Such interest is due for payment immediately on invoice.
- 9.4 Notwithstanding the above provisions for late payment, in such event the Licensor may, at its option and without prejudice to any other remedy, at any time after payment has become overdue, terminate or temporarily suspend the Licensee's access to the Software Product(s) and/or the performance of any of Licensor's obligations under this Software Product Licence without liability to the Licensee. In the event of any such suspension, the Licensee's access or the performance of the Licensor's obligations shall not be resumed (except in the sole discretion of Licensor) until payment of all outstanding amounts has been received by the Licensor.
- 9.5 Without prejudice to any other rights or remedies the Licensor may have, in the event that Licensor becomes entitled to terminate this Software Product Licence for any reason, any sums then due to the Licensor will immediately become payable in full.

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- 10.2 Without prejudice to clause 4.4 of these Terms and Conditions, the Licensee will not modify or delete any proprietary marks on the Software Product(s).

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- 11.2 In the event that an IPR Claim is made against the Licensee, the Licensor will defend or cause to be defended at its expense and will pay the Licensee's reasonable costs (provided they are reasonably incurred by the Licensee) including any costs or damages finally awarded against the Licensee by a court of competent jurisdiction provided (as a condition precedent) that:
- 11.2.1 the Licensee shall promptly notify the Licensor in writing of such action or any claim threatening such action; and
- 11.2.2 the Licensor shall have the exclusive conduct of the defence of such action and all negotiations for its settlement or compromise; and,
- 11.2.3 the Licensee shall give the Licensor all necessary assistance requested by the Licensor in the defence of such action or settlement provided that Licensor reimburses the Licensee its reasonable costs incurred in connection with such assistance notified to Licensor in advance of such costs being incurred.
- 11.3 In the event that a final injunction is granted by a court of competent jurisdiction preventing the Licensee's continued use of the Software Product(s), the Licensor will, at its option and its expense,



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11.4.7 the failure of the Licensee to install and use in substitution for the previous Release any new Release within 30 days of such release being made generally available by the Licensor where installation and use of that release would have avoided or would not have given rise to the IPR Claim; or

11.4.8 use of the Software Product(s) in a manner for which it was not designed and/or designated; or,

11.4.9 breach by the Licensee of its obligations under this Software Product Licence.

11.5 Subject to the provisions of clause 14.1, this clause 11 states Licensor's entire liability under or connection with this Software Product Licence arising from any IPR Claim.

12. Integrity of Data

12.1 The parties agree that the Licensee is the best judge of the value and importance of the data held on the Licensee's computer systems (or those under its control) and will be solely responsible for:

12.1.1 instituting and operating all necessary backup procedures to ensure that data integrity can be maintained in the event of loss of data for any reason;

12.1.2 taking out any insurance policy or other financial cover for loss or damage which may arise from the loss of data for any reason.

12.2 THE LICENSOR SHALL NOT BE LIABLE TO THE LICENSEE FOR ANY LOSS OF OR CORRUPTION OF DATA, SOFTWARE (INCLUDING THE SOFTWARE PRODUCT(S)) (WHETHER OR NOT AS MODIFIED



AND/OR ENHANCED)) OR DATABASE CONFIGURATION HELD BY OR ON BEHALF OF THE LICENSEE (INCLUDING BY OR ON BEHALF OF THE LICENSEE ON BEHALF OF A THIRD PARTY).

12.3 THE LICENSEE WILL INDEMNIFY THE LICENSOR IN RESPECT OF ANY CLAIMS MADE AGAINST LICENSOR BY ANY THIRDS PARTY AS A RESULT OF LOSS OF OR CORRUPTION OF DATA, SOFTWARE (INCLUDING THE SOFTWARE PRODUCT(S) (WHETHER OR NOT AS MODIFIED AND/OR ENHANCED)) OR DATABASE CONFIGURATION HELD BY OR ON BEHALF OF THE LICENSEE (INCLUDING BY OR ON BEHALF OF THE LICENSEE ON BEHALF OF A THIRD PARTY) FOR ANY REASON.

13. Confidential information

13.1 The Receiving Party shall:

13.1.1 keep the Confidential Information confidential;

13.1.2 not disclose the Confidential Information to any person, other than in accordance with clauses 13.2 to 13.5, unless it first obtains the Disclosing Party's written consent; and

13.1.3 not use the Confidential Information for any purpose other than the performance of its obligations under this Software Product Licence.

13.2 During the term of this Software Product Licence, the Licensor may disclose Confidential Information to its employees and permitted sub-contractors to the extent reasonably necessary (in the Licensor's discretion) for the purposes of performing its obligations and/or exercising its rights under or in connection with this Software Product Licence.

13.3 The Licensee may disclose Confidential Information to its employees and/or sub-contractors strictly to the extent necessary for performing its obligations and/or exercising its rights under or in connection with this Software Product Licence.

13.4 The Receiving Party shall ensure that each person who receives Confidential Information pursuant to clauses 13.2 or 13.3 (a "Recipient") is made aware of and complies with all the Receiving Party's obligations of confidentiality under this Software Product Licence as if the Recipient was a party to this Software Product Licence.

13.5 The Receiving Party may disclose Confidential Information where disclosure is required by law, by a court of competent jurisdiction or by a regulatory body with authority over its business, provided that the Receiving Party gives the Disclosing Party at least two working days' notice of the disclosure.

13.6 The obligations contained in clauses 13.2 to 13.5 of these Terms and Conditions do not apply to Confidential Information which:

13.6.1 is at the date of this Software Product Licence or at any time after the date of this Software Product Licence comes into the public domain other than through breach of this Software Product Licence by the Receiving Party or any Recipient;

13.6.2 can be shown from written records of the Receiving Party and (in any event) to the reasonable satisfaction of the Disclosing Party to have been known by the Receiving Party before disclosure by the Disclosing Party to the Receiving Party; or

13.6.3 subsequently comes lawfully into the possession of the Receiving Party from a third party.

13.7 These obligations of confidentiality will survive termination of this Software Product Licence.



14. Limitations of Liability

14.1 **THIS SECTION OF CONTAINS IMPORTANT PROVISIONS WHICH ACT TO SET AND PLACE LIMITS ON OUR LIABILITY UNDER THIS SOFTWARE PRODUCT LICENCE TO YOU AND OTHER PARTIES. IN SOME CASES, WE ALSO COMPLETELY EXCLUDE CERTAIN TYPES OF LIABILITY. BY ENTERING INTO THIS SOFTWARE PRODUCT LICENCE YOU ARE AGREEING TO BE BOUND BY ITS TERMS AND EXPRESSLY AGREEING TO THE FOLLOWING LIMITATIONS AND EXCLUSIONS OF OUR LIABILITY TO THE MAXIMUM EXTENT THEY ARE PERMITTED BY APPLICABLE LAW.**

14.2 Notwithstanding anything to the contrary in this Software Product Licence neither party's liability to the other party:

14.2.1 for death or personal injury caused by the negligence of the party in default, its employees, agents or sub-contractors;

14.2.2 due to any breach by either party of conditions as to title or warranty as to quiet possession to the extent (if at all) implied by applicable law; or

14.2.3 for fraud (including fraudulent misrepresentation),

shall be limited (but nothing in this clause confers any right or remedy upon the party not in breach to which it would not otherwise be entitled).

14.3 Except as otherwise expressly stated in this Software Product Licence, clauses 14.4 to 14.7 of these Terms and Conditions set out the Licensor's entire liability (including liability for the acts or omissions of its employees, agents or sub-contractors) to the Licensee in respect of:

14.3.1 any breach of its contractual obligations arising under or in connection with this Software Product Licence; and

14.3.2 any representation, statement, negligence, breach of statutory duty or other tortious act or omission arising under or in connection with this Software Product Licence.

14.4 Subject to the maximum extent permitted by law, the Licensor will not be liable to the Licensee for any claim in respect of:

14.4.1 pure economic loss including:

14.4.1.1 profits (whether direct or indirect);

14.4.1.2 revenues;

14.4.1.3 anticipated savings;

14.4.1.4 goodwill;

14.4.1.5 business opportunities;

14.4.1.6 wasted or lost management or employees' time;

14.4.1.7 loss of data;

and,

14.4.2 any special, consequential or indirect loss, whether or not the Licensor has been advised of the likelihood of such loss.

14.5 The Licensee's sole remedy in respect of a breach of the warranties given at clause 6.1.1 and (if applicable) 6.1.2 of these Terms and Conditions shall be for the Licensor to use its reasonable endeavours to:-



- 14.5.1 (in respect of clause 6.1.1) remedy any reproducible defect or error in the Software Product(s) in accordance with the relevant provisions of the Support Agreement or, at Licensor(s) option, replace the defective Software Product(s), with a replacement Software Product(s) which complies with the warranty given in clause 6.1.1 of these Terms and Conditions; and,
- 14.5.2 (if applicable)(in respect of clause 6.1.2) replace the Software Product(s) provided the defective media is first returned to Licensor;

PROVIDED THAT if the Licensor is unable to do so it shall provide a refund to the Licensee of the applicable Licence Fee (or part thereof) paid in respect of the defective Software Product(s) on the precondition that the defective Software Product(s) (including (if applicable) the media on which it was delivered) and any and all copies which the Licensee has made (or has had made on its behalf) is returned to Licensor or otherwise permanently deleted from the Licensed Computer System and/or any other computer system under the Licensee's control or other storage medium to which copies have been stored by or on behalf of the Licensee and that the Licensed Computer System and/or any other computer system and/or storage medium has been overwritten to adequately prevent reconstruction of the Software Product(s) (or any part thereof). Upon compliance by the Licensee and the Licensor with the foregoing provisions of this clause 14.5, this Software Product Licence shall immediately terminate without the need for further notice.

- 14.6 **SUBJECT TO CLAUSE 14.2 OF THESE TERMS AND CONDITIONS, THE LICENSOR'S MAXIMUM LIABILITY UNDER OR IN CONNECTION WITH THIS SOFTWARE PRODUCT LICENCE WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL NOT EXCEED THE LICENCE FEE PAID BY THE LICENSEE UNDER THIS SOFTWARE PRODUCT LICENCE.**

15. Independent Contractor

- 15.1 It is understood that each party is acting as an independent contractor and not in any way as an agent or representative of the other. Neither party has authority to bind or speak for the other party except as may be specified in writing from time to time.

16. Termination

- 16.1 The Licensor and the Licensee shall (respectively) immediately become entitled (without prejudice to its other rights in law or equity or under this Software Product Licence) to terminate this Software Product Licence immediately by notice in writing to the other (the "**Defaulting Party**") if the Defaulting Party:
 - 16.1.1 is in breach of its obligations under this Software Product Licence and (in the event of a breach which is capable of remedy) fails to remedy the same within 30 (thirty) days of receiving written notice requiring such remedy; or
 - 16.1.2 is involved in any legal proceeding concerning its solvency, or commences liquidation (except for the purpose of reconstruction) or ceases or threatens to cease trading, or if serious doubt arises as to its solvency (an "**Insolvency Event**"). For the avoidance of doubt, in the event where the Licensee is an employee, contractor or agent to a corporate entity who has purchased the Licence in respect of the Licensed Product(s), the Licensor shall be entitled to terminate this Software Product Licence pursuant to this clause 16.1.2 in the event that an Insolvency Event occurs in relation to the corporate entity who has purchased the Licence in respect of the Licensed Product(s).



16.2 In the event that it wishes to cease using the Software Product(s), the Licensee will be entitled to terminate this Software Product Licence subject to giving ninety (90) days notice of such termination to the Licensor.

17. Consequences of Termination

17.1 On termination of this Software Product Licence for whatever reason the Licensee will return to the Licensor all copies of the Software Product(s) in the possession, or under the control, of the Licensee or otherwise permanently delete the same from the Licensed Computer System and/or any other computer system under the Licensee's control or other storage medium to which copies have been stored by or on behalf of the Licensee and that that the Licensed Computer System and/or any other computer system and/or storage medium has been overwritten to adequately prevent reconstruction of the Software Product(s) (or any part thereof). The Licensee will at its own cost and expense comply with such requirement within 7 days of termination and will (if requested to do so in writing by the Licensor) certify to the Licensor in writing in such form as the Licensor may reasonably require that all copies of the Software Product(s) in whatever form have been permanently obliterated from the Licensed Computer System and any other computer or storage medium in the possession of or under the control of the Licensee and also undertakes that the Licensee will not at any time thereafter re-create or retrieve any such copy (or attempt to do so).

18. Force Majeure

18.1 Neither the Licensor or the Licensee (respectively) shall be liable for total or partial failure to perform its obligations (other than the payment of any money which is due and payable) in this Software Product Licence during any period in which its performance is prevented or hindered by circumstances beyond its reasonable control.

19. Choice of Law

19.1 The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any of its terms shall be governed by the laws of England.

20. Disputes

20.1 Subject to clause 20.4 of these Terms and Conditions, if a dispute arises out of or in connection with this Software Produce Licence (a "Dispute") it shall be determined in accordance with clauses 20.2 and 20.3.

20.2 Resolution by senior managers

20.2.1 The Licensor or the Licensee may refer the Dispute in writing for final settlement to the Chief Commercial Officer of Licensor and such senior officer or equivalent nominee as stipulated by the Licensee. The parties shall ensure that their respective representatives shall, for a period of 14 days from the date of the written reference ("the Resolution Period"), use all reasonable endeavours to reach a reasonable resolution of the Dispute.

20.3 Courts

20.3.1 If the parties have not resolved the Dispute by the end of the Resolution Period the courts of England have exclusive jurisdiction to settle the Dispute and to hear and decide any suit, action or proceedings ("Proceedings") relating to the Dispute and, for these purposes, each party irrevocably submits to the jurisdiction of the courts of England. For the avoidance of doubt, the election of jurisdiction set out in this clause 20.3.1 is intended for the benefit of the Licensor who shall



accordingly be entitled to commence proceedings in any other relevant jurisdiction in which the Licensee is domiciled and/or holds assets.

20.4 Nothing in this clause 20 shall prevent either party from applying for injunctive relief without first attempting to resolve the Dispute in accordance with clauses 20.2 and 20.3 of these Terms and Conditions.

21. General

21.1 **This Agreement forms the entire agreement between You and the Licensor on its subject matter and supersedes without limitation all previous contracts, arrangements, representations (other than fraudulent misrepresentations) or understandings between You and the Licensor, in each case, whether written, arising from custom or oral. Each of You and the Licensor acknowledges that this Agreement has not been entered into wholly or partly in reliance on any statement, promise or representation made by or on their behalf other than those made fraudulently.**

21.2 **No amendment to this Agreement will be valid unless confirmed in writing and signed by authorised signatories of the Licensor and of the Licensee. For these purposes, You acknowledge and agree that, in certain circumstances (including but not limited to where the Licensor makes available updates and/or upgrades to the Software Product(s) in the form of Releases (as described in clause 3 of these Terms and Conditions) for download by You and/or where You purchase replacement or additional Licence(s)), You may be required to accept further or replacement terms of or to (as applicable) this Software Product Licence by following the process described at clauses 1. and 2. of these Terms and Conditions. If you choose not to accept such further or replacement terms to this Software Product Licence, You will not be permitted to use such updates and/or upgrades to the Software Product(s) in the form of Releases or purchase the relevant Licence.**

21.3 In the event that any of the terms and conditions of this Software Product Licence is judged to be in whole or in part illegal or unenforceable for any reason the remainder of the terms and conditions of this Software Product Licence will continue in full force and effect.

21.4 No delay or failure by either party in enforcing its respective rights will prejudice or restrict the rights of the party, and no waiver of any such rights, or of any breach of any contractual terms, will be deemed to be a waiver of any other right or of any later breach.

21.5 The Licensee is prohibited from assigning, transferring, sub-contracting, mortgaging, charging or otherwise parting with this Software Product Licence or any right or obligation under it without the prior written consent of the Licensor.

21.6 Any notice given under this Software Product Licence by either party to the other must be in writing and delivered:

21.6.1 (in the case of the Licensor) to the address set out in clause 1.1 of these Terms and Conditions;
and,

21.6.2 (in the case of the Licensee) to the address given by the Licensee when registering as a developer or user at the Licensor's website,

and must be effected by:

21.6.3 personal delivery; or

21.6.4 courier; or



21.6.5 registered mail; or

21.6.6 email,

and will be deemed to have been given in the case of:

21.6.7 registered mailing, three (3) working days after the date of mailing; or,

21.6.8 email, when a written acknowledgement is received by the sender.

21.7 The Parties to this Software Product Licence do not intend that any of its terms will be enforceable by virtue of the Contracts (Rights of Third Parties) Act 1999 or any similar law (established by statute, precedent, common law, custom or otherwise) by any person not a party to it.

22. Definitions and Interpretation

22.1 The following words shall have the following meanings in this Software Product Licence:

"Agreement" means the terms and conditions set out in this End User Licence Agreement together with:

- (a) the supplemental terms and conditions set out in the Licence Confirmation; and,
- (b) (if the Licensee has purchased a Licence which includes the provision of Support Services) the supplemental terms and conditions set out in the Support Agreement.

For the avoidance of doubt, references to **"Software Product Licence"** shall be construed accordingly.

"Application" means a software application which is developed to operate on a Supported Device.

"Commencement Date" means the date on which You have agreed to be bound by this Agreement by clicking first clicking "I Accept" during the download process for the Software Product(s).

"Confidential Information" means all information of a confidential nature disclosed (whether in writing, verbally or by any other means and whether directly or indirectly) by one party to this Agreement ("the Disclosing Party") to the other party to this Agreement ("the Receiving Party") whether before or after the date of this Agreement including any information relating to the Disclosing Party's products, operations, processes, plans or intentions, product information, Intellectual Property Rights, market opportunities and business affairs or those of its Licensees, clients or other contacts (including companies within the Disclosing Party's group).

"Documentation" means the standard user and/or technical documentation made available by the Licensor in respect of the Software Product(s) and which is available for viewing and/or download by the Licensee at the Licensor's website at the following address www.madewithmarmalade.com/devnet/docs/reference-en.

"Intellectual Property Rights" means all intellectual and industrial property rights including patents, know-how, registered trademarks, registered designs, utility models, applications for and rights to apply for any of the foregoing, business names (including internet domain names and email addresses), unregistered design rights, unregistered trademarks, rights to prevent passing off for unfair competition and copyright, database rights, topography rights and any other rights in any invention, discovery or process, in each case in the United Kingdom and all other countries in the world and together with all renewals and extensions.



“IPR Claim” means the meaning given to that expression set out in clause 11.1 of these Terms and Conditions.

“Licence” means the relevant type of licence which the Licensee has purchased from Us as identified in the Licence Confirmation.

“Licence Confirmation” means the supplemental terms and conditions to this End User Licence Agreement which (amongst other things) define the relevant Licence(s) which the Licensee has purchased or otherwise has been granted in respect of the Software Product(s) and the rights and/or restrictions which apply to the Licensee’s use of the Software Products in accordance with the relevant Licence. The Licence Confirmation can be viewed by the Licensee running the Licence Utility within the Software Product(s).

“Licence Fee” means the licence fee payable by the Licensee in respect of the Licence which is purchased by or (if the Licensee is an employee, contractor or agent of a corporate entity who has entered into a contract to purchase multiple licences of the Licensed Product(s) for use by its staff) on behalf of the Licensee and as specified on the Licensor’s website at the following address www.madewithmarmalade.com/buy or otherwise as specified on the invoice supplied by the Licensor to the Licensee (or (if relevant) Licensee’s employer) when purchasing the relevant Licence(s).

“Licence Restriction” means any supplemental restrictions on the Licensee’s use of the Licensed Product(s) as may be set out in the Licence Confirmation.

“Licence Term” means the duration of the relevant Licence as specified in the Licence Confirmation.

“Licence Utility” means the functionality within the Software Product(s) which allows the Licensor’s licensing and registration systems to verify the Licence and its current status and validity so far as the Licence relates to the machine on which the Licensee has installed the Software Product(s).

“Licensed Computer System” means the computer machine (comprised within a closed computer network) onto which the Licensed Product(s) has been downloaded and installed which meets the System Requirements and is identified on the Licence Confirmation by reference to that machine’s MAC address and/or IP address (or such other unique identifier as used by the Licensor from time to time in its discretion to identify the Licensee’s machine).

“Licensed Location” means the location at which the Licensee is licensed to use the Licensed Product(s) as specified in the Licence Confirmation or (if no such location is specified) the country in which the Licensee normally resides and from which the Licensee has downloaded the Licensed Product(s) to the Licensed Computer System.

“Major Release” means a release of the Software Product(s) which is denoted by the Licensor as being material by reference to number to the right of the first decimal point. By way of example, a new Major Release would be an updated version of Software Product(s) which has moved from “x.y.z to “x.y+1.z”.

“Minor Release” means a release of the Software Product(s) which is denoted by the Licensor as being minor by reference to the number to the right of the second or later decimal point. By way of example, a new Minor Release would be an updated version of the Software Product(s) which has moved from “x.y.z” to “x.y.z+1”.

“Release” means either a Major Release or a Minor Release.



"Software Product(s)" means the software development product known as Marmalade as described in the Documentation. Any modifications, enhancements or changes of any kind to the Software Product(s) (whether or not authorised by this Agreement) will form part of the Software Product(s) and will be subject to the terms and conditions of this Agreement.

"Specification" means the functional and non-functional specification for the Software Product(s) as may be set out in its related Documentation.

"Support Agreement" means the terms on which the Licensor provides preventative and/or remedial maintenance generally in respect of the Licensed Product(s) to those of its licensees who have purchased a Licence under which Support Services are provided by the Licensor. The terms of the Support Agreement are available for downloading on the Licensor's website at the following address www.madewithmarmalade.com/downloads.

"Supported Device(s)" means a relevant device which operates the relevant Supported Platform and in relation to which the Licensed Product(s) is designed to support for the purposes of the development of Applications. Details of all Supported Devices are published from time to time by the Licensor by reference to the relevant Release as specified on the Licensor's website at following address www.madewithmarmalade.com/marmalade/supported-platforms.

"Support Period" means a period during which the Support Services are to be provided by the Licensor in respect of a relevant Licence purchased by the Licensee and shall, unless otherwise expressly stated in a Licence Confirmation, be the same duration as the Licence Term for that Licence.

"Supported Platform" means a relevant operating system or other application execution environment which the Licensed Product(s) is designed to support for the purposes of the development of Applications. Details of all Supported Platforms are published from time to time by the Licensor by reference to the relevant Release as specified on the Licensor's website at following address www.madewithmarmalade.com/marmalade/supported-platforms.

"Support Services" means those services as set out in the Support Agreement.

"System Requirements" means the minimum technical and/or functional requirements which the Licensed Computer System must meet in order to be capable of running and/or operating the Licensed Product(s) in accordance with the Documentation as such minimum technical and/or functional requirements are specified (from time to time) in the Documentation or otherwise as published by the Licensor on its website at following address www.madewithmarmalade.com/downloads.

"Technically Competent" means (in relation to the Licensee or (if the Licensee is a corporate entity) a relevant member of staff, having reasonable regard to that person's respective technical role) either:

- a) that person has successfully completed a training course in relation to the Software Product(s) in accordance with any reasonable instructions issued by the Licensor; or
- b) that person is, in the Licensor's reasonable opinion, already sufficiently technically skilled and competent in the use of the Software Product(s) without the need for further training.

"Third Party Licence Terms" means the separate terms and conditions which govern the grant of licence and use of the Third Party Software and which are available for download on the Licensor's website at following address www.madewithmarmalade.com/devnet/code-community.



“Third Party Software” means certain components of the Licensed Product(s) which are provided by a third party(ies) under “open source” or similar licences and which (in certain circumstances) are libraries that will become embedded within Applications developed using the Licensed Product(s).

“Warranty Period” means the period of 90 days commencing on the Commencement Date.

22.2 Interpretation

22.2.1 The index and headings to the clauses of these Terms and Conditions shall not affect its construction.

22.2.2 Where the context so requires or admits, the masculine shall include the feminine and the neuter and the singular shall include the plural and vice versa.

22.2.3 Any reference in this Agreement to a clause is a reference to a clause of this Agreement.

22.2.4 If there is a conflict between any of the documents that are comprised within this Agreement, the conflict shall be resolved according the following order of priority:

22.2.4.1 the Licence Confirmation;

22.2.4.2 these Terms and Conditions;

22.2.4.3 the Support Agreement.

22.3 Any reference to a statute or statutory provision shall be construed as a reference to the same as from time to time amended, consolidated, modified, extended, re-enacted or replaced.

22.4 Any phrase in this Agreement introduced by the term “include”, “including”, “in particular” or any similar expression will be construed as illustrating and will not limit the sense of the words preceding that term.

22.5 Any obligations on a party not to do or omit to do anything includes an obligation not to allow that thing to be done or omitted by a third party and to the extent this Agreement does not prohibit the sub-contracting of any obligations on a party, then that party who agrees to do something will be deemed to fulfil that obligation if that party procures that it is done.