

# Mbedthis AppWeb Development Licence Agreement

This is a Licence Agreement between Mbedthis Software LLC. ("Mbedthis") and you, the Customer.

THIS IS A CONTRACT. PLEASE READ THESE TERMS AND CONDITIONS CAREFULLY BEFORE PURCHASING THIS LICENSE. BY YOUR ONLINE ACCEPTANCE, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS IN THIS AGREEMENT. FAILURE TO COMPLY WITH THE TERMS OF THIS AGREEMENT VOIDS THE AGREEMENT, DISALLOWS CUSTOMER USE OF THE SOFTWARE AND MAY GIVE RISE TO UNSPECIFIED DAMAGES.

## Definitions

**"Integrated Product"** means the Customer's application or device incorporating the Software.

**"Project"** means a single Customer development project that creates integrated products and embeds or integrates the Software into a larger application or system together with other software or hardware of significant value-add.

**"Software"** means the supplied Mbedthis AppWeb software in binary form including all source code, headers, documentation and data files including updates and upgrades that have been supplied by Mbedthis to the Customer.

**"Units"** means the number of discrete computing systems shipped during a twelve (12) month period that are executing the Software and may have multiple CPUs in a single enclosure.

## 1. Ownership and Proprietary Rights

Mbedthis retains ownership of all intellectual property rights in the Software and all patents, copyrights, authors' rights, trademarks, know-how, trade secrets and other material that is associated with the Software, irrespective of whether such rights arise under U.S. or international intellectual property, unfair competition or trade secret laws. Mbedthis and Customer acknowledge and agree that, as between Mbedthis and Customer, Mbedthis owns and will own all of the Proprietary Rights to the Software, and no title to the Proprietary Rights is transferred to Customer, any Sub-distributor or any End User. The use by Customer of the Proprietary Rights is authorized only for the purposes herein set forth and upon termination of this Agreement for any reason, such authorization will cease. Customer agrees to protect Mbedthis's Proprietary Rights with at least the same degree of care used by Customer to protect its own proprietary rights.

All right and title to modifications made solely by the Customer to the Software and the right and title to other software that is included by the Customer in an Integrated Product, shall remain the property of the Customer except where the customer explicitly contributes such modifications back to Mbedthis under the terms of the Mbedthis Contributors Agreement.

## 2. Grant of License

Subject to the terms and conditions of this Agreement, and receipt by Mbedthis of payment in full of all due

payments under this and other agreements between the parties, the Customer is hereby granted a world-wide, royalty-free, non-exclusive, non-transferable (except as permitted herein) right to use, modify and reproduce the Software for the purposes of creating Integrated Products by a single Project.

This license is for evaluation and development purposes only and prohibits the distribution of Integrated Products containing any portion of the Software except for limited field trials of less than one hundred (100) Units. Customer acknowledges that a separate Deployment license is required for distribution and for selling Integrated Products containing the Software.

## 3. Support

The Customer is eligible for support services in accordance with the terms and conditions of the Mbedthis Support Agreement for a period of twelve (12) months from the effective date of this Agreement. In no event shall Customer be entitled to support services which cost Mbedthis in excess of the amount paid to Mbedthis during the current year under this Agreement.

Mbedthis reserves the right at any time not to release or to discontinue release of any Software and to alter prices, features, specifications, capabilities, functions, programming interfaces licensing terms, release dates, general availability or other characteristics of the Software.

## 4. Warranty

Mbedthis MAKES NO WARRANTIES IN CONNECTION WITH ANY SOFTWARE PRODUCT, INCLUDING THE SOFTWARE, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR USE.

## 5. Limitation of Liability

IN NO EVENT SHALL MBEDTHIS'S LIABILITY ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNT RECEIVED BY MBEDTHIS FROM CUSTOMER HEREUNDER IN ANY ONE-YEAR PERIOD. IN NO EVENT SHALL MBEDTHIS BE LIABLE FOR COSTS OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, LOST PROFITS OR ANY CONSEQUENTIAL, SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, INCLUDING NEGLIGENCE OR

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STRICT LIABILITY, ARISING OUT OF THIS AGREEMENT. CUSTOMER ACKNOWLEDGES AND AGREES THAT THE AMOUNTS PAYABLE HEREUNDER BY CUSTOMER ARE BASED IN PART UPON THESE LIMITATIONS. CUSTOMER AGREES THAT THE ABOVE LIMITATIONS SHALL APPLY NOT-WITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE.

## 6. Record Keeping

During the term of this Agreement and for a six (6) month period following termination, Mbedthis shall have the right at its own expense, to conduct periodic reviews of the Customer's records relating to its distribution of Integrated Products containing the Software for the purpose of verifying the Customer's appropriate payment of the Customer fees due hereunder. Mbedthis shall exercise this right upon no fewer than thirty (30) days' prior written notice. The Customer will provide Mbedthis with reasonable accommodation for the review and reasonable use of available office equipment. The Customer shall pay the cost of any audit, including (without limitation) reasonable travel expenses and the costs of any attorneys and consultants, if the amount underpaid to Mbedthis is five percent (5%) or more of the amount actually paid. Complete and accurate documents shall be retained by the Customer for two (2) years following termination of this Agreement.

## 7. Termination

This Agreement shall be effective for one (1) years from the effective date of this Agreement and shall automatically renew unless terminated earlier under the provisions of this Agreement. Either party may terminate this agreement by written notice to the other party if the other party breaches any material provision of this Agreement and such breach is not cured within ninety (90) days after written notice thereof is received by the breaching party.

The Customer may terminate this license at any time by providing Mbedthis written notice stating the effective date of the termination and immediately ceasing to ship Integrated Products containing the Software. If this license is terminated for any reason by either party, the Customer is not entitled to a refund of the whole or any part of the fees paid. In the event of such termination, the Customer's right to use Integrated Products that were sold prior to termination is not affected.

## 8. Transfer

Customer may not assign or otherwise transfer any of the rights or obligations arising out of this Agreement except to transfer this Agreement to any successor in connection with any transfer of all or substantially all of its assets or to any party that acquires voting control of

the Customer in a merger, acquisition or reorganization.

## 9. Export Control

Customer agrees to comply with all export and re-export restrictions and regulations of the Department of Commerce or other United States agency or authority, and not to transfer or authorize the transfer of Software to a prohibited country or otherwise in violation of any such restrictions or regulations.

## 10. U.S. Government Restrictions

The Software and its documentation are provided with restricted rights. Use, duplication or disclosure 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 subparagraph (c)(1) and (2) of the Commercial Computer Software - Restricted Rights at 48 CFR 52.227-19, as applicable. The Contractor / Manufacturer is Mbedthis Software, Inc., 7427 Orin Ct N, Seattle WA 98103 USA.

## 11. Applicable Law and General Provisions

This Agreement is governed solely by the laws of the State of Washington and the United States, including patent and copyright laws. This Agreement shall not be subject to the United Nations Convention on Contracts for the International Sale of Goods. Sole jurisdiction over any dispute arising under this Agreement shall be brought in the courts of the United States of America, with sole venue in King County, Washington. This Agreement is the entire agreement between the parties regarding this subject matter, and supersedes all prior discussions, negotiations and agreements. This Agreement may be modified only in writing, and signed by both parties. Purchase orders issued by Customer to Mbedthis, its distributors or licensees shall be for administrative convenience only, and any printed terms therein shall have no effect unless agreed in writing by Mbedthis.

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