

ENTIT MARKETPLACE
APPLICATION DISTRIBUTION PROGRAM AGREEMENT

You have elected to join the EntIT Software LLC ("*ENTIT*") Marketplace Application Distribution Program (the "*Program*"). Participation in the Program will allow you to submit your Applications for possible distribution through the Marketplace offered by ENTIT. Before you ("*You*" or "*Developer*") access any of the materials or services which ENTIT provides to you under this Program, please read the terms and conditions of use below. Access to the Developer Portal for distribution of Applications is subject to the terms and conditions of this ENTIT Distribution Program Agreement (the "*Agreement*"). The Agreement is effective as of the date You click on the "Accept" button (the "*Effective Date*") to indicate your agreement to the terms and conditions of this Agreement. If you do not agree to the terms and conditions of this Agreement, you may not access the Developer Portal or participate in the Program. SUBMITTING AN APPLICATION FOR DISTRIBUTION THROUGH THE PROGRAM INDICATES THAT YOU ACCEPT THESE TERMS.

If you are participating in the Program or accessing the Developer Portal in connection with work you are doing for a company or corporate entity ("*Company*"), the term "Developer" includes both you as an individual as well as such Company, and the Agreement applies to both as the context permits. You therefore represent and warrant that you have the authority to bind such Company to this Agreement on their behalf. Services provided by ENTIT hereunder may be provided by ENTIT, its subsidiaries or affiliates; where appropriate, references to "ENTIT" shall include references to its subsidiaries or affiliates.

In an effort to improve the Program, ENTIT may change or update certain aspects of the Developer Portal or the Program itself, including changes to the terms and conditions of this Agreement. ENTIT reserves the right to do so by posting new or updated details (including terms and conditions) to the Developer Portal, or by providing such details to you in writing, for example by email. If you do not agree to the new details, you may not continue your participation in the Program. PARTICIPATING IN THE PROGRAM, OR SUBMITTING AN APPLICATION AFTER ENTIT POSTS OR INFORMS YOU OF UPDATED DETAILS INDICATES THAT YOU ACCEPT THE CHANGES NOTIFIED.

1. Definitions.

- a. "**Application**" or "**App**" means one or more software application programs that are developed by You for use in the Marketplace, including any modifications, or Updates thereof.
- b. "**Application Submission Process**" or "**App Submission Process**" means the process that Developer may use to submit and manage its Application(s) through the Marketplace.
- c. "**Developer Portal**" means the website where Developer may upload, update and modify Applications.
- d. "**Developer's Marketing Materials**" means the names, trademarks, service marks, icons and logos used or provided with any Application submitted by Developer, and any other materials such as supporting information, screenshots, URLs or audio-visual content provided by Developer for marketing purposes during the Application Submission Process.
- e. "**Distribution**" means the delivery of an Application to an End User through the Marketplace.
- f. "**End User**" means a user of an Application distributed through Marketplace.
- g. "**Existing End User**" means an End User who uses an Application prior to its Takedown, or prior to the expiration or termination of this Agreement.
- h. "**Intellectual Property Rights**" means all worldwide, current or future, copyright rights (including, without limitation, the exclusive right to use, reproduce, modify, create derivative works of, distribute, publicly display and publicly perform the copyrighted work), trademark rights (including, without limitation, rights to use trade names, trademarks, service marks, and trade dress in connection with goods or services), patent rights (including, without limitation, the exclusive right to make, have made, use, sell and offer to sell, import and export), trade secrets, moral rights, right of publicity, goodwill and all other intellectual property rights as may exist now and/or hereafter come into existence, and all renewals, continuations, continuations in part and extensions thereof, regardless of whether such rights arise under the law of the United States or any other state, country or jurisdiction.
- i. "**Marketplace**" is the electronic store managed by ENTIT in the Program, and through which End Users can find and download Developer's Applications.
- j. "**Personally Identifiable Information**" means information that can be used to identify or is associated with a living individual, including information which can be combined with other personal or identifying information so as to identify an individual or their personal details.
- k. "**Registration Process**" means the process through which information is provided by You to register Your participation in the Program.
- l. "**Takedown**" means the removal of one or more Applications from distribution through the Program, pursuant to the Takedown sections of this Agreement.
- m. "**Update**" means a new release of an Application consisting of a bug fix, workaround, or patch to correct any reproducible error in such software for which the number to the right of the second decimal point is increased; changes to solely metadata such as title, price, territories, description, contact info, or icons etc., shall not be considered Updates.
- n. "**User Generated Content**" means content created by end users of Applications or other third parties, which may be displayed or made available through use of an Application, where Developer does not exercise any material control over such content, and such Application is not specifically created or distributed by Developer for the purpose of eliciting User Generated Content in violation of the prohibited Application content criteria specified in this Agreement.

2. **ENTIT Acting as Agent of Developer.** You appoint ENTIT as Your agent to market and deliver Your Application to End Users. The parties' relationship shall be that of principal and agent. You grant ENTIT the right to distribute the Application in executable object code form only through the Marketplace.

3. **Rights Granted to ENTIT from Developer.**

a. **Marketing and Distribution Rights.** You authorize ENTIT to:

- (i) advertise and supply the Applications to End Users through the Marketplace;
- (ii) copy and prepare Applications for download by End Users, including making minor modifications to the Application strictly for the purpose of facilitating distribution and signing of the Application with a digital certificate;
- (iii) copy, store and download the Application as reasonably necessary to facilitate ENTIT's rights and obligations under this Agreement;
- (iv) copy, store, display use and adapt Developer's Marketing Materials as reasonably necessary in order to market the Application and its functionality; and
- (v) monitor the use and functioning of Applications and collate relevant data to enhance the marketing and delivery of the Applications and improve the Marketplace experience and functioning.

b. **ENTIT's Agents and Contractors and partners.** The rights granted to ENTIT in this Section 3 shall extend to ENTIT's agents, contractors and partners, strictly to the extent that those third parties require such rights to support the marketing and distribution of the Application under this Agreement. ENTIT is responsible for the compliance of those third parties with the applicable terms of this Agreement.

c. **License to Applications.** Developer grants to ENTIT Software a royalty-free, non-exclusive, worldwide license under all Intellectual Property Rights in the Application(s) for the purpose of performing the services contemplated in this Agreement.

d. **Ownership of Applications.** Developer retains all rights, title and interest in and to the Application(s), including all Intellectual Property Rights therein.

e. **Non-exclusivity.** This Agreement is non-exclusive to both parties, and ENTIT is free to market, develop and distribute applications of its own or third parties that may be substantially similar to Yours subject to any Intellectual Property Rights that You may own.

4. **Application Submission and Distribution Process.**

a. **Selected Distribution Method.** During the Application Submission Process, ENTIT may allow You to participate in one or more different programs for the distribution of Your Applications where you may select from the allowable programs to identify the program through which You would like that Application to be distributed. (the "Selected Distribution Method" or "SDM"). ENTIT reserves the right to change, discontinue or alter its SDMs at any time with or without notice to you.

b. **Prohibited Application Content.** Developer acknowledges that Applications containing certain categories of content are not suitable for distribution through the Marketplace. These categories include: promotion or use of any firearms, tobacco products, alcoholic

beverages, illegal acts or substances, or pornography or any other adult content ("**Prohibited Application Content Criteria**").

c. **Support.** ENTIT will provide basic technical support for the Marketplace, but Developer is solely responsible for providing Application support to End Users, using a minimum of reasonable efforts to address End User complaints and technical problems in a timely and appropriate manner.

d. **Developer's End User License Agreement.** You are responsible for providing appropriate terms for the use of Your Application by End Users, which terms may be referenced in Developer's Marketing Materials.

e. **Security of Application Code.** Developer acknowledges and agrees that: (i) Application will not contain any malicious code, virus, Trojan horse, or technology similar to any of the foregoing; (ii) Applications may be viewed or inspected by third parties; (iii) ENTIT is not obligated to take any steps to encrypt or restrict access to the code associated with any Application or take any other steps to prevent third parties from viewing or inspecting Application code; and (iv) any access restriction, encryption or additional security measures desired by Developer for the Application shall be solely at Developer's discretion and cost.

f. **Application Placement and Reviews.** The Program allows End Users to rate and/or review Applications. ENTIT reserves the right to display Applications to End Users in a manner that will be determined at ENTIT's sole discretion. Your Application(s) may be subject to ratings or reviews with which you disagree. Developer shall not engage (or encourage or facilitate third parties to engage) in any actions to artificially boost ratings of its Applications, e.g.: downloading its own Apps to increase the App's popularity rating; posting artificially favorable reviews of its own Apps; posting unfavorable, malicious, derogatory or defamatory reviews of competing applications. Application ratings may be used to determine the placement of Applications in the Marketplace, or be used to determine eligibility for certain marketing programs, all at ENTIT's sole discretion.

5. **Approval Required for Marketplace Distribution.** Once Developer submits an Application, through the Application Submission Process for Marketplace distribution, ENTIT will assess the Application for quality, usability and any prohibited content. If ENTIT finds that the Application meets such standards, it will authorize the Application to be placed in the Marketplace (the "**Application Authorization**").

6. **Product Takedown.**

a. **Developer Takedown.** You may remove any Application from distribution through the Program and prevent further distribution at any time, provided that You comply with this Agreement. Your Takedown shall not: (i) affect the license rights of Existing End Users; (ii) remove Applications from any part of the ENTIT network where previously purchased or downloaded Applications are stored on behalf of Existing End Users; or (iii) change Your obligation to support Applications that have been previously downloaded by Existing End Users.

b. **ENTIT Takedown.** ENTIT may Takedown the Application from distribution through the Program if ENTIT is notified or otherwise becomes aware and determines, in its sole discretion, that there is a reasonable likelihood that an Application (including User Generated Content): (i) violates the Intellectual Property Rights or any other rights of any third party; (ii) violates any applicable law or governmental regulation; (iii) violates any of the Prohibited Application Content Criteria; (iv) may create material liability for ENTIT or its authorized carriers and distributors, or cause harm to such parties; (v) is deemed by ENTIT to have a virus or is deemed to be malware, spyware or have an adverse impact on ENTIT's End Users,

or ENTIT or its carriers' networks; (vi) facilitates or constitutes false or fraudulent conduct; or (vii) creates or constitutes a material breach of this Agreement. At ENTIT's discretion, such Takedown may result in: (1) a temporary or permanent suspension of Developer's right to distribute the particular Application, or any and all of Developer's Applications; (2) a temporary or permanent removal of the Application from the Marketplace for Existing End Users; and/or (3) a partial termination of this Agreement or a termination of the Agreement in its entirety.

- c. **Effects of ENTIT Takedown.** In the event that Developer's Application is removed pursuant to the Section 6, ENTIT may, at its sole discretion charge Developer for all costs incurred to Takedown the Application(s) and remove Applications and any copies from the Marketplace, connected networks and support systems. ENTIT reserves the right to suspend and/or bar any Developer from the Program at its sole discretion.
- d. **Survival of Rights after a Takedown, Expiration or Termination.** The rights granted to ENTIT in Section 3 shall survive any Takedown, expiration or termination of this Agreement for the purpose of supporting Existing End Users. Developer shall provide reasonable commercial assistance to ENTIT in supporting Existing End Users after the Takedown, expiration or termination of this Agreement.
7. **Marketing and Publicity.** The parties may agree to marketing activities and approved uses as set out in the Application Submission Process, or upon mutual written agreement, which shall be set out separately and incorporated into this Agreement by reference. Developer may issue press releases announcing the availability of its Applications through the Program after the receipt of Application Authorization, but may not issue any other press releases, publicity or information relating to this Agreement without the prior written approval of ENTIT, unless required by law. Developer shall have no right to use any ENTIT trademarks, service marks or any logos, except as expressly set forth in writing by ENTIT.

8. **Term and Termination.**

- a. **Term.** The term of this Agreement shall be from the Effective Date until the earlier of: (i) the termination or discontinuance by ENTIT of the Program, which ENTIT may effect at any time in its sole discretion upon notice; (ii) termination by ENTIT of Developer's participation in the Program, due to any breach by Developer of the Agreement which cannot be remedied or which Developer fails to cure within thirty (30) days of written notice from ENTIT; (iii) the immediate termination of this Agreement by ENTIT for any material breach of the Prohibited Application Content Criteria, or any knowingly malicious or harmful act committed by Developer or through use of the Application; (iv) termination by ENTIT due to court or governmental order; or (v) termination by either party upon thirty (30) days' written notice to the other party.
- b. **Effect of Termination.** Upon any termination or expiration of this Agreement any licenses granted to End Users for the Application shall survive. Upon termination, ENTIT shall cease distribution of Applications, but may retain reasonable copies of the Application. Termination or expiry of this Agreement will not affect any provisions which are expressly stated or by necessary implication are intended to survive.
9. **Confidentiality.** Information exchanged under this Agreement will be treated as confidential if identified as such at disclosure or if the circumstances of disclosure would reasonably indicate such treatment. Confidential information may only be used for the purpose of fulfilling obligations or exercising rights under this Agreement, and shared with employees, agents or contractors with a need to know such information to support that purpose. Confidential information will be protected using a reasonable degree of care to prevent unauthorized use or disclosure for 3 years from the date of receipt or (if longer) for such period as the information

remains confidential. These obligations do not cover information that: (i) was known or becomes known to the receiving party without obligation of confidentiality; (ii) is independently developed by the receiving party; or (iii) where disclosure is required by law or a governmental agency.

10. **Developer's Representations and Warranties.**

- a. **Information Provided during Registration Process and Application Submission Process.** You represent and warrant that the information You provide during the Registration Process and Application Submission Process is accurate and correct to the best of Your knowledge.
- b. **Developer Authorized to Contract.** You represent and warrant that: (i) You are at least eighteen years of age; and (ii) You are not a person or entity barred from creating or distributing the submitted Application(s) under the laws of any jurisdiction, including Your own country of residence.
- c. **Developer's Authority to License.** You represent and warrant that You have the right and authority to enter into and perform this Agreement, and that You will obey all applicable laws, regulations and rules of any government body or agency or other competent authority, and You will not: (i) use any proprietary information of another party without appropriate authorization; or (ii) infringe or misappropriate the Intellectual Property Rights of another party.
- d. **Developer's Privacy Policy.** As a condition of distributing Your Applications, You must have a Privacy Policy in place which covers use of Your Applications. If an Application accesses, uses, associates or collects information that constitutes Personally Identifiable Information from End Users, You must disclose such activities to each End User and obtain each End User's consent before allowing the Application to perform such activities, in accordance with applicable data protection and privacy laws. You shall indemnify, defend and hold ENTIT harmless from any breach of this provision or breach of any provision in Your Privacy Policy.
- e. **Prohibited Activities.** You represent and warrant that You will not engage in any activity that: (i) is illegal, in breach of applicable regulatory requirements or infringes the rights of third parties; (ii) is unethical or likely to harm the reputation of ENTIT or ENTIT's products or services; or (iii) facilitates or procures such activities (including via the distribution or operation of the Application). Developer makes no representations or warranties under this Section 10e with respect to User Generated Content which may be made available through use of its Application and that You have no control over the content.
- f. **Developer's Application Warranty.** Developer warrants to ENTIT that the Application will be free from material defects, errors malicious code, virus, trojan horse, or technology similar to any of the foregoing, and Developer shall use commercially reasonable efforts to correct or remove any such material defect, errors, malicious code, virus, trojan horse, or technology similar to any of the foregoing. If Developer is unable to correct or remove such defects, errors, malicious code, virus, trojan horse, or technology similar to any of the foregoing in a timely manner, ENTIT may terminate this Agreement with respect to such Application and immediately cease distribution of such Application. EXCEPT AS OTHERWISE PROVIDED IN THIS AGREEMENT OR AS AGREED UPON DURING THE APPLICATION SUBMISSION PROCESS, THE APPLICATION IS PROVIDED ON AN "AS IS" BASIS, WITH NO OTHER WARRANTIES, EXPRESS OR IMPLIED.
11. **ENTIT's Warranty for the Program and Related Services.** DEVELOPER EXPRESSLY ACKNOWLEDGES AND AGREES THAT USE OF AND PARTICIPATION IN THE PROGRAM AND ALL RELATED SERVICES (THE "ENTIT SERVICES") IS AT DEVELOPER'S SOLE RISK. ENTIT DOES NOT GUARANTEE,

REPRESENT, OR WARRANT THAT DEVELOPER'S USE OF THE ENTIT SERVICES WILL BE UNINTERRUPTED, ACCURATE, COMPLETE, SECURE, VIRUS FREE, ERROR FREE OR AVAILABLE AT ANY TIME OR THAT DATA PROVIDED BY DEVELOPER TO ENTIT WILL NOT BE LOST OR CORRUPTED, TO THE MAXIMUM EXTENT PERMITTED BY LAW. DEVELOPER AGREES THAT THE ENTIT SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE" FOR DEVELOPER'S USE, WITHOUT WARRANTIES, OR TERMS AND CONDITIONS OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING ALL IMPLIED WARRANTIES OR TERMS AND CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, ACCURACY, QUIET ENJOYMENT, TITLE, AND NONINFRINGEMENT. NO ORAL ADVICE OR WRITTEN INFORMATION GIVEN BY ENTIT, OR ITS EMPLOYEES OR REPRESENTATIVES WILL CREATE A WARRANTY; NOR MAY DEVELOPER RELY ON ANY SUCH INFORMATION OR ADVICE.

12. Limitation of Consequential Damages. EXCEPT WITH RESPECT TO A BREACH OF OR OBLIGATIONS ARISING UNDER SECTION 9 (CONFIDENTIALITY), SECTION 10 (DEVELOPERS REPRESENTATIONS AND WARRANTIES), AND SECTION 14 (INDEMNIFICATION), NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, LOSS OF PROFITS OR REVENUE, OR INTERRUPTION OF BUSINESS IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT PRODUCT LIABILITY OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Limitation of Liability. UNDER NO CIRCUMSTANCES SHALL ENTIT OR ITS SUPPLIERS BE LIABLE FOR ANY LOSS OR DAMAGE WHICH MAY BE INCURRED BY DEVELOPER AS A RESULT OF: (I) ANY RELIANCE PLACED BY DEVELOPER ON THE COMPLETENESS, ACCURACY OF THE SERVICE OR CONTENT MADE AVAILABLE THROUGH THE DEVELOPER PORTAL AND ASSOCIATED SERVICES; (II) FOR ANY PERMANENT OR TEMPORARY CESSATION IN THE PROVISION OF THE DEVELOPER PORTAL AND ASSOCIATED SERVICES (OR ANY FEATURES WITHIN THE SERVICES); (III) THE DELETION OF, CORRUPTION OF, OR FAILURE TO STORE, ANY CONTENT AND OTHER COMMUNICATIONS DATA MAINTAINED OR TRANSMITTED BY OR THROUGH DEVELOPER'S USE OF THE DEVELOPER OR ASSOCIATED SERVICES; (IV) DEVELOPER'S FAILURE TO PROVIDE ENTIT WITH ACCURATE ACCOUNT INFORMATION; OR (V) DEVELOPER'S FAILURE TO KEEP DEVELOPER'S PASSWORD OR ACCOUNT DETAILS SECURE AND CONFIDENTIAL. EXCEPT WITH RESPECT TO A BREACH OF OBLIGATIONS ARISING UNDER SECTION 9 (CONFIDENTIALITY) AND SECTION 14 (INDEMNIFICATION), TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL ENTIT'S, ITS SUBSIDIARIES', ITS AFFILIATES' OR ITS SUPPLIERS' TOTAL AGGREGATE LIABILITY EXCEED THE AMOUNTS PAID BY DEVELOPER TO ENTIT IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM.

14. Indemnification.

a. **By Developer.** Developer shall, at its own expense, indemnify, defend and hold harmless ENTIT and its shareholders, officers, directors, employees, representatives, affiliates, and agents, against any third party claim, suit, action, or proceeding based on or relating to: (i) a claim that Developer's Marketing Material, or Developer's Application, software or technology infringes or misappropriates the Intellectual Property Rights of any third party or violates any applicable law; (ii) the use of the Application by an End User; (iii) a claim by an End User of a breach of warranty by Developer; (iv)

product liability claims relating to the Application; or (v) a breach by Developer of Section 10,

b. **By ENTIT.** Subject to Section 14(a), ENTIT shall, at its own expense, indemnify, defend and hold harmless Developer and its officers, directors, employees, representatives, affiliates, and agents against any third party claim, suit, action, or proceeding based on a claim that a trademark of ENTIT, infringes or misappropriates any Intellectual Property Rights of any third party or violates any applicable law.

c. **Indemnification Procedure.** Each party seeking indemnity ("**Indemnified Party**") agrees to promptly notify the other party ("**Indemnifying Party**") of, render reasonable assistance to (at the Indemnified Party's sole expense), and permit the Indemnifying Party to direct the defense or settlement of such action or claim, except that the Indemnifying Party shall not settle any such suit or claim without the Indemnified Party's prior written approval unless such settlement: (i) includes a complete release of the Indemnified Party and its officers, employees and agents (the "**Indemnitees**"); (ii) does not require any Indemnitee to pay any amount or deliver any other consideration; and (iii) places no restriction on the future conduct of any Indemnitee.

15. Miscellaneous Legal Provisions. This contains the entire agreement of the parties, and supersedes any and all previous agreements with respect to the subject matter hereof, whether oral or written. Nothing in this Agreement excludes either party's liability for fraudulent misrepresentation. This Agreement may not be assigned by either party without the other party's prior written consent, such consent not to be unreasonably withheld, except that: (i) Either party may assign this Agreement to any acquirer of all or of substantially all of such party's equity securities, assets or business related to the subject matter of this Agreement without the prior approval of the other party; and (ii) ENTIT may freely assign this Agreement to any subsidiary or affiliate of ENTIT without Developer's approval. Except as otherwise provided in this Agreement, each of the parties shall at all times during the term of this Agreement act as, and shall represent itself to be, an independent contractor, and not an agent or employee of the other. All notices and consents required or permitted to be given to ENTIT under this Agreement shall be in writing to: ENTIT Software LLC, Attn: General Counsel, 3000 Hanover Street, Palo Alto, CA 94304 or to such other address as ENTIT may designate to Developer by written notice, and shall be effective upon receipt. All notices and consents required or permitted to be given to Developer under this Agreement shall be in writing to the address provided during the Registration Process or to such other address as Developer may designate to ENTIT by written notice, and shall be effective upon receipt. This Agreement shall be governed by and construed under the laws of the State of California and the United States without regard to conflicts of laws provisions thereof. The sole and exclusive jurisdiction and venue for actions related to the subject matter hereof shall be the state and federal courts located in Santa Clara County, California, unless agreed otherwise by ENTIT in writing. Both parties consent to the exclusive jurisdiction of such courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by California or federal law. Neither party shall export, directly or indirectly, any information acquired under this Agreement or any products utilizing any such information to any country or to any individual or entity for which the U.S. Government or any agency thereof at the time of export requires an export license or other government approval without first obtaining such license or approval. With respect to any export transactions under this Agreement, both parties will cooperate in any reasonable manner to effect compliance with all applicable export regulations. A person who is not a party to this Agreement (other than a subsidiary or affiliate of ENTIT) shall not have any rights under applicable law to enforce any term of this Agreement. The consent of any third party (including any subsidiary or affiliate of ENTIT) shall not be required for the variation or termination of this Agreement