

# Mbedthis AppWeb Commercial License Agreement

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**This is a License Agreement ("Agreement") between Mbedthis Software LLC. ("Mbedthis"), and you (the "Licensee").**

## 1. Definitions

**“Annual Subscription Fee”** means the annual payment made by the Licensee to Mbedthis in consideration of the rights granted in this agreement.

**“Integrated Product”** means the Licensee's application or device incorporating the Software.

**"Program Errors"** means 1 or more reproducible deviations in the standard, unmodified Product from the applicable specifications shown in the documentation.

**"Project"** means a single Licensee 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.

**“Revenue”** means the gross project revenues before taxes and cost of goods.

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

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

## 2. License to Use

2.1. Subject to the terms and conditions of this Agreement, the Licensee 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.

2.2. The Licensee agrees not to export or re-export the Software or any copy or adaptation in violation of the US Export Administration regulations or other applicable regulation.

## 3. Term of License

- 3.1. 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.
- 3.2. 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.
- 3.3. The Licensee 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 Licensee is not entitled to a refund of the whole or any part of the fees paid. In the event of such termination, the Licensee's right to use Integrated Products that were sold prior to termination is not affected.

#### **4. Price and Payment**

- 4.1. The Licensee shall pay Mbedthis an Annual Subscription Fee for the rights granted in this Agreement to ship Integrated Products containing the Software for the following twelve (12) month period commencing at the execution of this Agreement. The initial payment is due upon execution of this Agreement and subsequent payments are due on the 12 month anniversary of this Agreement. Payments shall be made without any deduction and shall be exclusive of all taxes and duties.
- 4.2. The amount of the Annual Subscription Fee is determined each year by the current size of the Licensee's business for Integrated Products. It is calculated by the Licensee's good faith estimate of the number of Units of Integrated Products that will be shipped during the following twelve (12) month period.
- 4.3. If the Licensee ships more Units than estimated pursuant to Section 4.2, the Licensee shall upgrade its Software license within thirty (30) days and remit payment for the difference up to the next subscription level as described in Appendix A.
- 4.4. Mbedthis shall provide Licensee with a minimum of thirty (30) days notice prior to increasing the Annual Subscription Fee. Price increases will not affect current subscription fee levels and will only apply to future subscription payments.

#### **5. Assignment**

- 5.1. Licensee 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 Licensee in a merger, acquisition or reorganization.

## **6. Audit Rights**

6.1. 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 Licensee's records relating to its distribution of integrated products containing the Software for the purpose of verifying the Licensee's appropriate payment of the licensee fees due hereunder. Mbedthis shall exercise this right upon no fewer than thirty (30) days' prior written notice. The Licensee will provide Mbedthis with reasonable accommodation for the review and reasonable use of available office equipment. The Licensee 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 three percent (5%) or more of the amount actually paid. Complete and accurate documents shall be retained by the Licensee for two (2) years following termination of this Agreement.

## **7. Copyright and Other Laws**

7.1. The Software is owned by Mbedthis and is protected by international copyright, trademark and any other applicable laws. The Licensee must comply with the terms of the copyright notice in the Software and must never remove any notice or product identification from the Software or the accompanying documentation. The Licensee acknowledges that the copyright, patent, trade secret and all other intellectual property rights in the Software shall remain the exclusive property of Mbedthis. The Licensee also acknowledges that Mbedthis owns the Mbedthis and AppWeb trademarks and logos.

7.2. All right and title to modifications made solely by the Licensee to the Software and the right and title to other software that is included by the Licensee in an Integrated Product, shall remain the property of the Licensee.

## **8. Warranties and Limitations**

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8.2. Software Changes: 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.

8.3. Support: The Licensee is entitled to support services in accordance with the terms and conditions of the Technical Support Addendum as defined in this Agreement. In no event shall Licensee be entitled to support services in excess of the value of the Annual Subscription Fee

paid for the current year.

8.4. No Other Warranties: Mbedthis DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, RELATED TO THE Software, ITS USE OR ANY INABILITY TO USE IT, THE RESULTS OF ITS USE AND THIS Agreement. The Software, and any accompanying written materials, are supplied "AS IS", without warranty of any kind (other than the limited warranty contained in clause 4.a). Mbedthis does not warrant, guarantee or make any representations regarding the use of or the results of the use of the Software or as to its correctness, accuracy, reliability, currentness or otherwise. The entire risk as to results and performance of the Software is assumed by the Licensee. Where legislation does not permit such exclusion of liability, Mbedthis's liability is limited to: (1) replacement of the Software; or (2) correction of defects in the Software, at its option.

8.5. No Liability for Consequential Damages: In no event shall Mbedthis or any of its authorized representatives be liable to the Licensee for any damages (including, damages for loss of business profits, business interruption and loss of business information or computer programs) because of the Licensee's use or inability to use the Software, even if Mbedthis has been advised by the Licensee of the possibility of such damages. In any event, Mbedthis's entire liability under any provision of this Agreement shall be limited to the amount actually paid by the Licensee for the Software.

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## **9. Indemnification**

9.1. Mbedthis shall defend, at its expense, any claim, lawsuit or related action brought against the Licensee alleging that the Licensee's use of the Software in accordance with this Agreement infringes a United States patent or copyright, and shall pay all costs and damages finally awarded in any such action (and reasonable attorneys' fees incurred in such action), provided that Mbedthis is given prompt written notice of such claim, any information in the Licensee's possession related to such claim, reasonable assistance by the Licensee and sole authority to settle or defend such claim. Notwithstanding the foregoing, Mbedthis shall not have any liability or obligation under this Section 5 to the extent that the alleged infringement is based upon the use of the Software in combination with any other computer programs or technology not licensed by Mbedthis to the Licensee.

## **10. US Government Restricted Rights**

- 10.1. The Software provided under this License Agreement is commercial computer software developed exclusively at private expense, and in all respects are proprietary data belonging solely to Mbedthis.
- 10.2. Department of Defense End Users: If the Software is acquired by or on behalf of agencies or units of the Department of Defense (DOD), then, pursuant to DoD FAR Supplement Section 227.7202 and its successors (48 C.F.R. 227.7202) the Government's right to use, reproduce or disclose the Software and any accompanying documentation acquired under this License Agreement is subject to the restrictions of this Agreement.
- 10.3. Civilian Agency End Users: If the Software is acquired by or on behalf of civilian agencies of the US Government, then, pursuant to FAR Section 12.212 and its successors (48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Software and any accompanying documentation acquired under this License Agreement is subject to the restrictions of this License Agreement.

## **11. Notices**

- 11.1. Any notice required or permitted by this Agreement shall be in writing and shall be deemed sufficient (a) upon receipt, when delivered personally or by courier, overnight delivery service or confirmed facsimile, (b) one (1) day after e-mail transmission via Internet (with a copy by first-class certified or registered mail, postage prepaid on the first business day after transmission) or (c) forty-eight (48) hours after being deposited in the regular mail as certified or registered mail (airmail if sent internationally) with postage prepaid, provided in each case that such notice is addressed to the party's address, facsimile number or e-mail address as set forth below, or as subsequently modified by written notice.

## **12. Severability**

- 12.1. If one or more provisions of this Agreement are held to be unenforceable under applicable law, the parties agree to renegotiate such provision in good faith, in order to maintain the economic position enjoyed by each party as close as possible to that under the provision rendered unenforceable. In the event that the parties cannot reach a mutually agreeable and enforceable replacement for such a provision, then (a) such provision shall be excluded from this Agreement, (b) the balance of the Agreement shall be interpreted as if such provision were so excluded and (c) the balance of the Agreement shall be enforceable in accordance with its terms.
- 12.2. If Mbedthis and its successors cease operate in the ordinary course of business, the License's rights granted in Section 2, including the ability to create and sell Integrated Products, shall continue unaffected. In such an event, the Licensee shall have no obligation to pay further Annual Subscription Fees.

### 13. Entire Agreement

13.1. This Agreement contains the entire agreement between the Licensee and Mbedthis and supersedes all prior agreements, negotiations or other communications between the parties relating to the Software. This Agreement may only be amended or modified by agreement in writing.

### 14. Applicable Law

14.1. This Agreement will be governed by the laws of the State of Washington, USA and the parties submit to the non-exclusive jurisdiction of the courts of that state.

Mbedthis Software LLC.

\_\_\_\_\_

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: Michael O'Brien  
CEO  
Mbedthis Software, LLC  
9440 Lake Washington Blvd NE  
Bellevue WA 98004

Name: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Date: \_\_\_\_\_

## Appendix A

### Annual Subscription Fee Schedule

	Qualification	USD Price
Class A	Less than 100 Units per year and less than \$ 100,000 project Revenues	\$495
Class B	Less than 500 Units per year and less than \$ 500,000 project Revenues	\$995
Class C	Less than 2,000 Units per year and less than \$2 million project Revenues	\$2,995
Class D	Less than 5,000 Units per year and less than \$5 million project Revenues	\$4,995
Class E	Less than 15,000 Units per year and less than \$15 million project Revenues	\$9,995
Unlimited	Unlimited Units and unlimited project Revenues	CALL

## **Support Addendum**

### **Mbedthis Commercial Support Agreement**

#### **15. Technical Support**

- 15.1. Mbedthis will provide technical support services to Licensee for Program Errors reported to Mbedthis by Licensee and not resolved by Licensee. Subject to the terms below, services shall include efforts by Mbedthis to identify defective source code and to provide corrections, workarounds and/or patches to correct Program Errors.
- 15.2. Mbedthis will use reasonable commercial efforts to resolve each significant Program Error that Licensee reports to Mbedthis and that Mbedthis confirms. Licensee shall report Program Errors using the designated email address and shall provide sufficient information for Mbedthis to duplicate the Program Error before Mbedthis's response obligations will commence. This report shall include a complete description of the problem and how to reproduce it, an initial severity level assessment, full details of the software and hardware environment and a test case that demonstrates the problem using the standard unmodified Software distribution. Mbedthis will provide Licensee with an e-mail address which Licensee may use to report Program Errors. Mbedthis may reclassify Program Errors if it reasonably believes that Licensee's classification is incorrect.
- 15.3. Mbedthis shall respond Program Errors reported by Licensee by providing either a reasonable workaround, an object code patch or a specific action plan for how Mbedthis will address the problem and an estimate of how long it will take to rectify the defect. Unless otherwise authorized in writing by Mbedthis, Mbedthis will not be required to correct any Program Error caused by (a) any non conformance caused by neglect, misuse, alteration, modification, or enhancement of the Software; (b) the failure to provide an installation environment recommended for the Software; (c) use of the Software for other than the specific purpose for which the Software is intended; (d) use of the Software on any systems other than the specified hardware platform for such Software; or (e) failure to incorporate any Software revision or patch previously released by Mbedthis which corrects such Program Error.
- 15.4. Mbedthis will use reasonable commercial efforts to communicate with Licensee about the Program Error via e-mail within the targeted response times set forth below.
- 15.5. Mbedthis agrees to support a given revision of the Software for the shorter of (i) 6 months from the date such revision is superseded by the next sequential Software update; or (ii) until such revision is superseded by 2 sequential Software revisions.



***Targeted Regular Response Times (excluding Mbedthis holidays)***

<b>Priority</b>	<b>Failure</b>	<b>Initial Response Time</b>	<b>Status Updates</b>
1 - Critical	Licensee's Integrated Product is not functioning	1 day	2 days
2 – Severe Impact	Licensee's Integrated Product has significant issues disabling key functions.	3 days	5 days
3 – Degraded Operations	Licensee's Integrated Product has issues but a workaround is possible.	7 days	14 days
4 – Minimal Impact		14 days	Nil

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