



TOM SAWYER SOFTWARE END USER LICENSE AGREEMENT

THIS END USER LICENSE AGREEMENT (“Agreement”) is entered into as of the Effective Date by and between Tom Sawyer Software, a California corporation, having an office at 1997 El Dorado Avenue, Berkeley, CA 94707 USA (“Licensor”), and you, (as either one natural person utilizing the Licensed Products for individual use or as the authorized representative of the entity entering into this Agreement with Licensor, such natural person or entity shall be referred to as the “Licensee”). Terms with initial capital letters shall have the meaning set forth herein or in the attached exhibits. By clicking on the “Accept Terms” button under “Terms and Conditions” and subscribing to the Licensed Products, you, the subscriber, represent and warrant that you: (i) have read this Agreement and understand it; (ii) are authorized to enter into this Agreement on behalf of and bind the Licensee to the terms of this Agreement; and (iii) are utilizing the Licensed Products solely for the benefit of Licensee, and not for any other person or entity. BY SUBSCRIBING TO LICENSED PRODUCTS, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THE FOLLOWING TERMS AND AGREE TO BE BOUND BY THEM.

Recitals

- A.** Licensor is the developer and owner of certain software products that are defined herein as the Licensed Product(s).
- B.** Licensee desires to obtain from Licensor, a license to use for the End User, defined below, and Licensor is willing to grant Licensee certain licenses hereunder.

Agreement

1. Definitions.

All capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.

(a) **Agreement.** “Agreement” means this End User License Agreement, and the exhibits agreed upon execution between the Licensor and Licensee.

(b) **Affiliates.** An “Affiliate” of a party means any person or entity which, as of the Effective Date, controls or is controlled by, or is under common control with, such party, where “control” means ownership of more than fifty percent (50%) of the outstanding voting securities (but only as long as such person or entity meets these requirements).

(c) **Amazon Web Services Account.** “Amazon Web Services Account” means Licensee’s End User Customer’s or Licensee’s active account on the Amazon Web Services Marketplace.

(d) **Amazon Web Services Marketplace.** “Amazon Web Services Marketplace” means the software/service marketplace operated by Amazon Web Services located at <https://aws.amazon.com/marketplace>, as it may be updated from time-to-time by Amazon Web Services.

(e) **Amazon Web Services Terms and Policies.** “Amazon Web Services Terms and Policies” means all of the Amazon Web Services terms, conditions, restrictions, and policies that may be applicable to Licensee resulting from this Agreement, including, but not limited to, the Amazon Web Services Customer Agreement as well as Amazon Web Services’ acceptable use policy, site terms, content terms, and service terms.

(f) **Documentation.** “Documentation” means Licensor’s online or printed manuals describing the Licensed Products and provided to Licensee hereunder.

(g) **Effective Date.** “Effective Date” means the date on which Licensee subscribes to the Licensed Products, and therefore acknowledges and agrees to all terms and conditions of this Agreement.

(h) **End User.** “End User” means each natural person who has access to an Amazon Web Services Account and is authorized to use or access the Licensed Products in accordance with the Agreement by Licensee or Licensee Affiliates or Licensee’s End User Customer, as applicable. Different natural persons may not share End User licenses.

(i) **Licensee’s End User Customer.** “Licensee’s End User Customer” means a natural person or legal entity (other than the Licensee) who has access to an Amazon Web Services Account and is authorized to use or access the Licensed Products, solely as bundled with, part of, or incorporated into other software or hardware and not on a standalone basis pursuant to the Agreement, for its own internal purposes and not for distribution to, or on behalf of, others.

(j) **Intellectual Property Rights.** “Intellectual Property Rights” means any and all worldwide: (i) rights associated with works of authorship, including, but not limited to, moral rights and copyrights; (ii) trademark and trade name rights and similar rights; (iii) trade secret rights; (iv) patents, designs, algorithms and other industrial property rights; (v) all other intellectual and industrial property rights (of every kind and nature throughout the world and however designated) whether arising by operation of law, contract, license, or otherwise; and (vi) all registrations, initial applications, or extensions of all of the foregoing now or hereafter in force (including any rights in any of the foregoing).

(k) **Licensed Application.** A “Licensed Application” means any Licensee application(s) developed using or otherwise utilizing the Licensed Product(s).

(l) **Licensed Products.** “Licensed Products” means the Licensor software products, in object code only, described on Licensor’s “Product Overview” page of Amazon Web Services Marketplace.

(m) **Maintenance Services.** “Maintenance Services” means the services described in Exhibit B of this Agreement.

(n) **Professional Services.** “Professional Services” means the services described in Exhibit C of this Agreement.

(o) **Release.** A “Release” is identified by a unique sequence of three (3) consecutive numbers separated by periods that identifies a particular release of the Licensed Products. Releases have an X.Y.Z format, where X and Y are the same as those in the applicable Version.

(p) **Version.** A “Version” is identified by a unique sequence of two (2) consecutive numbers separated by a period that identifies a particular version of the Licensed Products. Versions have an X.Y format.

2. Evaluation. If Licensor has made available to Licensee a free trial or evaluation access to the Licensed Products (“Evaluation Access”), Licensee’s access is limited to evaluate Licensed Products to determine whether to purchase a subscription from Licensor. Licensee may use Evaluation Access solely for the purpose of evaluating the Licensed Products. Evaluation Access is limited to thirty (30) days from the date Licensee activates Evaluation Access, unless otherwise specified by Licensor. Licensor has the right to terminate Evaluation Access at any time. Unless Licensee purchases a subscription for Licensed Products, upon any such termination or expiration Licensee’s Evaluation Access will cease and Licensee will no longer have access to Licensed Products (This includes the risk of the loss of Licensee data that may be used in connection with Evaluation Access). If Customer purchases a subscription to Licensed Products, all of the terms and conditions in this Agreement will apply to such purchase and the use of these Licensed Products. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, LICENSOR WILL HAVE NO WARRANTY, INDEMNITY, SUPPORT OR OBLIGATIONS WITH RESPECT TO EVALUATION ACCESS. Licensee may not reverse engineer, disassemble, or decompile the Licensed Products or otherwise attempt to determine its underlying source code or permit any such actions.

3. Conditions and Limitations.

(a) **Ownership of Licensed Products.** Licensor and its suppliers retain all right, title, and interest in and to the Licensed Products, Documentation, and all Intellectual Property Rights therein, and Licensee is only acquiring a limited license as described in Exhibit A of this Agreement. Licensee shall not take any actions that are inconsistent with Licensor’s or its suppliers’ ownership rights in the Licensed Products, Documentation, and related Intellectual Property Rights. All rights not expressly granted herein are reserved to Licensor and its suppliers.

(b) **Open-Source Software.** Certain items of independent code that are included with the Licensed Products hereunder are subject to open source or free software licenses (“Open-Source Software”). Each Release of the Licensed Products will be accompanied by a listing of all known items of Open-Source Software included in that Release with links to the applicable licenses. This Open-Source Software is licensed under the terms of the applicable third-party licenses that accompany such Open-Source Software. The Agreement does not limit Licensee’s rights hereunder. It also does not grant Licensee rights that supersede the terms and conditions of any applicable license for such Open-Source Software. The terms of the Agreement other than this Section 3(b) and Sections 7(e), 8 and 12 of this Agreement will not apply to Open-Source Software. As, and to the extent, required by the terms

of the third-party Open-Source Software licenses, Licensor makes the Open-Source Software, and Licensor's modifications to that Open-Source Software, available per request to Licensor's legal contact through legal@tomsawyer.com.

4. **Delivery and Acceptance.** By clicking on the "Accept Terms" button under "Terms and Conditions" and subscribing to the Licensed Products, both parties will consider Licensed Products as delivered and accepted ("Delivery and Acceptance").

5. **Fees.**

(a) **License and Maintenance Fees.** Licensee shall pay the amounts due under "Pricing Information" on Licensor's page of Amazon Web Services Marketplace as are consistent with Amazon Web Services Marketplace payment approaches.

(b) **Taxes.** Any sales or personal property taxes or value added taxes, use taxes, excise taxes or duties, or similar taxes or charges (excluding any taxes based on Licensor's income) payable under or in connection with the Agreement, and any interest and penalties thereon, shall be the obligation of Licensee, and Licensee shall indemnify and hold Licensor harmless from payment of any such taxes, duties, or charges. If Licensee is claiming sales or use tax exemption, a certified Tax-Exempt Certificate must be provided to Licensor upon request.

6. **Technical Support.** During the term of this Agreement, Licensor shall provide reasonable website support at www.tomsawyer.com/support, 24 hours a day, seven days a week from a geographic region where the Licensor operates a support presence, in response to Licensee's questions regarding the use of the Licensed Products. Licensor will not provide on-site support under this Agreement and can give no assurances that it can satisfactorily resolve problems relating to the Licensed Products that may arise during the term of this Agreement.

7. **Warranty.**

(a) **Limited Performance Warranty.** Licensor warrants that for a period of one hundred and eighty (180) days after Delivery and Acceptance of the first release to Licensee (the "Warranty Period"), such release shall perform substantially in accordance with the Documentation when used as permitted in the Agreement and in accordance with the Documentation. Licensor will, at its own expense and as its sole obligation and Licensee's exclusive remedy for any breach of this warranty, use commercially reasonable efforts to correct any reproducible Error in such release reported to Licensor by Licensee in writing during the Warranty Period or, if Licensor determines that it is unable to correct the Error, Licensor will refund to Licensee the fees actually paid by Licensee to Licensor for such release, in which case the Agreement and the rights licensed to Licensee hereunder will terminate. Any such Error correction provided to Licensee will not extend the original Warranty Period.

(b) **GNU GPL Policy.** Licensor also warrants that, unless Licensor has notified Licensee otherwise in writing, the Licensed Products do not contain any Open-Source Software licensed under the GNU GPL or LGPL or any other open-source license that by its terms requires, or conditions the use or distribution of such code on, the disclosure, licensing, or distribution of the Licensed Products. Notwithstanding the foregoing, for certain Licensed Products, Licensor may utilize Third-Party Software that is licensed under the commercially permissible GNU GPL plus Classpath Exception.

(c) **Non-Infringement; Indemnification.** Licensor further warrants that, to Licensor's knowledge, the Licensed Products, as provided by Licensor to Licensee hereunder, will not infringe the Intellectual Property Rights of any third party. Licensor will defend at its own expense any action against Licensee brought by a third party (including Licensee's End User Customer) to the extent that the action is based upon a claim that the Licensed Products in the form provided by Licensor to Licensee and/or Licensor's Component infringe any patent, copyright, or trademark or constitutes a misappropriation of the trade secret rights of such third party, and Licensor will pay those costs and damages finally awarded against Licensee in such action that are specifically attributable to such claim or those costs and damages agreed to by Licensor in a monetary settlement of such action. Notwithstanding the foregoing, Licensor will have no obligation under this Section or otherwise with respect to any infringement claim based upon (i) Licensor's compliance with any specifications, instructions or requirements provided by Licensee, (ii) any use of the Licensed Products not in accordance with the Agreement or for purposes not intended by Licensor, (iii) any use of the Licensed Products in combination with other products, equipment, software, or data not supplied by Licensor, (iv) any modification of the Licensed Products by any person other than Licensor, (v) any use of the Licensed Products after Licensee has received notice from the Licensor that Licensee should cease use of such Licensed Products due to a claim, or (vi) unauthorized use, access, reproduction, or distribution of Licensor's Component by Licensee or any Licensee's End User Customers; ((i)-(vi) collectively, the "Exceptions"). If the Licensed Products become, or in Licensor's opinion are likely to become, the subject of an infringement claim, Licensor may, at its option, either (1) procure for Licensee the right to continue using the Licensed Products, (2) replace or modify the Licensed Products so that they become non-infringing, or (3) if (1) or (2) above are not, in Licensor's sole determination, obtainable using reasonable commercial efforts, then Licensor may accept the return of such Licensed Products in exchange for a refund to Licensee of the purchase price paid by Licensee to Licensor for such Licensed Products.

(d) **Indemnity by Licensee.** Licensee shall defend at its own expense any action against Licensor brought by a third party (including Licensee's End User Customer) to the extent such action is based on (1) a claim that the Licensee's Component infringes any copyright, patent, or trademark or constitutes a misappropriation of the trade secret rights of any third party, (2) any claim other than an intellectual property infringement claim for which Licensor has an indemnification obligation pursuant to Sections 7(c) arising from or relating to the use or manufacture or distribution (if any) of the Licensed Application by Licensee, Licensee's Affiliates, or Licensee's End User Customers, (3) any of the Exceptions specified in Section 7(c) of this Agreement above or (4) any representations, warranties, or guarantees made by or on behalf of Licensee or its Affiliates relating to the Licensed Products that are inconsistent with Licensor's warranties hereunder, and Licensee will pay those costs and damages finally awarded against Licensor in any such action that are specifically attributable to such claim, or those costs and damages agreed to by Licensee in a monetary settlement of such action.

(e) **No Viruses.** Licensor further warrants that prior to delivering any Release of the Licensed Products to Licensee, Licensor has used commercially available anti-virus software to scan the Licensed Products in an effort to detect, and if so detected, to eliminate, any viruses, worms, or other computer code that is designed and intended to damage, disrupt, harm, disable, or otherwise impede the orderly operation of any software, data files, firmware, hardware, computer system or network. Licensor's sole and exclusive obligation and Licensee's sole and exclusive remedy for a breach of this warranty is to redeliver a new Release in conformance with this warranty.

(f) **Disclaimer.** THE FOREGOING ARE LICENSOR'S ONLY WARRANTIES TO LICENSEE. LICENSOR DOES NOT WARRANT THAT THE OPERATION OF THE LICENSED PRODUCTS WILL BE UNINTERRUPTED OR ERROR-FREE. TO THE EXTENT PERMITTED BY LAW AND EXCEPT FOR THE EXPRESS WARRANTIES IN SECTION 7(a), (b), (c), and (e), LICENSOR DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE LICENSED PRODUCTS AND ANY OTHER PRODUCTS, SOFTWARE, OR SERVICES THAT MAY BE PROVIDED UNDER THE TERMS OF THE AGREEMENT.

8. **Export Control and Trade Sanctions Compliance.** Licensee may not use, export, import, or transfer the Licensed Products or Documentation except as authorized pursuant to applicable law, including US law. In particular, but without limitation, the Licensed Products and Documentation may not, without any required government authorization, be exported, re-exported, or otherwise transferred to (a) any person or entity located or resident in a country or territory that is a designated State Sponsor of Terrorism or subject to comprehensive United States trade sanctions or embargoes (including, but not limited to, Cuba, Iran, North Korea, Sudan, Syria, and the Crimea region of Ukraine) (collectively, the "Sanctioned Countries"); or (b) to any person or entity identified on a restricted party list maintained by the US Government, including but not limited to the US Treasury Department's Specially Designated Nationals and Blocked Persons List, Foreign Sanctions Evaders List, and Sectoral Sanctions Identifications List, and the US Department of Commerce's Denied Person's List or Entity List, and Unverified List (collectively, "Sanctioned Persons"). By using the Licensed Products and Documentation, Licensee represents and warrants that (i) neither Licensee nor its Affiliates are located in a Sanctioned Country and (ii) neither Licensee nor its Affiliates are Sanctioned Persons. Licensee will not use the Licensed Products or Documentation for any purpose prohibited by US law, including the development, design, manufacture, or production of missiles, nuclear, chemical, or biological weapons. Licensee acknowledges and agrees that products, services, or technology provided by Licensor are subject to the export control laws and regulations of the United States. Licensee shall comply with these laws and regulations and shall not, without prior US government authorization, export, re-export, or transfer the Licensor products, services, or technology, either directly or indirectly, to any country in violation of such laws and regulations.

9. **Confidentiality.**

(a) Each party acknowledges that it may receive the confidential information (as hereafter defined) of the other party during the term of the Agreement. Each party agrees that it will: (i) not disclose such confidential information to third parties except as permitted herein; (ii) use at least the same care it uses with respect to its own confidential information of a similar nature, but in no event less than reasonable care, to protect and maintain the confidentiality of such confidential information; and (iii) not use such information except as provided in the Agreement. For purposes of this Section 9, "confidential information" means any information relating to the disclosing party's business or its products or services which is not generally known to the public and is marked as "confidential" or "proprietary" or in some other manner so as to clearly indicate its confidential nature. Confidential information that is disclosed orally or visually shall be confirmed in writing as confidential within thirty (30) days after its oral disclosure. Notwithstanding the foregoing, the Licensed Products and Documentation will be the confidential information of Licensor, regardless of whether or not so marked or identified.

(b) Confidential information does not include any information that: (i) was already in the possession of the receiving party, without prior restrictions and without breach of any agreement or violation of law, prior to receiving it from the disclosing party; (ii) has become generally available to the public through no fault of the receiving party; (iii) is lawfully received by the receiving party from a third party who had the right to disclose such information to the receiving party without any confidentiality restriction; or (iv) is independently developed by the receiving party without use of or reference to the confidential information of the disclosing party, as demonstrated by the receiving party's written records.

(c) In addition, the receiving party may disclose the confidential information of the disclosing party to the extent required by law, a court order, or a governmental agency with jurisdiction, provided that (to the extent permitted) the receiving party first notifies the disclosing party of such required disclosure and cooperates with the disclosing party at the disclosing party's expense in seeking to limit such disclosure.

(d) Licensee shall not provide access to the confidential information of Licensor to any of its Affiliates, employees, consultants, or other independent contractors, unless such person or entity has a need to know and is bound by written confidentiality obligations with Licensee substantially similar to those contained in the Agreement.

(e) Subject to Section 11(f), upon written request of the disclosing party or the expiration or termination of the Agreement, whichever comes first, the receiving party will promptly return to the disclosing party or destroy all confidential information of the disclosing party in the receiving party's possession or control. At the disclosing party's request, the receiving party will certify in a writing signed by an officer of the receiving party that it has fully complied with its obligations under this Section 9(e).

10. Benchmark Report. Licensee may not publish any benchmark or similar information regarding the Licensed Products or any other of Licensor's products without first obtaining written consent from Licensor.

11. Term and Termination.

(a) **Term.** The Agreement shall commence as of the Effective Date and will conclude at the end of the payment term selected by you from the options offered on the "Pricing Information" on Licensor's page of Amazon Web Services Marketplace. The term selected by you will then be automatically extended for successive renewal terms, unless otherwise terminated in accordance with Section 11(b)-(e).

(b) **Termination by Either Party.** Without limiting any other rights either party may have, each party may terminate the Agreement in the event that the other party materially breaches the provisions of the Agreement (including a failure to pay fees) and fails to cure the breach within thirty (30) days after written notice thereof by the non-breaching party.

(c) **Termination for Convenience by Licensee.** Licensee may terminate for its convenience, this Agreement and/or Licensee's use of Licensed Products at any time permitted by Amazon Web Services Marketplace in which event Licensee will NOT be entitled to a refund or credit of unused fees (if any) pre-paid by Licensee for access to Licensed Products.

(d) **Termination for Convenience by Licensor.** The Licensor and Licensee agree that Licensor may terminate this Agreement and the provision of the Licensed Products for its convenience (for any reason or for no reason). The Licensor and Licensee agree that any termination hereof in accordance with this Section 11(d) shall NOT be treated as a breach of this Agreement by Licensor or Licensee and shall not entitle the other party to any claim for damages, losses, or expenses of any kind or nature arising from or related to such termination.

(e) **Termination by Amazon Web Services.** Licensee acknowledges that the Amazon Web Services Terms and Policies include rights in Amazon Web Services to suspend and terminate Licensee's Amazon Web Services account, which will suspend or terminate Licensee's access to, and use of, Licensed Products. In such event, Licensor will not provide, or be liable for, any refund, including fees pre-paid by Licensee for access to and use of Licensed Products.

(f) **Consequences of Termination.** Upon any termination or expiration of the Agreement or legal documents otherwise associated with said Agreement, (i) any amounts owed to Licensor under the Agreement before such termination or expiration will be immediately due and payable and Licensee will promptly bring all accounts up to date and pay to Licensor any and all amounts due and owing to Licensor up until the date of such termination or expiration, and (ii) all licensed rights granted under the Agreement shall immediately cease to exist and Licensee shall immediately cease all use, reproduction, and distribution of the Licensed Products and Documentation and all use of any Licensor confidential information in Licensee's possession.

(g) **Survival.** Upon expiration or termination of the Agreement, the rights and obligations of the parties under the Agreement shall terminate except for: (i) such rights and obligations, which are expressly provided in the Agreement to survive the expiration or termination; (ii) any payment obligation accrued prior to such expiration or termination; and (iii) Sections 1, 5, 7(f), 9, 11(f) and (g), 12, 13, 14, and 15 of the Agreement.

12. Limitation of Liability.

(a) EXCEPT FOR ANY BREACH BY LICENSEE OF THE LICENSE RESTRICTIONS IN THE AGREEMENT, OR LIABILITY OF A PARTY FOR ITS VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, OR FOR THE INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER, IN NO EVENT SHALL EITHER PARTY, ITS EMPLOYEES, OFFICERS, DIRECTORS, AGENTS, SUCCESSORS OR ASSIGNS BE LIABLE TO THE OTHER UNDER ANY CONTRACT, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OR ANY DAMAGES FOR LOST PROFITS OR LOST DATA, COST OF SUBSTITUTE GOODS, TECHNOLOGY, OR SERVICES, ARISING OUT OF, OR RELATING IN ANY WAY TO, THE SUBJECT MATTER OF THE AGREEMENT, THE LICENSED PRODUCTS, OR ANY SERVICES PROVIDED BY LICENSOR, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

(b) EXCEPT FOR: (I) ANY BREACH BY LICENSEE OF THE LICENSE RESTRICTIONS IN THE AGREEMENT; OR, (II) LIABILITY OF A PARTY FOR ITS VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS, (III) FOR THE INDEMNIFICATION OR CONFIDENTIALITY OBLIGATIONS HEREUNDER OR (IV) LICENSEE'S PAYMENT OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S TOTAL CUMULATIVE LIABILITY ARISING FROM OR RELATED TO THE AGREEMENT, THE LICENSED PRODUCTS, OR ANY SERVICES PROVIDED BY LICENSOR, WHETHER IN CONTRACT, TORT, OR OTHERWISE, EXCEED THE AMOUNT OF FEES ACTUALLY PAID BY LICENSEE TO LICENSOR FOR THE PRODUCT OR SERVICES FOR WHICH THE CLAIM WAS MADE IN THE TWELVE (12) MONTHS PRECEDING THE DATE THE FIRST CLAIM ARISES. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMITATION.

(c) NOTWITHSTANDING THE FORGOING LIMITATIONS OF LIABILITY, LICENSOR'S AGGREGATE LIABILITY FOR ITS INDEMNIFICATION OBLIGATION IN SECTION 7(c) OF THIS AGREEMENT SHALL BE TWO MILLION DOLLARS (\$2,000,000).

(d) THE PROVISIONS OF THIS SECTION 12 ALLOCATE THE RISKS UNDER THE AGREEMENT BETWEEN LICENSOR AND LICENSEE. LICENSOR'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

13. Miscellaneous Provisions.

(a) **Governing Law.** The Agreement shall be governed by and construed in accordance with the laws of the State of California without regard to conflicts of laws or principles that would require the application of the laws of any other jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to the Agreement.

(b) **Venue.** Any action or proceeding arising directly or indirectly from the Agreement shall be brought in an appropriate state or federal court located in the County of Alameda, State of California. Both parties consent to the jurisdiction of these courts and agree that process may be served in the manner provided herein for giving of notices or otherwise as allowed by the State of California or US Federal law. Notwithstanding the foregoing, either party may at any time seek injunctive or equitable relief in any court of competent jurisdiction to protect or enforce its Intellectual Property Rights or rights in confidential information.

(c) **Affiliates.** Licensee hereby warrants that it will ensure that its Affiliates shall undertake and perform all relevant obligations under the Agreement as if such Affiliates were directly named as a party to the Agreement. Notwithstanding the foregoing, Licensee warrants that it will be fully responsible to Licensor for any and all acts or omissions of its Affiliates under the Agreement, and in particular that it will promptly pay, and that it guarantees as its own debt, all payments that are due under the Agreement and attributable to its Affiliates. If an Affiliate of Licensee breaches any of the terms of the Agreement, Licensor may proceed directly against either the breaching Affiliate or Licensee or both.

(d) **Force Majeure.** Any delay in the performance of any duties or obligations of either party (except the payment of money owed) will not be considered a breach of the Agreement if such delay is caused by a labor dispute, shortage of materials, unavailability of utilities or telecommunications, fire, earthquake, flood, or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the circumstances causing the delay and to resume performance as soon as possible.

(e) **Construction.** The headings of sections of the Agreement are for convenience and are not to be used in interpreting the Agreement. As used in the Agreement, the word "including" means "including but not limited to." Whenever the term "day" is used herein, unless otherwise stated, it refers to a calendar day.

(f) **Order of Precedence.** If any term or provision of this Agreement conflicts with any term or provision of any exhibits, attachments, addendums, or schedules to the Agreement, the following order of precedence will apply unless otherwise expressly stated: (1) the Agreement; and (2) any exhibits, attachments, addendums, or schedules to the Agreement.

(g) **Severability.** If any provision of the Agreement is unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions will continue in full force and effect.

(h) **No Implied Waivers.** The failure of either party at any time to require performance by the other party of any provision hereof shall not affect in any way the right to require such performance at any time thereafter. A waiver by either party of a breach of any provision hereof shall not be taken or held to be a waiver of any subsequent breach of the same provision or any other provision.

(i) **Remedies.** In any action to enforce rights under the Agreement, the prevailing party shall be entitled to recover costs and attorneys' fees. Except as otherwise expressly provided herein, the parties' rights and remedies under the Agreement are cumulative. If Licensee continues to use or distribute the Licensed Products after its right to do so (if any) has terminated or expired, Licensor will be entitled to seek immediate injunctive relief without the requirement of posting bond.

(j) **Independent Contractor.** The parties acknowledge that each party is an independent contractor, and that this Agreement does not appoint a party as the agent or representative of the other party hereto. This Agreement does not create a partnership, joint venture, employer/employee, or other joint relationship between the parties and neither party shall have the right or authority to bind the other party in any manner whatsoever.

14. Interpretation.

Each party acknowledges that it has had the opportunity to review the Agreement with legal counsel and agrees that the Agreement will not be interpreted or construed against any party to the Agreement because that party or any attorney or representative of that party drafted the Agreement or participated in the drafting of the Agreement.

15. Notices.

All notices, requests, demands, consents, instructions, or other communications required or given under the Agreement shall be in writing. Each party will address such notices to the other party's legal contact set forth in Section 3(b) of this Agreement. Such notices shall be deemed to have been duly given upon delivery if delivered personally, by one-day courier, by facsimile transmission where receipt is acknowledged by the receiving machine, by electronically scanned document that is e-mailed, by pre-paid telegram, or by first-class, postage pre-paid, registered, certified, or return-receipt mail. Either party may change the address to which such communications are to be directed by giving written notice to the other party in accordance with this Section 15 of this Agreement. Further, it is recommended that Licensee's End Users sign up at www.tomsawyer.com and update their user profile from time to time to help maintain accurate contact information.

EXHIBIT A

INTERNAL USE AND DISTRIBUTION LICENSE GRANTS

Internal Use License. Subject to Licensee's continued compliance with all terms and conditions of the Agreement and the limitations on the number of End Users as applicable, Licensor hereby grants to Licensee and its Affiliates a worldwide, limited, non-exclusive, non-transferable, license (without the right to sublicense) during the term of the Agreement to use the Licensed Products solely for internal business purposes.

Distribution License. Subject to Licensee's continued compliance with all terms and conditions of the Agreement and the limitations on the number of End Users as applicable, Licensor hereby grants to Licensee a worldwide, limited, non-exclusive, non-transferable (without the right to sublicense) during the term of the Agreement to: (a) incorporate the Licensed Products into Licensee's software application to create Licensed Applications; and (b) reproduce the Licensed Products as part of the Licensed Applications; and (c) distribute the Licensed Products as part of Licensed Application pursuant to the requirements of the section below titled "Required Agreements" directly to Licensee's End User Customer solely for internal business use.

Required Agreements.

Before making the Licensed Application available to any Licensee's End User Customer or otherwise distributing the Licensed Application to any Licensee's End User Customer, as applicable, Licensee must enter into a binding, written agreement with such Licensee's End User Customer, as applicable, that contains terms no less restrictive than those set forth below. Licensee must enforce each such agreement with at least the same degree of diligence that Licensee uses to enforce similar agreements for its own products or other software products that it distributes, but in no event less than reasonable efforts. Licensee will immediately notify Licensor if Licensee becomes aware of any material breach of any such agreement relating to the Licensed Products.

Restrictions on Licenses.

Licensee, on behalf of itself and its Affiliates, acknowledges that the Licensed Products contain valuable intellectual property of Licensor. Unless expressly permitted pursuant to a license granted in the Agreement, Licensee shall not, nor shall it permit its Affiliates or others, to do the following:

1. Incorporate the Licensed Products into any other software or hardware products in such a way that the Licensed Products are available on a stand-alone or independent basis; or
2. Sell, distribute, transmit, rent, sublicense, lease, loan, transfer, or otherwise provide access to or use of the Licensed Products to any third party or unauthorized user; or
3. Modify or create derivative works from the Licensed Products; or
4. Reverse-engineer, disassemble, or decompile the Licensed Products or otherwise attempt to determine their underlying source code, or the underlying ideas, algorithms, structure, or organization; or
5. Remove, alter, or obscure in any way any proprietary rights notices (including copyright notices) of Licensor or its suppliers on or within the copies of the Licensed Products and the Documentation available to Licensee on Licensor's "Product Overview" page of Amazon Web Services Marketplace.

MINIMUM TERMS FOR LICENSEE'S END USER CUSTOMER LICENSE AGREEMENTS

1. Use of the Licensed Products is limited to the Licensee's End User Customer's internal business purposes. The Licensed Products shall be solely used as a part of (a) Licensee's Licensed Application.
2. Title to and ownership of the Licensed Products remains with Licensor and its suppliers.
3. Licensee's End User Customer may not (a) reproduce, alter, modify, or create derivative works of the Licensed Products, (b) reverse-engineer, decompile, disassemble, or in any way attempt to derive the source code of the Licensed Products, or (c) transfer or distribute the Licensed Products to any third party.
4. Licensee's End User Customer will not export or re-export the Licensed Products without the appropriate US or foreign government licenses.
5. All express and implied warranties regarding the Licensed Products by Licensor and its suppliers are disclaimed.
6. All direct, consequential, special, and indirect damages are disclaimed on behalf of Licensor and its suppliers.
7. For US Government End Users: The Licensed Products is a "commercial item," as that term is defined at 48 C.F.R. 2.101, and more specifically is "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all US Government End Users acquire Licensed Products with only those rights set forth herein.

EXHIBIT B
MAINTENANCE SERVICES

1. Definitions.

All capitalized terms used but not defined herein shall have the respective meanings set forth in the Agreement.

(a) **Corrected Release.** A “Corrected Release” means a Release of the Licensed Product that corrects one or more Errors. The Version is not changed when a Corrected Release is released, however, the Release number is updated.

(b) **Enhanced Release.** An “Enhanced Release” means a Release of the Licensed Product that enhances external dependency support and additionally may correct one or more Errors. The Version is not changed when a Corrected Release is released, however, the Release number is updated.

(c) **Error.** An “Error” means a failure of a Licensed Product to substantially perform the functions set forth in the Documentation.

(d) **External Dependencies.** “External Dependencies” means, without limitation, dependency upon hardware architectures, operating systems, virtual machines, development environments, compilers, programming languages, application servers, web browsers, transport layers, embedded third party libraries, or specific releases thereof.

(e) **General Release.** “General Release” means the first release of the Licensed Products bearing a new release number.

(f) **Maintenance.** “Maintenance” means providing Technical Support for Licensed Product(s) to Licensee.

(g) **New Releases.** “New Releases” means, collectively, General Releases, Corrected Releases, and Enhanced Releases.

(h) **Technical Support.** “Technical Support” means the assistance provided by Licensor to Licensee, as detailed in this Exhibit B.

2. Maintenance Obligations.

(a) **Maintenance Obligations.** Subject to Licensee’s payments according to the “Pricing Information” on Licensor’s page of Amazon Web Services Marketplace, Licensor shall provide Maintenance as described herein for each Licensed Product described on the Licensor’s “Product Overview” page of Amazon Web Services Marketplace. Licensor will be responsible for providing Maintenance only to Licensee’s End User(s). Licensee acknowledges and agrees that Maintenance is provided solely for the currently available releases of the Licensed Product for the documented capabilities and that any training, advanced application design and development assistance, and development of new features on tight time schedules are not included in Maintenance but may be provided as Professional Services if the parties execute an Agreement for such Services.

3. Technical Support. Licensee may contact Licensor Technical Support for any Technical Support via www.tomsawyer.com/support. The Fees paid by Licensee entitles Licensee to make an unlimited number of requests for Technical Support, provided that Licensee agrees to pay Licensor its then current hourly fee for such requests once Licensor has provided the number of hours of Technical Support in any given month specified in Section 7 below.

4. Discontinued or Obsolete Software. Licensor will have no obligation to provide Maintenance for Releases released more than two (2) years prior to the request for Maintenance.

5. General Limitations. Licensor shall have no obligation to investigate or correct problems (including Errors) that cannot be reproduced by Licensor based on information provided by Licensee, that are due to a breach by Licensee of the terms of the Agreement, or that cannot be remedied due to the operational characteristics of the computer equipment on which the Licensed Products are installed. If Licensor agrees to correct any problems not covered by this Maintenance, such corrective work will be billed by Licensee to Licensor at its then current hourly rate for such services.

6. Feedback. Licensee may communicate to Licensor its knowledge of any problems encountered with the Licensed Products or any modifications, design changes, comments, criticisms, suggested improvements, or other feedback regarding the use, operation, and functionality of the Licensed Products (“Feedback”). Licensee agrees that Licensor will have the right to use all Feedback provided by Licensee for any purpose, and in any manner, Licensor deems appropriate.

7. Service Description. Licensor maintains a professional technical support offering with a technical support website, telephone service, and e-mail response support. Licensor has developed customer support information systems with integrated case management.

If the Licensee has a technical support question, the Licensee should submit the technical support question through the technical support website at www.tomsawyer.com/support. Secondly, Licensee may, if applicable, call one of the Licensor's regional technical support centers during the applicable center's local business hours, which are generally weekdays from 9 a.m. to 5 p.m., except for nationally recognized holidays.

When the technical support request ("request") is received, the request is managed with Licensor's technical support information system. All requests should include sufficient information for the Licensor to be able to reproduce the problem. If the request is submitted through the technical support website, the request is assigned a case ID and an e-mail acknowledgement, identifying the case ID, is sent to the Licensee for reference within minutes.

Licensee should submit separate requests for questions that can be reasonably answered separately. This typically enhances the technical support flow and improves overall response time.

The case ID is also associated with the individual who submitted the request, and the individual may go to the technical support website to view the current status of the request.

The Customer Support Associate will then set a priority for the case based upon a severity level and service level categorization. The Customer Support Associate then assigns the case to a Customer Support Engineer for resolution.

When the Customer Support Engineer has resolved the case, the Customer Support Engineer will enter the resolution into the technical support information system and assign the case back to the Customer Support Associate. The Customer Support Associate will ensure the quality and completeness of the resolution before a response is sent to the individual who submitted the request.

It is sometimes the case that a single request is not fully resolved after the initial response from the Customer Support Team, and a communications thread will subsequently result.

(a) **Severity Levels.** The Licensee will, in good faith, set a Severity Level in accordance with the criteria below when the request is first submitted.

- **Level 1. Minor.** Licensee requests information, an enhancement, or Documentation clarification regarding the Licensed Products but there is no or minimal impact on the operation of the Licensed Products. Licensee's use of the Licensed Products is continuing, and no work is being materially impeded at the time. Licensor will provide a workaround or clarification that resolves the request, provided that, if Licensor is unable to provide a workaround or clarification, Licensor reserves the right to resolve the request in a New Release at its discretion.
- **Level 2. Medium.** Important Licensed Product features are unavailable, but a workaround is available, or less significant Licensed Product features are unavailable with no workaround. Licensee suffers a minor impact to its ability to conduct business. Licensor will provide a workaround or clarification that resolves the request, provided that, if Licensor is unable to provide a workaround or clarification, Licensor reserves the right to resolve the request in a New Release at its discretion.
- **Level 3. Severe.** Important Licensed Product features are unavailable with no workaround available. Licensee's ability to conduct business is seriously affected. Licensor will provide a workaround that resolves the request, provided that, if Licensor is unable to provide a workaround, Licensor will classify the request as an Error in the Licensed Products and work to produce a Corrected Release in accordance with the Service Level of the Licensee.
- **Level 4. Fatal.** Licensee's use of the Licensed Products is stopped or so severely degraded that Licensee cannot reasonably conduct business, and no workaround is available. Licensor will provide a workaround that resolves the request, provided that, if Licensor is unable to provide a workaround, Licensor will classify the request as an Error in the Licensed Products and work to produce a Corrected Release in accordance with the Service Level of the Licensee.

(b) **Services.** The Services highlighted below will be provided to Licensee, in good faith, in accordance with the descriptions below when the request is first submitted.

Communication	Availability	Response Time	Monthly Technical Support Allowance
Website Telephone E-mail	24 hours a day, seven days a week	Work begins within one (1) day	Limited to ten (10) hours per month with no rollover privileges. If Licensee requires additional Technical Support, a Professional Services engagement will be required.

(c) **Delivery of New Releases.** Licensor shall update Licensor's page on Amazon Web Services Marketplace to provide Licensee with New Releases when and as Licensor, at its sole discretion, makes such New Releases generally available.

(d) **Delivery of Corrected Releases.** If Licensee has discovered an Error, then Licensor shall determine whether the Error has already been corrected in a generally available New Release. If Licensor indicates that the Error has been corrected in a generally available New Release, Licensee may adopt a New Release that corrects the Error. If Licensee is unable to adopt a New Release, Licensee may request the delivery of a Corrected Release on a Professional Services Basis.

(e) **Discontinuation of Certain External Dependencies in New Releases.** Licensor reserves the right to discontinue Maintenance for one or more External Dependencies in Enhanced Releases at its sole discretion. Certain External Dependencies may also be discontinued if the applicable vendor of those dependencies has declared that it no longer supports the particular dependency.

(f) **Discontinuation of Certain External Dependencies in Existing Releases.** Licensor reserves the right to discontinue Maintenance for one or more External Dependencies in an existing General Release, at its sole discretion, if it is determined that the particular External Dependency causes an undue burden on Licensor or would be commercially impracticable or if the External Dependency is no longer supported by the vendor who makes or supports the External Dependency.

(g) **New Release Features.** If a minor feature, as determined solely by Licensor, was available in a prior Release of the Licensed Products, then Licensor does not warrant or guarantee that the minor feature will be available in a subsequent New Release.

EXHIBIT C
PROFESSIONAL SERVICES

Licensors may provide professional services ("Professional Services") to Licensee based on a Professional Services Agreement and an Agreement Order executed by both parties independently of this Agreement. Each Professional Services project that Licensors undertake will be described in an Agreement Order which will set forth the agreed upon project schedule, delivery dates, deliverables, pricing, and payment terms. If you need Professional Services, please contact us via www.tomsawyer.com/support.