

## **PLAZMIC WORKSHOP START SOFTWARE END USER LICENSE AGREEMENT**

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### **1.0 Definitions**

"**Software**" means the Plazmic Workshop software and any third party software embedded in that software, and includes all documentation and other written materials related to the Software (the "Documentation").

### **2.0 Grant of License**

2.1 This Agreement hereby grants You a non-exclusive, non-transferable right to install the Software on the number of central processing units for which You have paid licensing fees and to permit only one person to use or access each installed copy of the Software at any time. This license does not give You any entitlement to future upgrades of the Software but any upgrades or bug fixes to the Software provided to You shall be licensed to You subject to the terms and conditions of this license.

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3.2 You may not: (i) use the Software except as expressly permitted in this Agreement and for the purposes contemplated by the Documentation; (ii) copy or reproduce or in any other manner duplicate or attempt to duplicate the Software (including the Documentation), in whole or in part; (iii) sublicense, rent, lease, loan or transfer the Software or otherwise acquiesce in its use by a third party without our prior written consent; or (iv) export the Software without obtaining any necessary government authorizations or permits. For the purposes of this provision "copy, reproduce or duplicate" shall not include any reproduction required to give effect to the license grant in paragraph 2.1, or any copying that naturally results from the operation of the Software or

in the course of making regular back-ups of the computer or system on which the Software is installed.

#### **4.0 Purchase Orders**

Unless Plazmic otherwise expressly agrees in writing any terms and conditions on any purchase order You issue for the Software shall superceded by the terms and conditions set out in this Agreement. For purposes of clarification, unless Plazmic expressly agrees in writing otherwise, the terms and conditions on Your purchase order shall be of no force or effect.

#### **5.0 Term**

The grant of rights shall be non-exclusive, non-transferable and perpetual provided that You do not breach the terms and conditions of this Agreement or any other agreement with Plazmic. If You fail to comply with any of the terms of this Agreement, all licenses granted hereunder shall automatically terminate without notice, and Plazmic may exercise any or all of its rights under this Agreement or under applicable law, including without limitation, obtaining relief by way of a temporary or permanent injunction. Upon termination of the Agreement and in any event upon Plazmic delivering You notice of termination for breach, You shall immediately purge all Software from your computer system(s), and return all copies of the Software (including the Documentation) in your possession or control to Plazmic.

#### **6.0 Disclaimers and Exclusion of Liability.**

6.1 TO THE EXTENT PERMITTED BY LAW, PLAZMIC PROVIDES THE SOFTWARE ON AN "AS IS" BASIS, AND PLAZMIC DISCLAIMS ALL WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY, DURABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NONINFRINGEMENT, EACH WITH RESPECT TO THE SOFTWARE DOCUMENTATION AND HANDHELD PRODUCT.

6.2 TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL PLAZMIC BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION OR CORRUPTION OR LOSS OF DATA, OR OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE OR THE HANDHELD PRODUCT, EVEN IF PLAMZIC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

6.3 THE LIMITATIONS AND EXCLUSIONS SET OUT IN THIS SECTION ARE INTENDED TO APPLY AND DO APPLY WITHOUT REGARD TO WHETHER SUCH DAMAGES ARE CLAIMED, ASSERTED OR BROUGHT IN AN ACTION OR CLAIM SOUNDING IN TORT (INCLUDING NEGLIGENCE) OR CONTRACT, OR BASED ON THE BREACH OF ANY EXPRESS OR IMPLIED WARRANTY, OR UNDER ANY OTHER LAW OR FORM OF ACTION.

#### **7.0 Indemnity/Liability.**

You shall defend, indemnify, and hold harmless Plazmic and Plazmic's suppliers, successors, affiliates, agents and assigns from any claims, damages, losses, or expenses (including without limitation attorney fees and costs) incurred by Plazmic or Plazmic's suppliers in connection with all claims, suits, judgments and causes of action: (i) for infringement of patents or other proprietary rights arising from combining with or using any device, system or service in connection with the Software or any portion thereof, or (ii) for libel, slander, defamation or infringement of copyright or

other proprietary right with respect to material transmitted by You using the Software. No remedy herein conferred upon Plazmic is intended to be, nor shall it be construed to be, exclusive of any other remedy provided herein or as allowed by law or in equity, but all such remedies shall be cumulative. You shall pay to Plazmic all attorney fees, collection fees, and related expenses, expended or incurred by Plazmic in the enforcement of any right or privilege hereunder (including, but not limited to, expenses of paid investigators and reasonable compensation for time of Plazmic's representatives).

## **8.0 General.**

8.1 Except as otherwise specifically stated in this Agreement, the provisions herein are for the benefit of the Parties and not for any other person or entity.

8.2 You hereby consent to your contact information and information about the specific Plazmic product You acquire and any other information You provide being disclosed to, maintained and used by Plazmic, its affiliates and persons authorized by Plazmic to distribute the Software solely for the purposes of: (i) managing and developing their businesses and operations; (ii) making information about Plazmic products available to You; and (iii) developing new and enhancing existing Plazmic products. You further agree that Plazmic may provide this information to other persons as required to satisfy any legal requirements and to any person that purchases all or substantially all of Plazmic's assets provided that they agree to use your information only for the purposes for which You have provided your consent. If You wish to gain access to any personally identifiable information You have provided to Plazmic or to make any changes to that information please contact Plazmic directly.

8.3 Waiver by either Party of any default by the other Party shall not be deemed a continuing waiver of such default or a waiver of any other default.

8.4 When used in this Agreement, the term "license" shall be deemed to include "sublicense" for items of third party software embedded in the Software.

8.5 The terms, conditions and warranties contained in this Agreement that by their sense and context are intended to survive the performance hereof by either or both Parties shall so survive the completion of performance, cancellation or termination of this Agreement.

8.6 The United Nations Convention on Contracts for the International Sale of Goods (1980) does not apply.

8.7 This Agreement is to be construed in Canada under the laws of the Province of Ontario. Any disagreement or dispute arising out of or relating to this Agreement, or the breach thereof, which the Parties are unable to resolve after good faith negotiations, shall be submitted to binding arbitration. Upper management or their representatives shall meet within thirty (30) days of a dispute arising and if the Parties are unable to resolve the dispute in this timeframe, the dispute shall be settled by final and binding arbitration to be conducted in Ontario, Canada in accordance with the American Arbitration Association's rules for the resolution of international commercial disputes. The arbitration shall be held before a panel of three arbitrators. Each of the Parties shall appoint one arbitrator and the two arbitrators shall jointly appoint a third arbitrator. Each Party shall bear one half of the costs of the arbitration proceedings. Judgment upon the award rendered may be entered in any Court having jurisdiction thereof. Notwithstanding the foregoing, Plazmic has the right to institute legal or equitable proceedings in court with respect to: (i) amounts owed by You in connection with license granted hereunder; or (ii) protecting Plazmic's intellectual

property rights. With respect to these disputes only, the Parties submit to the exclusive jurisdiction of the Court of the Province of Ontario as court of first instance.

8.8 If a provision of this Agreement is found to be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather (unless a failure of consideration would result there from) the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of each Party shall be construed and enforced accordingly.