

## SI-WARE END USER AGREEMENT

This End User Agreement (“**End User Agreement**”), together with any order forms executed or otherwise expressly agreed to by You and Si-Ware that expressly refer to this End User Agreement (each, an “**Order Form**,” and collectively the Order Forms and the body of this End User Agreement, the “**Agreement**”) forms a legally binding contract between You and Si-Ware with respect to Your use of the Si-Ware Platform and Developer Products in connection with the Si-Ware Platform. Terms with initial capital letters are defined in Section 1 of this Agreement.

BY EXECUTING, CLICKING “I ACCEPT,” OR AGREEING TO AN ORDER FORM, YOU ACCEPT AND AGREE TO ALL OF THE TERMS OF THIS END USER AGREEMENT. IN ORDER TO USE THE SI-WARE PLATFORM OR ANY DEVELOPER PRODUCTS IN CONNECTION WITH THE SI-WARE PLATFORM OR OTHERWISE IN ACCORDANCE WITH THIS END USER AGREEMENT YOU MUST AGREE TO THE TERMS OF THIS END USER AGREEMENT.

SI-WARE MAY MODIFY THE TERMS OF THIS END USER AGREEMENT FROM TIME TO TIME AND ANY SUCH MODIFIED TERMS SHALL APPLY FROM THE EARLIER OF (I) THE DATE YOU ACCESS THE SI-WARE PLATFORM OR A DEVELOPER PRODUCT AFTER SI-WARE MAKES THE MODIFIED TERMS AVAILABLE AND (II) THE DATE THAT IS 30 DAYS AFTER SI-WARE MAKES THE MODIFIED TERMS AVAILABLE. IF YOU OBJECT TO ANY MODIFICATIONS TO THIS END USER AGREEMENT MADE IN ACCORDANCE WITH THIS PARAGRAPH YOU MUST CONTACT SI-WARE IN WRITING TO NOTIFY SI-WARE OF SUCH OBJECTION AND MUST CEASE USING THE SI-WARE PLATFORM AND ANY DEVELOPER PRODUCTS.

IF YOU ARE AGREEING TO BE BOUND BY THIS END USER AGREEMENT AND ANY ORDER FORMS ON BEHALF OF YOUR EMPLOYER OR OTHER ENTITY YOU REPRESENT AND WARRANT THAT YOU HAVE FULL LEGAL AUTHORITY TO BIND YOUR EMPLOYER OR SUCH ENTITY TO THIS AGREEMENT. IF YOU DO NOT HAVE THE AUTHORITY, YOU MAY NOT ACCEPT THE END USER AGREEMENT OR USE THE SI-WARE PLATFORM OR ANY DEVELOPER PRODUCTS ON BEHALF OF YOUR EMPLOYER OR OTHER ENTITY.

### 1. DEFINITIONS

“**Developer**” means a third party that develops a Developer Product.

“**Developer Product**” means a model, algorithm, software program, documentation or other material provided to Si-Ware by a Developer that is identified on an Order Form or otherwise purchased by End User via the Si-Ware Platform and made available to End User by Si-Ware via the Si-Ware Platform or otherwise for use by End User in accordance with this Agreement.

“**End User**” or “**You**” means the individual or company that either (i) executes and Order Form for a Si-Ware Device or Developer Product, (ii) purchases a Si-Ware Device or a license to a Developer Product online, or (iii) downloads the

Developer Product from the Si-Ware Platform or otherwise receives a Developer Product from Si-Ware; provided that the End User or You uses the Si-Ware Platform and any Developer Product in connection with a Si-Ware Device for its own internal business purposes (and not for distribution).

“**End User Data**” means any data, information or other materials provided by End User to Si-Ware in connection with this Agreement, including any data, information or other materials submitted, provided or made available via or through the Si-Ware Platform.

“**Si-Ware**” means Si-Ware Systems, Inc., a Delaware corporation.

“**Si-Ware Device**” means a device purchased or

leased from Si-Ware by End User for use in connection with a Developer Product that such End User obtained via the Si-Ware Platform or otherwise from Si-Ware, as applicable.

“**Si-Ware Platform**” means the software, services and cloud-based platform made available by Si-Ware that enables End Users to obtain and use Developer Products.

## **2. DEVELOPER PRODUCTS AND SI-WARE PLATFORM**

**2.1 Licenses.** Subject to the terms and conditions of this Agreement, including the terms of any Order Form, Si-Ware grants to End User a non-exclusive, non-transferable, non-sublicensable internal-use license: (i) to use Developer Products solely in connection with End User’s use of the Si-Ware Device and solely for End User’s internal business purposes; and (ii) to access and use the Si-Ware Platform solely as necessary to enable End User’s use of the applicable Developer Products and Si-Ware Devices.

**2.2 Certain End User Obligations and Restrictions.** End User shall: (i) not use a Developer Product or the Si-Ware Platform in any manner not permitted on the applicable Order Form; (ii) not use a Developer Product or the Si-Ware Platform on behalf of or for the benefit of any third party, including use of the foregoing to provide services to any third parties, unless expressly agreed to on the applicable Order Form or otherwise in writing by Si-Ware; (iii) not introduce or permit any third party to introduce any malware, virus or similar malicious code or functionality into any Developer Product or the Si-Ware Platform; (iv) use Developer Products and the Si-Ware Platform in a manner that complies with all laws applicable to the foregoing or to the performance of End User’s obligations or exercise of End User’s rights under this Agreement; and (v) comply with all Si-Ware Platform terms and policies made available by Si-Ware from time to time during the term of this Agreement via the Si-Ware Platform or otherwise,

including any usage or volume limits and other restrictions.

**2.3 Support.** Si-Ware will provide its standard telephone support during Si-Ware’s normal business hours with respect to the Si-Ware Platform and, to the extent the applicable Developer provides support to Si-Ware, with respect to the applicable Developer Product. In the event an End User has a technical issue with any Developer Product that causes such Developer Product not to operate in accordance with its applicable specifications during the first 30 days after End User obtains such Developer Product under this Agreement, and if Si-Ware cannot remedy such issue using reasonable efforts, Si-Ware may in its sole discretion issue a full or partial refund for amounts End User paid for the applicable Developer Product or may provide End User with a similar product pursuant to Section 9.5. This Section 2.3 states Si-Ware’s sole obligation and End User’s sole and exclusive remedy with respect to any defects or other performance issues with any Developer Products or the Si-Ware Platform.

**2.4 Certain Data.** Si-Ware may obtain, collect and process End User Data and other technical data in connection with the operation of the Developer Products (including any resulting outcomes, deliverables or other information) during the term of this Agreement (collectively, “**Product Data**”) and may use Product Data to perform its obligations or exercise its rights under this Agreement, to perform data analytics, and for the purpose of developing and improving Si-Ware products and services. Si-Ware may disclose Product Data to third parties as necessary for such third parties to provide services to Si-Ware in connection with the Si-Ware Platform (e.g., hosting services) and may otherwise disclose such data to third parties in aggregated and anonymized form.

## **3. FEES & PAYMENT**

**3.1 Fees.** The fees and other amounts payable under this Agreement shall be as set forth on the applicable Order Form or as provided to End User via the Si-Ware Platform if End User purchases a

license to the Developer Product online. Each Party shall pay any such fees and other amounts specified on the Order Form or on the Si-Ware Platform in accordance with the terms of such Order Form or the Si-Ware Platform.

3.2 **Taxes.** Any fees or other amounts payable to Si-Ware in connection with this Agreement do not include any local, state, federal or foreign taxes, levies or duties of any nature, including any sales and value-added taxes (“**Taxes**”). End User is responsible for paying all Taxes, excluding only taxes based on Si-Ware’s income. If Si-Ware has the legal obligation to pay or collect Taxes for which End User is responsible under this section, the appropriate amount shall be invoiced to and paid by End User unless End User provides Si-Ware with a valid tax exemption certificate authorized by the appropriate taxing authority.

#### 4. SI-WARE DEVICE; OWNERSHIP

4.1 **Si-Ware Device.** The terms applicable to the purchase or lease and use of any Si-Ware Device shall be as specified in an Order Form or a separate purchase order between Si-Ware and End User and will be subject to the Device Terms and Conditions of Sale.

4.2 **Ownership.** Si-Ware owns and shall retain all right title and interest in the Si-Ware Platform, including any technology or intellectual property used to make the Si-Ware Platform available, and any intellectual property rights embodied in the Si-Ware Device.

#### 5. CONFIDENTIALITY

5.1 **Confidential Information.** The term “**Confidential Information**” means all confidential and proprietary information of a party (“**Disclosing Party**”) disclosed to the other party (“**Receiving Party**”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Confidential Information shall not include any information that: (i) is or becomes publicly

available without breach of any obligation owed to the Disclosing Party; (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party; (iii) was independently developed by the Receiving Party without breach of any obligation owed to the Disclosing Party; or (iv) is received from a third party without breach of any obligation owed to the Disclosing Party.

5.2 **Protections.** The Receiving Party shall not use or disclose Confidential Information of the Disclosing Party except to perform its obligations or exercise its rights under this Agreement. Each party agrees to protect the confidentiality of the Confidential Information of the other party in the same manner that it protects the confidentiality of its own proprietary and confidential information of like kind, but in no event with less than reasonable care. If the Receiving Party is compelled by law or a government authority to disclose Confidential Information of the Disclosing Party, it shall provide the Disclosing Party with prior notice of such compelled disclosure (to the extent practicable and legally permitted) and reasonable assistance, at Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure.

6. **DISCLAIMER.** WITHOUT LIMITING SI-WARE’S OBLIGATIONS UNDER SECTION 2.3, SI-WARE MAKES NO WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE DEVELOPER PRODUCTS, SI-WARE PLATFORM, SI-WARE DEVICES, OR THIS AGREEMENT. SI-WARE HEREBY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. IN ADDITION, END USER ACKNOWLEDGES AND AGREES THAT SI-WARE HAS NO RESPONSIBILITY OR LIABILITY UNDER THIS AGREEMENT FOR ANY ACTIONS TAKEN BY

END USERS IN CONNECTION WITH ANY DEVELOPER PRODUCTS, ANY USE OF THE DEVELOPER PRODUCTS BY END USER, OR FOR ANY OTHER CLAIMS OR OTHER LIABILITY ARISING FROM OR RELATED TO THE DEVELOPER PRODUCTS.

**7. INDEMNIFICATION.** End User shall at its expense defend Si-Ware and its officers, directors and employees (“**Si-Ware Indemnified Parties**”) against any claims made or brought against any Si-Ware Indemnified Party arising from or related to the End User’s use of any Developer Products or the Si-Ware Platform (each, a “**Si-Ware Claim**”) and shall pay any damages finally awarded by a court or agreed to by End User in a settlement with respect to such Si-Ware Claim; provided, that Si-Ware (i) promptly gives written notice of the Si-Ware Claim to End User; (ii) gives End User sole control of the defense and settlement of the Si-Ware Claim (provided that End User may not agree to any settlement that imposes any liability or obligation on Si-Ware); and (iii) provides to End User, at End User’s cost, reasonable assistance in connection therewith.

**8. LIMITATION OF LIABILITY**

**8.1 Limitation of Liability.** IN NO EVENT SHALL THE AGGREGATE LIABILITY OF SI-WARE ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS ACTUALLY PAID BY END USER TO SI-WARE HEREUNDER IN THE THEN-PRIOR 12 MONTH PERIOD.

**8.2 Exclusion of Certain Damages.** EXCEPT FOR DAMAGES ARISING FROM A PARTY’S BREACH OF SECTION 6, OR END USER’S BREACH OF SECTION 2, IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, LOSS OF USE, COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, MULTIPLE, EXEMPLARY,

PUNITIVE, OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE.

**9. TERM & TERMINATION**

**9.1 Term of Agreement.** This End User Agreement commences upon the earlier of (i) the execution of an Order Form, (ii) the purchase of a Si-Ware Device or a license to a Developer Product via the Si-Ware Platform, or (iii) You clicking “I ACCEPT” to this End User Agreement, and continues until terminated in accordance with Section 9.2 or 9.3, provided that this End User Agreement shall remain in effect with respect to any ongoing, permitted use by End User of a Developer Product.

**9.2 Termination for Convenience.** Si-Ware may terminate this End User Agreement and/or any license to a Developer Product for convenience upon 15 days written notice. Termination shall not relieve either party of the obligation to pay any fees accrued or payable by such party prior to the effective date of termination.

**9.3 Termination for Cause.** A party may terminate this Agreement and/or a license to a Developer Product for cause: (i) upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of such period; or (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors that is not dismissed or stayed within 60 days. Termination shall not relieve End User of the obligation to pay any fees accrued or payable to Si-Ware prior to the effective date of termination.

**9.4 Suspension or Termination of Developer Products.** Si-Ware may suspend or terminate access to the Si-Ware Platform or any Developer Product at any time in its sole discretion including in connection with violations of this End User

Agreement or any Order Form, uses of a Developer Product or the Si-Ware Platform that place an unreasonable burden or otherwise interfere with Si-Ware's IT infrastructure or systems, or actions by End User that may cause or result in liability to Si-Ware. If Si-Ware suspends or terminates such access in accordance with this Section 9.4 Si-Ware will notify End User of such suspension or termination and the reasons therefor.

**9.5 Substitution.** Si-Ware may in its discretion terminate End User's license and access to a Developer Product and substitute the terminated Developer Product with a similar product. Upon Si-Ware providing access to such similar product, it shall be considered the "Developer Product" for purposes of the Agreement for the original Developer Product.

**9.6 Survival.** The following provisions shall survive termination or expiration of this Agreement: Sections 4, 5, 6, 7, 8, 9.6 and 10.

## **10. GENERAL PROVISIONS**

**10.1 Trademark License.** End User grants Si-Ware a non-exclusive license to use and display End User's name and logo in connection with the marketing, promotion, licensing and distribution of Si-Ware Devices and the Si-Ware Platform. Si-Ware will comply with any trademark usage guidelines provided by End User to Si-Ware in writing.

**10.2 Relationship of the Parties.** The Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the Parties. There are no third-party beneficiaries to the Agreement.

**10.3 Notices.** All notices under the Agreement shall be in writing and shall be deemed to have been given upon: (i) personal delivery; (ii) the second business day after mailing; or (iii) the second business day after sending by email. Notices to Si-Ware shall be addressed to the attention of its Chief Financial Officer, with a copy to its Chief Executive Officer. Notices to End User are to be

addressed to the individual identified in the Order Form or as provided by End User via the Si-Ware Platform if the purchase is made through the Si-Ware Platform.

**10.4 Waiver; Cumulative Remedies Severability.** No failure or delay by either party in exercising any right under the Agreement shall constitute a waiver of that right. Other than as expressly stated herein, the remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of the Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of the Agreement shall remain in effect.

**10.5 Assignment.** Neither party may assign the Agreement, or any of its rights or obligations under the Agreement, whether by operation of law or otherwise, without the prior express written consent of the other party. Notwithstanding the foregoing, either party may assign the Agreement together with all rights and obligations hereunder, without consent of the other party, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its stock or assets that relate to the Agreement. Any attempt by a party to assign its rights or obligations under the Agreement in breach of this section shall be void and of no effect. Subject to the foregoing, the Agreement shall bind and insure to the benefit of the parties, their respective successors and permitted assigns.

**10.6 Governing Law.** This Agreement shall be governed by the laws of California. The state and federal courts located in San Francisco, California shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each Party hereby consents to the exclusive jurisdiction of such courts provided that nothing in this Section 10.6 prohibits either Party from seeking or obtaining in any jurisdiction injunctive or similar relief in connection with the enforcement of this

Agreement.

10.7 **Entire Agreement.** The Agreement includes all Order Forms, each of which is incorporated herein by reference. In the event of any conflict between the provisions in this End User Agreement and an Order Form, the terms of such Order Form shall prevail to the extent of such conflict with respect to and End User's use of the Developer Products described on such Order Form. The Agreement constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its

subject matter. Except as stated in the preamble to this End User Agreement, no modification, amendment, or waiver of any provision of the Agreement shall be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. Notwithstanding any language to the contrary therein, no terms or conditions stated in an End User purchase order or in any other End User order documentation (excluding, for clarity, the Order Form(s)) shall be incorporated into or form any part of the Agreement and all such terms or conditions are hereby rejected and shall be null and void.

