



# Terms and Conditions

MB Enterpryze Cloudware Limited

## End User License Agreement for Enterpryze Software

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2.2 You may not copy, decompile, reverse engineer, disassemble, modify, or create derivative works of the Enterpryze Software or any part thereof. You shall keep exclusive possession of and control over the Enterpryze Software and maintain adequate security measures to safeguard the Enterpryze Software from unauthorised access or use by any unauthorised person.

## 3. Payment

3.1 You shall pay fees to the Company or the Enterpryze Authorised Reseller at the rates and in the manner specified in your individual subscription plan (the "Subscription Plan").

3.2 For the avoidance of doubt, the fees set out in the Subscription Plan do not include charges for additional services which are quoted for and billed separately by the Company at the time of purchase.

3.3 You agree to make payment of the Company's or the Enterpryze Authorised Reseller's invoices in accordance with the provisions of your Subscription Plan. Such payments shall be made by cheque or electronic transfer or as the Company or the Enterpryze Authorised Reseller from time to time shall direct.

3.4 The Company or the Enterpryze Authorised Reseller will issue invoices in a format of its choosing which may be amended from time to time. The Company reserves the right to correct any errors in its invoices however you are not entitled to set off against any of the Company's or the Enterpryze Authorised Reseller's invoices any money which you may claim is owed by the Company to you.

3.5 You agree to notify the Company or the Enterpryze Authorised Reseller of any discrepancies in any invoice issued by the Company within 30 (thirty) days of receipt of the invoice by you. If you do not notify the Company or the Enterpryze Authorised Reseller of such discrepancies within this time period, you hereby waive your right to dispute such discrepancies.

3.6 If you are late in paying any of the Company's or the Enterpryze Authorised Reseller's invoices then the Company or the Enterpryze Authorised Reseller shall be entitled to sue you for all outstanding sums due and to charge you interest pursuant to the European Communities (Late Payment in Commercial Transactions) Regulations 2012.

3.7 Until the Company or the Enterpryze Authorised Reseller receives full payment in respect of any overdue invoices, it shall be entitled to suspend, withhold or refuse to provide the Enterpryze Software to you until all outstanding sums due to the Company or the Enterpryze Authorised Reseller are paid. The Company or the Enterpryze Authorised Reseller shall also be entitled to withdraw entirely the Enterpryze Software and any related services from you.

3.8 You shall not be entitled to delay or withhold any payment to the Company or the Enterpryze Authorised Reseller caused by delay arising from the non-performance or non-delivery by any third party.



3.9 The remedies available to the Company or the Enterpryze Authorised Reseller under this License are additional to its general rights and remedies under statute and by law.

### 3.10 Fees and Payment

**Fees.** Customer will pay all fees specified in any applicable Order Forms. Except as otherwise specified herein or in an Order Form, (i) fees are based on the Service purchased and not actual usage, (ii) payment obligations are non-cancellable, and (iii) fees paid are non-refundable. Customer is responsible for providing complete and accurate billing and contact information to Enterpryze.

**Taxes.** Enterpryze's fees do not include any taxes, levies, duties or similar government assessments of any nature, including, for example, value added, sales, use or Withholding Taxes, assessable by any jurisdiction whatsoever (collectively, "Taxes"). Customer is responsible for paying all Taxes associated with Customer's purchases hereunder. If Enterpryze has a legal obligation to pay or collect Taxes for which the Customer is responsible under this section, Enterpryze will invoice Customer and Customer will pay that amount unless Customer provides Enterpryze with a valid tax exemption certificate authorised by the appropriate taxing authority. For clarity, Enterpryze is solely responsible for taxes assessable against it based on its income, property and employees.

## 4. Transfer

4.1 You may not rent, lease, lend, sell, commercially exploit, assign your rights under this License or sublicense the Enterpryze Software.

4.2 Updates: If an Enterpryze Software update completely replaces (full install) a previously licensed version of the Enterpryze Software, you may not use both versions of the Enterpryze Software at the same time nor may you transfer them separately.

4.3 NFR (Not for Resale) Copies, Trial Licenses or Evaluation Licenses: Notwithstanding other sections of this License, Enterpryze Software labelled or otherwise provided to you on a promotional basis may only be used for demonstration, testing and evaluation purposes and may not be resold, licensed, sub-licensed, commercially exploited or transferred to any third party in any manner whatsoever.

4.4 Academic Copies or Educational Licenses: If the Enterpryze Software package has an academic label or if you acquired the Enterpryze Software at an academic discount, you must be an Eligible Educational End User to use the Enterpryze Software. "Eligible Educational End Users" means students, faculty, staff and administration staff attending and/or working at an educational institutional facility (i.e., college campus, public or private schools).

4.5 Non-Governmental Associations (NGOs) or Registered Charities: If you acquired the Enterpryze Software at an NGO or Registered Charity discount, you must be a staff member of a recognised NGO or registered charity.



## **5. Consent to Use of Data and Account Security**

5.1 You agree that the Company may collect and use technical and related information, including but not limited to technical information about your mobile device, computer, system and application software, and peripherals, that is gathered periodically to facilitate the provision of software updates, product support and other services to you (if any) related to the Enterpryze Software. The Company may use this information, as long as it is in a form that does not personally identify you, to improve the Company's products or to provide services or technologies to you.

5.2 The Company will process and control any data or information collected by it in accordance with the Company's Privacy Policy (the "Privacy Policy").

5.3 You are entirely responsible for maintaining the confidentiality of your password and account and the Company will not be liable for any loss that you may incur as a result of any use of or access to, whether authorised or not and either with or without your knowledge, your password or account.

## **6. User's Obligations**

You hereby agree and covenant that you shall:

6.1 pay the Company's invoices as required by your Subscription Plan in relation to the Enterpryze Software and related products or services purchased by you from the Company;

6.2 provide accurate information to the Company to enable the Company to enhance the Enterpryze Software and notify the Company promptly if you become aware of any defects in the Enterpryze Software;

6.3 use best endeavours to effect and maintain adequate security measures to safeguard your account from access by an unauthorised person;

6.4 assist the Company in all material respects when the Company is making support calls;

6.5 not knowingly obstruct the Company from providing the Enterpryze software and related services to you and observe and deal with all reasonable requests the Company makes to you;

6.6 save with the prior written consent of the Company not use any trademark belonging to the Company;

6.7 observe and implement any advice provided by the Company in connection with the Enterpryze Software.

## **7. Termination**

7.1 The Company or the Enterpryze Authorised Reseller may terminate this License immediately and without notice if:-

7.1.1 You do not pay any sums due under this License on the due date in accordance with the Subscription Plan;

7.1.2 You are unable to pay your debts as they fall due or becomes the subject of any formal insolvency procedure (for example, receivership, liquidation, administration, voluntary arrangements or bankruptcy); or

7.1.3 You are in breach of any of your material obligations under this License.

7.2 The Company or the Enterpryze Authorised Reseller may terminate this License by giving you seven days' notice of the Company's intention to terminate the License where you have breached any provisions of this License including but not limited to the provisions relating to Payment set out in Clause 3 above.

7.4 Upon termination of this License, the Company or the Enterpryze Authorised Reseller will not make any refunds to you and the Company shall be entitled to payment of any outstanding amounts under the Subscription Plan up to the date of termination of this License together with any damages incurred by the Company or the Enterpryze Authorised Reseller for any breaches of this License by you.

7.5 Upon the termination of this License, you shall immediately cease all use of the Enterpryze Software and delete any versions of the Enterpryze Software within your power, procurement or possession and all copies, full or partial, of the Enterpryze Software.

## 8. Indemnity

8.1 You agree to fully indemnify, keep indemnified, defend (at the Company's request), and hold the Company, its parent, subsidiaries, affiliates, officers and employees, harmless from any claims, demands, losses, expenses (including but not limited to legal expenses) or liability incurred or sustained by the Company or any of its employees and agents, directly or indirectly, or made or brought by any third party due to or arising out of the following:

8.1.1 the provision of the Enterpryze Software to you;

8.1.2 your breach of your warranty under this License;

8.1.3 your fraudulent behaviour, wilful misconduct or negligence;

8.1.4 any violation by you of the License or any provision therein;

8.1.5 any violation by you of any Intellectual Property rights of any person or entity;

8.1.6 any use or misuse by you or any third parties connected with you of your password or account;

8.1.7 any content requested by you or modification of the Enterpryze Software required by you.

8.2 Without prejudice to the generality of the indemnity set out in Clause 8.1, you shall fully indemnify the Company or the Enterpryze Authorised Reseller in respect of any breach of licence, copyright, patent, trademark or any other applicable law or regulation caused by your use of any Intellectual Property.

8.3 In addition to the above and without prejudice to the provisions of clause 8.1 or 8.2 above, you hereby agree to indemnify the Company or the Enterpryze Authorised Reseller against any loss, damage, costs, expenses, claim or liability whatsoever and howsoever incurred which the Company or the Enterpryze Authorised Reseller may incur as a consequence of any breach by you of the obligations, provisions or undertakings contained in this License.



## **9. Warranty**

9.1 There is no warranty for the Enterpryze Software to the extent permitted by applicable law. The Company provides the Product “as is” without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose.

## **10. Limitation of Liability**

10.1 To the extent not prohibited by law, in no circumstances shall the Company or the Enterpryze Authorised Reseller be liable for any direct, incidental, special, indirect or consequential loss or damage whatsoever and howsoever arising, including, without limitation, damages for loss of profits, loss of data, economic loss, business interruption or any other damages or losses, arising out, in connection with or related to your use of, or inability to use, the Enterpryze Software, whether such liability arises in Contract or Tort.

## **11. Severability**

11.1 If for any reason any provision, or portion thereof, is deemed to be unenforceable by the Courts, the remainder of this License shall continue in full force and effect.

## **12. Complete Agreement and Governing Language**

12.1 This License constitutes the entire agreement between the parties with respect to the use of the Enterpryze Software licensed hereunder and supersedes all prior or contemporaneous understandings regarding such subject matter. No amendment to or modification of this License will be binding unless in writing and signed by the Company.

12.2 Any translation of this License is done for local requirements and in the event of a dispute between the English and any non-English versions, the English version of this License shall govern and be applicable.

## **13. Confidentiality**

13.1 Both parties agree to keep confidential all information concerning the other party’s business or its ideas, products, trade secrets, processes, customers or services that could be considered confidential or propriety information.

13.2 Confidential information is any information belonging to or in the possession or control of a party that is of a confidential, proprietary or trade secret nature, including, without limitation, any information relating to or concerning the price or pricing structure of the Enterpryze Software, which is furnished or disclosed to the other party. Confidential information will remain the property of the other party and the receiving party will not acquire any rights to that confidential information.

## **14. Force Majeure**

14.1 The obligations of each party under this License shall be suspended during the period and to the extent that that party is prevented or hindered from complying with them by any cause beyond its reasonable control including (insofar as beyond such control but without prejudice to the generality of the foregoing expression) strikes, lock-outs, labour disputes, acts of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm, difficulty or increased expense in obtaining workmen, materials, goods or raw materials in connection with the performance of this License.

14.2 In the event of either party being so hindered or prevented, the party concerned shall give notice of suspension as soon as reasonably possible to the other party stating the date and extent of the suspension and its cause, and the omission to give such notice shall forfeit the rights of that party to claim suspension. Any party whose obligations have been suspended as aforesaid shall resume the performance of those obligations as soon as reasonably possible after the removal of the cause and shall so notify the other party. In the event that the cause continues for more than 6 months either party may terminate this Agreement on 30 days' notice.

## **15. Freedom to Contract**

15.1 The parties declare that they each have the right, power and authority and have taken all action necessary steps to execute and deliver and to exercise their rights and perform their obligations under this License.

## **16. Waiver**

16.1 The failure of the Company or the Enterpryze Authorised Reseller to exercise or enforce any right under this License shall not be deemed to be a waiver of that right, nor operate to bar the exercise or enforcement of it at any time or times thereafter.

## **17. No Assignment**

17.1 You shall not assign any of your obligations under this License, in whole or in part, either voluntarily or by operation of law, and any attempt by you to assign this License shall be a material breach of this License pursuant to clause 7 above and any such purported assignment shall be null and void.

## **18. Governing Law and Jurisdiction**

18.1 This License shall be governed by and construed in accordance with the laws of Ireland.

18.2 The Irish Courts shall have exclusive jurisdiction to deal with any dispute arising out of or in connection with this License.