



SmartClient/Smart GWT Enterprise Edition Developer License Agreement

THIS IS A LEGAL AGREEMENT BETWEEN THE PERSON, COMPANY, OR ORGANIZATION THAT IS LICENSING OR HAS LICENSED THE SMARTCLIENT/SMART GWT SOFTWARE ("YOU") AND ISOMORPHIC SOFTWARE, INC. ("ISOMORPHIC"). BY DOWNLOADING OR USING THE SOFTWARE ACCOMPANYING THIS AGREEMENT, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN DO NOT DOWNLOAD OR USE THE SOFTWARE.

SINGLE DEVELOPER / SINGLE ORGANIZATION LICENSE:

The Software is licensed herein for development use by a single individual, to create software products on behalf of a single organization. This is a "named user" license - all developers who use the Product SDK in the development of Integrated Products must be individually licensed.

Introducing changes to the terms of this agreement is only possible with a bulk purchase of Enterprise licenses, support or related services.

1. Definitions

"**APIs**" shall mean software application programming interfaces, which are used by software programmers to develop and manipulate software applications.

"**Documentation**" shall mean all generally available documentation that pertains to the Licensed Software.

"**Licensed Developer(s)**" means all individuals, specified by 'First Name' and 'Last Name' in the registration process prior to downloading the Software, who have accepted this Agreement. A Licensed Developer may be an independent consultant or contractor to the Licensed Organization.

"**Licensed Organization**" means the company, organization, or other legal entity that you specify as 'Company/Organization' in the registration process prior to downloading the Software. If you do not specify a valid legal entity as the 'Company/Organization', you are the Licensed Organization.

"**End User**" shall mean an individual employee, contractor, agent, partner, member, or customer of Licensed Organization who may access and use Integrated Product(s).

"**Integrated Product!**" means software application(s) or product(s) built by the Licensed Developer(s) which incorporate the Product Runtime.

"**Licensed Software**" means the current version of the Smart GWT™ and SmartClient™ Enterprise Edition; software and documentation supplied by Isomorphic under this Agreement, and any updates to this software and documentation that you are entitled to receive under this Agreement. The Software includes all components which are made separately available under the SmartClient and Smart GWT LGPL licenses, except governed by this license instead. The Software also includes the SmartClient/Smart GWT server framework, but does not include any optional components that may be included in evaluation versions of the SmartClient/Smart GWT product and labeled as 'Optional' in the Documentation.

"**Product SDK**" or "**SDK**" means the complete set of tools and documentation intended for use in developing SmartClient & Smart

GWT applications. For SmartClient, this means the software, documentation, examples, tools, and other components provided in the 'smartclientSDK' directory of the Licensed Software. For Smart GWT, this means the resources that are included in the "Tools" GWT module(s) and any provided samples or documentation. These resources are considered part of the SDK regardless of how such resources are deployed or accessed, and inclusive of online versions made available by Isomorphic. The SDK is intended for use in development and testing environments only.

"**Product Runtime**" or "**Runtime**" means the set of resources intended for deployment with the Integrated Product(s). For SmartClient, this means the components provided in the 'smartclientRuntime' directory of the Licensed Software. For Smart GWT, this means the resources that are included in the com.smartgwt.SmartGwtEE module as well as GWT modules included with the Software representing alternative skins. The Runtime does not include the documentation, examples, or tools that are provided in the SDK nor any components or modules that are labeled as 'Development Only', 'Experimental', or 'Optional'.

2. Delivery of Licensed Software

Isomorphic shall deliver all Licensed Software and Documentation under this Agreement to Licensed Organization in electronic form.

3. License Grants

3.1 **Development License.** Isomorphic grants to Licensed Organization a non-exclusive, non-transferable, non-sublicensable license to Licensed Developer(s) to use the APIs of the Licensed Software and to copy the Licensed Software and Documentation on License Organization's development and testing systems, solely to develop and maintain Integrated Product(s).

3.2 **Deployment License.** Isomorphic grants to Licensed Organization a non-exclusive, non-transferable, non-sublicensable license to copy and deploy the Product Runtime solely within Integrated Product(s).

3.3 **End Use License.** Isomorphic grants to Licensed Organization a non-exclusive, non-transferable license to execute the Licensed Software solely through the interfaces of Integrated Product(s). Licensed Organization may sublicense these limited execution rights to End Users in accordance with Sections 4.6, 4.7, and all other terms and conditions of this Agreement.

4. License Obligations

Licensed Organization agrees:

4.1 to integrate and use the Licensed Software only as a part of Integrated Product(s), and not with any other software system;

4.2 to modify the Licensed Software only in accordance with the Documentation to allow for interoperability with Integrated Product(s), and not to create any derivative work from the Licensed Software;

4.3 to preserve all marks and proprietary notices and labels contained in the Licensed Software;

4.4 not to reverse compile, reverse engineer, disassemble, unobfuscate, reformat, or otherwise attempt to read or make readable any portion of

the code (or the underlying ideas, algorithms, structure or organization) of the Licensed Software;

4.5 not to combine the Licensed Software with "open source" software licensed under the GNU General Public License, or under any other license agreement, in a manner that would require the Licensed Software in source code form to be made publicly available;

4.6 not to provide or expose the APIs of the Licensed Software for use by any third party.

4.7 to provide Integrated Product(s) to third-party End Users only under written terms and conditions which prohibit End Users from:

- (i) modifying the Licensed Software or creating any derivative work of the Licensed Software;
- (ii) removing or altering any marks or proprietary notices or labels contained in the Licensed Software;
- (iii) reverse compiling, reverse engineering, disassembling, unobfuscating, reformatting, or otherwise attempting to read or make readable any portion of the code (or the underlying ideas, algorithms, structure or organization) of the Licensed Software; or
- (vi) renting, leasing, selling, sublicensing, granting a security interest in, or otherwise transferring any rights in the Licensed Software

5. Intellectual Property Ownership

Isomorphic and its licensors retain (i) all title and rights to the Licensed Software, all copies thereof, and all related Documentation and materials; (ii) all of the trademarks, service marks, trade names, logos, domain names or any other designations used for the Licensed Software; and (iii) all copyrights, patent rights, trade secret rights and other proprietary rights in the Licensed Software, all copies thereof, and all enhancements, modifications, and derivative works thereto.

6. Payment

The licenses granted herein are contingent upon your payment of license fees charged during the purchasing process. If your payment of license fees is canceled or denied, these licenses will terminate and you must immediately delete all copies of the Software.

6.3 **Taxes.** Licensed Organization shall pay any sales, use, property, license, value added, withholding, excise or similar tax, whether federal, state, local or foreign, that may be imposed upon or with respect to the delivery, use, or distribution of the Licensed Software.

6.4 **Audit.** Isomorphic may once per term, with thirty (30) days prior written notice, request and gain access to Licensed Organization premises for the limited purpose of auditing compliance with the terms of this Agreement and payments made to Isomorphic hereunder. Licensed Organization will provide all reasonably necessary cooperation and assistance for the audit. In the event that such audit reveals use of the Licensed Software by Licensed Organization other than in full compliance with the terms of this Agreement, Licensed Organization will be liable for remedying any discrepancies revealed during the audit, including reimbursement to Isomorphic for auditing costs, license fee underpayments, and interest on underpayments.

7. Updates

(a) Minor versions. For as long as the last major version of the Licensed Software made available to you is generally supported by Isomorphic, Isomorphic will provide you with access to the most recent generally available minor version of the Licensed Software (as indicated by a change to the number immediately following the first decimal point in the Software version number).

(b) Maintenance updates and patches. For as long as the last minor version of the Licensed Software made available to you is generally supported by Isomorphic, Isomorphic will provide you with access to all generally available maintenance updates (as indicated by a change to the number immediately following the second decimal point in the Software version number) and patches to that minor version of the Software. (c) Major versions. The Licensee is not entitled to new major versions of the Licensed Software (as indicated by the number prior to the decimal point in the Software version number).

8. Support, Development, Training & Consulting Services

You may purchase support, training, consulting, or other services offered by Isomorphic separately at your discretion. Isomorphic is not obligated under this Agreement to provide any technical support, training, or other services to you or to Licensed Organization with respect to the Software or Integrated Product.

9. Limited Warranty; Indemnity

9.1 **Limited Warranty.** Isomorphic warrants that the Licensed Software will conform in all material respects to the Documentation for a period of sixty (60) days from the initial delivery of the Licensed Software ("Warranty Period"). Isomorphic does not warrant that Licensed Organization's use of the Licensed Software will be uninterrupted or error-free, or that the Licensed Software will sufficiently meet Licensed Organization's requirements. Isomorphic's sole liability, and Licensed Organization's exclusive remedy, for any breach of this warranty shall be, in Isomorphic's sole discretion, to use commercially reasonable efforts: (i) to repair or replace the non-conforming Licensed Software; or (ii) to advise Licensed Organization how to achieve substantially the same functionality, through a procedure different from that set forth in the Documentation; or (iii) if the above remedies are impracticable, to terminate this Agreement and, upon written certification from Licensed Organization that all copies of the Licensed Software have been destroyed, refund the license fees paid for the Licensed Software. Isomorphic shall have no obligation with respect to a warranty claim unless notified in writing of such claim within the Warranty Period. Isomorphic will use reasonable commercial efforts to repair, replace, advise, or refund pursuant to the foregoing warranty within thirty (30) days of being so notified. Notwithstanding the foregoing, Isomorphic makes no warranties with respect to any part of the Licensed Software that is supplied to Isomorphic by a third party.

THE FOREGOING WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE.

9.2 **Indemnity.** If any claim of infringement of a copyright, trademark, or trade secret is asserted against Licensed Organization in a World Intellectual Property Organization (WIPO) member nation by a third party based upon Licensed Organization's authorized deployment of the Licensed Software, Isomorphic will indemnify Licensed Organization against amounts awarded in a settlement or by a final court decision, provided that Isomorphic shall have received from Licensed Organization: (i) prompt notice of such claim (but in any event notice in sufficient time for Isomorphic to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and/or settlement of such claim; and (iii) all reasonably necessary cooperation and assistance of Licensed Organization. If Licensed Organization's use of the Licensed Software is, or in Isomorphic's opinion is likely to be, enjoined due to the type of infringement claim specified above, or if required by settlement, Isomorphic may, in its sole discretion: (a) substitute for the Licensed Software substantially and functionally similar programs and documentation; (b) procure for Licensed

Comment [A1]: Customers who require a stronger warranty than is offered in these warranty terms should purchase an Enterprise or above commercial support plan. Enterprise and Premium support plans offer an unlimited number of hot-patches for any issues that are found with the product. To read more about the support plans offered by Isomorphic please see –

<http://www.smartclient.com/services/index.jsp#support>

Modifying the Warranty clause will cause standard support fees and support terms to be added to the agreement.

Comment [A2]: Please be aware that changes to the language of the Indemnity section will increase the cost of the licenses (usually substantially). The standard license terms include the Basic level of indemnity. Isomorphic offers the following higher levels of indemnity for customers that require stronger terms:

Basic level + patents (price floor of the licenses: \$30,000, but requires an analysis of the product type, deployment model, and market visibility to determine the final cost.): Indemnity. If any claim of infringement of a copyright, trademark, patent or trade secret is asserted against Licensee in a World Intellectual Property Organization (WIPO) member nation by a third party based upon Licensee's authorized deployment of the Licensed Software, Isomorphic will indemnify Licensee against amounts awarded in a settlement or by a final court decision, provided that Isomorphic shall have received from Licensee: (i) prompt notice of such claim (but in any event notice in sufficient time for Isomorphic to respond without prejudice); (ii) the exclusive right to control and direct the investigation, defense, and/or settlement of such claim; and (iii) all reasonably necessary cooperation and assistance of Licensee. If Licensee's use of the Licensed Software is, or in Isomorphic's opinion is likely to be, enjoined due to the type of infringement claim specified above, or if required by settlement, Isomorphic may, in its sole discretion: (a) substitute for the Licensed Software substantially and functionally similar programs and documentation; (b) procure for Licensee the right to continue using the Licensed Software; or (c) if the above remedies are commercially impracticable, terminate this Agreement upon thirty (30) days advance written notice and refund to Licensee the license fees received for Licensed Software on a pro rata basis using a two (2) year amortization schedule. The foregoing is Licensee's sole and exclusive remedy with respect to any claim of intellectual property infringement or misappropriation. This indemnity obligation does not apply: (1) if the Licensed Software is modified by any party other than Isomorphic; (2) if the Licensed Software is combined with other non-Isomorphic products, processes or materials, but solely to the extent the alleged infringement is caused by such combination; (3) to any claim which, at the time of a claim being made against Licensee, is found to cover techniques that are in broad use by other products in the same category as the Licensed Software (4) where the allegedly infringing activity continues after Isomorphic has notified Licensee thereof and has provided Licensee with modifications that would have avoided the alleged infringement; (5) to any modifications made to the Licensed Software by Isomorphic based on specifications provided by o...

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Organization the right to continue using the Licensed Software; or (c) if the above remedies are commercially impracticable, terminate this Agreement upon thirty (30) days advance written notice and refund to Licensed Organization the license fees received for Licensed Software on a pro rata basis using a two (2) year amortization schedule. The foregoing is Licensed Organization's sole and exclusive remedy with respect to any claim of intellectual property infringement or misappropriation. This indemnity obligation does not apply: (1) if the Licensed Software is modified by any party other than Isomorphic; (2) if the Licensed Software is combined with other non-Isomorphic products, processes or materials, but solely to the extent the alleged infringement is caused by such combination; (3) to any claim which, at the time of a claim being made against Licensed Organization, is found to cover techniques that are in broad use by other products in the same category as the Licensed Software (4) where the allegedly infringing activity continues after Isomorphic has notified Licensed Organization thereof and has provided Licensed Organization with modifications that would have avoided the alleged infringement; (5) to any modifications made to the Licensed Software by Isomorphic based on specifications provided by or on behalf of Licensed Organization; or (6) to any third-party code contained within the Licensed Software.

10. Limitation of Liability

ISOMORPHIC SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT, UNDER ANY THEORY OF LIABILITY WHETHER IN TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE: (I) FOR ANY AMOUNTS EXCEEDING, IN THE AGGREGATE, THE FEES PAID TO ISOMORPHIC BY LICENSED ORGANIZATION FOR THE LICENSED SOFTWARE UNDER THIS AGREEMENT; (II) FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES; (III) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF CERTAIN TYPES OF LIABILITY, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO LICENSED ORGANIZATION, IN WHOLE OR IN PART.

11. Confidentiality

Intentionally left blank.

12. Term & Termination

12.1 Term. The terms of this agreement do not expire unless the agreement is terminated as a whole.

12.2 Termination for Breach. Isomorphic may terminate this Agreement upon thirty (30) days prior written notice of a material breach by Licensed Organization if such breach is not cured within such thirty (30) day period. Upon termination of this Agreement for Licensed Organization's breach, the license grants of Section 3, including any sublicensed rights, shall terminate, and Licensed Organization shall remove all copies of the Licensed Software from Licensed Organization's computer systems.

12.3 Survival. Sections 1 (Definitions), 4 (License Obligations), 5 (Intellectual Property Ownership), 6 (Payments), 9.1 (Limited Warranty), 10 (Limitation Of Liability), 11 (Confidentiality), 12 (Termination), and 13 (Miscellaneous) shall survive any expiration or termination of this Agreement.

13. Miscellaneous

13.1 US Government Rights. The Licensed Software and Documentation are commercial computer software developed exclusively at private expense, and in all respects are proprietary data

belonging solely to Isomorphic. If the Licensed Software is acquired by or on behalf of agencies or units of the Department of Defense (DOD), then, pursuant to DoD FAR Supplement Section 227.7202 and its successors (48 C.F.R. 227.7202) the Government's right to use, reproduce or disclose the Licensed Software and Documentation acquired under this Agreement is subject to the restrictions of this Agreement. If the Licensed Software is acquired by or on behalf of civilian agencies of the United States Government, then, pursuant to FAR Section 12.212 and its successors (48 C.F.R. 12.212), the Government's right to use, reproduce or disclose the Licensed Software and Documentation acquired under this Agreement is subject to the restrictions of this Agreement.

13.2 Export Compliance. Licensed Organization shall not export or re-export the Licensed Software or any underlying information or technology except in full compliance with all United States and other applicable laws and regulations. In particular, but without limitation, none of the Licensed Software may be exported or re-exported (a) into (or to a national or resident of) Cuba, Iran, Iraq, Libya, North Korea, Syria, or Sudan, or (b) to anyone on the US Treasury Department's list of Specially Designated Nationals or the US Commerce Department's Table of Denial Orders. Licensed Organization represents and warrants that Licensed Organization is not located in, under control of, or a national or resident of any such country or on any such list.

13.3 Assignment. Licensed Organization may assign this Agreement in its entirety to a third party that acquires substantially all of Licensed Organization's stock or assets relating to that portion of Licensed Organization's business that is related to this Agreement ("Acquiring Party") provided that:

- (i) Licensed Organization shall provide prior written notice of such assignment to Isomorphic;
- (ii) The acquiring party shall assume all of the obligations of Licensed Organization under this Agreement; and
- (iii) The licenses provided herein shall apply only to the Integrated Product(s) existing immediately prior to such assignment, and not to any other applications developed or distributed by the Acquiring Party.

Any attempted assignment, delegation, or transfer in contravention of this Agreement shall be null and void.

13.4 Publicity. (i) At license signing, Isomorphic may state publicly that Licensed Organization has licensed SmartClient/Smart GWT for product development, and may use Licensed Organization's name and logo in Isomorphic's public customer lists. (ii) At Isomorphic's request, Licensed Organization shall provide facts and figures relating to performance and volume of use of the Licensed Software, as well as quantifiable time, money or other savings resulting from the use of the Licensed Software, for use in Isomorphic's website and marketing collateral, provided that such information can be reasonably obtained and that the public release of such information does not jeopardize Licensed Organization's trade secrets or violate Licensed Organization's obligations to keep such information confidential.

13.5 Third-Party Components. (Java integration server only) The Java integration server components of the Software may bundle certain third-party components provided under terms and conditions which are different from those of this Agreement. These third-party components and their license terms and conditions may be found in the WEB-INF/lib/ and WEB-INF/licenses/ directories of the Product SDK and Product Runtime for SmartClient, and in the WEB-INF/licenses directories of each sample in Smart GWT. By accepting this Agreement, you are also accepting the additional terms and conditions, if any, set forth therein. Such additional terms and conditions, and not the terms of

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this Agreement (other than Sections 10(b) and 11), apply to such third-party components.

13.6 Governing Law; Jurisdiction. This Agreement and all matters arising out of or relating to this Agreement shall be governed by the substantive and procedural laws of the State of California, U.S.A., excluding its conflict of law provisions. Any dispute between the parties regarding this Agreement will be heard in the state or federal courts having jurisdiction in the city of the plaintiff's place of business, as set forth above, and both parties hereby agree to submit to the jurisdiction of such courts. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement and is expressly disclaimed.

13.7 Equitable Relief. Licensed Organization acknowledges that any breach of its obligations under this Agreement with respect to the proprietary rights or confidential information of Isomorphic may cause Isomorphic irreparable injury for which there may be inadequate remedies at law, and therefore Isomorphic will be entitled to seek equitable relief without posting of bond or other security, in addition to all other remedies provided by this Agreement or available at law.

13.8 Severability. If any part of this Agreement is held to be invalid or unenforceable, in whole or in part, such holding will not affect the validity of the other parts of this Agreement.

13.9 Waiver. The waiver by either party of any default or breach of this Agreement shall not constitute a waiver of any other or subsequent default or breach.

13.10 Notices. All notices, authorizations, consents, or other communications required or permitted to be given hereunder shall be made in writing and shall be deemed effective when delivered to the addresses set forth above by personal delivery, certified mail (return receipt requested), or a commercially recognized carrier. Notices sent to Licensed Organization shall be addressed to the "Office of the President". Notices sent to Isomorphic shall be addressed to the attention of "General Counsel". Either party may change its address for purposes hereof by so notifying the other party in writing.

13.11 Entire Agreement. This Agreement is the entire agreement between you and Isomorphic with respect to the subject matter hereof and supersedes all prior and contemporaneous agreements and representations, whether written or oral. No purchase order or similar document issued by you shall modify or amend this Agreement. No agent or employee of Isomorphic is authorized to make any amendment to this Agreement unless such amendment is in writing and signed by a duly authorized representative of Isomorphic.

