

License Agreement

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1. Definitions

The terms listed in this Section 1 will have the definitions given below when used in this Agreement. All other terms will have the definitions given in this Agreement or, if not defined in this Agreement, will have their plain English meaning as commonly interpreted in Poland.

“Authorized User” means, (1) in the case where Licensee is an individual, Licensee himself or herself, and (2) in the case where Licensee is an entity or organization, the employees and contractors of the entity or organization, and any subsidiaries, affiliates or customers of that entity or organization authorized on an applicable Order, provided

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“Deployment Installations” means the permitted number of unique Installations of the Runtime Components specified in an applicable Order.

“Documentation” means all documentation for the Software provided to Licensee by GRAFTCODE .

“End User License Agreement” means a written end user software license agreement with Licensee pertaining to the Software having terms at least as protective of GRAFTCODE and the interests of GRAFTCODE in the Software as the terms of this Agreement.

“Installation” means an installation or other instance of the Software on computing equipment or in a computing environment owned or controlled by Licensee or an Authorized User, including, without limitation, physical servers, virtualized servers (virtual machines), or other computing equipment or environments.

“Licensee Works” means software components or applications created, compiled, or tested by Licensee using the Runtime Components in accordance with the terms of this Agreement, and that add primary and substantial functionality to the Software (and are not merely a set or subset of any of the Software).

“Runtime Components” means the components of the Software specified in the Documentation as “Main class of Javonet solution” which provide access to bridging functionality in conjunction with the Licensee Works.

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2. ORDER ACCEPTANCE

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Acceptance of an Order by Licensee will occur upon receipt by GRAFTCODE of any of the following (or by such other means as may be agreed to by both parties with respect to a given Order): (1) a copy of the Order signed by Licensee; (2) a purchase order from Licensee for the Order; or (3) payment of the Fees under the Order. Licensee may only accept Orders issued by GRAFTCODE nter in the name of Licensee and not any third party.

3. TERM.

The term of this Agreement for any Software shall begin on the Effective Date and continue for an initial period of 30 days, unless otherwise extended through the express authorization of GRAFTCODE, such authorization in the sole discretion of GRAFTCODE (the “Trial Term”). If Licensee accepts the Order applicable to the Software (as set forth in Section 2) prior to the completion of the Trial Term, then the term of this Agreement shall be extended as to that Software for the duration of the commercial term specified in the applicable Order (the “Commercial Term”). If Licensee does not accept the Order applicable to the Software (as set forth in Section 2) prior to the completion of the Trial Term, then this Agreement will expire upon completion of the Trial Term.

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Subject to the terms of this Agreement, GRAFTCODE grants to Licensee a personal, nonexclusive, nontransferable, noncommercial, limited license during the Trial Term to install and use the number of Deployment Installations of the Software solely for purposes of: (1) using the Runtime Components as necessary to evaluate the Software and test the Licensee Works; and (2) using the Runtime Components to create and compile Licensee Works.

All use of the Software during the Trial Term shall be solely by Authorized Users and ONLY FOR NON-COMMERCIAL, NON-PRODUCTION, INTERNAL, TRIAL AND EVALUATION PURPOSES AND NOT FOR ANY COMMERCIAL, GOVERNMENTAL, OR INSTITUTIONAL PURPOSE OF ANY KIND.

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Professional License. A personal, nonexclusive, nontransferable (subject to Section 19.10), limited license solely to install the number of Deployment Installations subject to the Order applicable to the Software and permit the use of

those Runtime Components by Authorized Users for the sole purpose of: (a) using provided developers API to build custom logic that uses bridging functionality including extending .Net type functionality to build custom proxy classes; (b) using those Proxy Classes and Runtime Components to create and compile Licensee Works; and (c) using those Proxy Classes and Runtime Components and custom logic as necessary to test, use, and operate the Licensee Works created using the Runtime Components. PROVIDES THE RIGHT TO DISTRIBUTE JAVONET BASED SOLUTION TO EXTERNAL CUSTOMERS (PROFESSIONAL LICENSES NEEDED FOR EACH TARGET MACHINE)

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11.1 Fees.

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The parties are independent contractors and neither party is an agent, representative, or partner of the other party. This Agreement shall not be interpreted or construed to create an association, agency, joint venture, or partnership between the parties or to impose any liability attributable to such relationship on either party. There are no third party beneficiaries to this Agreement. GRAFTCODE provides no warranty whatsoever to any third party. Licensee shall be solely responsible to its Authorized Users (or anyone else who rightfully uses or acquires any

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15. AUDIT.

No more frequently than once per 12-month period during the term of this Agreement, and upon reasonable notice and during normal business hours, GRAFTCODE or its outside auditors will have the right to enter Licensee's premises and access Licensee's records and computer systems to the extent necessary to verify that Licensee has paid to GRAFTCODE the correct amounts owed under this Agreement and determine whether the Software is being used in accordance with the terms of this Agreement. We will design such audits reasonably to minimize disruption to Licensee's business. Licensee will provide reasonable assistance to GRAFTCODE in connection with any such audit. Licensee agrees to pay the cost of the audit if any underpayments during the period covered by the audit amount to more than 5% of the fees actually owed for that period. In addition to any such audit, upon the request of GRAFTCODE, Licensee will promptly provide GRAFTCODE with a copy of each form of End User License Agreement entered into between Licensee and each Authorized User.

16. TERMINATION AND EFFECT OF TERMINATION.

16.1 Termination.

Either party may terminate this Agreement if the other party breaches any material provision of this Agreement and does not cure such breach (provided that such breach is capable of cure) within 30 days after being provided with written notice thereof. In addition to the foregoing, GRAFTCODE may terminate this Agreement immediately upon written notice to Licensee if: (a) Licensee, in any manner, breaches any part of Section 4, 5, 6, or 9 of this Agreement; or (b) any audit conducted under Section 15 above shows that (i) Licensee underpaid GRAFTCODE by 10% or more during the period covered by the audit or (ii) underpaid GRAFTCODE by 5% or more on more than one occasion. Licensee may terminate this Agreement at any time for any reason upon 5 days written notice to GRAFTCODE of its intent to terminate the Agreement.

16.2 Effects of Termination.

Upon any termination or expiration of this Agreement: (a) any amounts owed to GRAFTCODE under this Agreement before such termination or expiration will be immediately due and payable, unless the Agreement is terminated arising from an uncured breach by GRAFTCODE under Section 16.1; (b) all rights and licenses granted to Licensee in this Agreement will immediately cease to exist; and (c) Licensee must promptly discontinue all use of the Software, erase all copies of the Software from Licensee's computers, and return or destroy all copies of the Software on tangible media in Licensee's possession or control. At the request of GRAFTCODE, Licensee (or an officer of Licensee, if Licensee is an entity or organization) will certify in writing to GRAFTCODE that Licensee has fully complied with all requirements of this Section 16.2. Sections 9, 11, 12.2, 12.3, 16, 17.2, 18, and 19 will survive termination or expiration of this Agreement for any reason.

17. INDEMNIFICATION.

17.1 By GRAFTCODE.

(a) GRAFTCODE shall indemnify, defend, and hold harmless Licensee and its officers, directors, employees, representatives and agents (collectively, "Licensee Indemnitees") from and against any third party claim or action brought against any Licensee Indemnitee to the extent such claim or action shows that the Software (when used by Licensee in accordance with this Agreement) infringes or misappropriates any third party copyright, trademark or trade secret or that GRAFTCODE knowingly infringed any third party U.S. or Polish patent in the development of the Software. GRAFTCODE shall pay all settlements entered into and damages awarded against any Licensee Indemnitee (including reasonable attorneys' fees) to the extent based on such a claim or action. The foregoing obligations are conditioned on Licensee (i) notifying GRAFTCODE promptly in writing of such action, (ii) giving GRAFTCODE sole control of the defense thereof and any related settlement negotiations, and (iii) cooperating and, at GRAFTCODE's request a d expense, assisting in such defense.

(b) If the Software becomes, or in the reasonable opinion of GRAFTCODE may become, the subject of any claim of infringement, GRAFTCODE may, at its option: (i) procure for Licensee the right to use the Software in accordance with the terms of this Agreement free of any liability; (ii) replace or modify the Software to make it non-infringing, provided that such replacement or modification remains functionally equivalent; or (iii) if neither (i) nor (ii) is commercially practicable, terminate this Agreement on at least 30 calendar days' written notice to Licensee and refund Licensee the value of the infringing Software upon such termination, computed according to a 36 month straight-line amortization schedule beginning on the Effective Date. GRAFTCODE shall not be liable for any costs or expenses incurred by Licensee in connection with any claim of infringement without its prior written authorization, provided that such exemption shall not apply if GRAFTCODE fails to fulfill its obligations pursuant to the above in a timely manner.

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The Software is a "commercial item" as that term is defined at FAR 2.101 (Oct 1995), consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212 (Sep 1995) and is provided to the U.S. Government only as a commercial end item. Consistent with FAR. 12.212 and DFARS 227.7202 (Jun 1995), all U.S. Government End Users acquire the Software with only those rights set forth herein.

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19.5 Modification

Except as expressly set forth in this Agreement, this Agreement may be amended or modified only by a subsequent written amendment signed by the authorized representatives of both parties. Except for any terms or conditions included in an Order accepted by GRAFTCODE, the or terms or conditions on any purchase order or similar document provided by Licensee will have no force or effect and will not serve to modify the terms of this Agreement.

19.6 Severability.

If any provision of this Agreement is held to be unenforceable, that 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 remain in full force. Without limiting the generality of the foregoing, Licensee agrees that Section 18 will remain in effect notwithstanding the unenforceability of any provision in Section 12.2.

19.7 Waiver.

All waivers under this Agreement must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

19.8 Notice.

All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail, courier, electronic facsimile, or certified or registered mail (postage prepaid and return receipt requested) to Licensee at the address for Licensee set forth on any Order placed by Licensee and to GRAFTCODE at the address for GRAFTCODE set forth on the then-current GRAFTCODE web site. All notices will be effective upon receipt or 3 business days after being deposited in the mail, whichever occurs sooner. Either party may change its address by giving notice of the new address to the other party.

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If any proceeding or lawsuit is brought by GRAFTCODE or Licensee in connection with this Agreement, the prevailing party in such proceeding or lawsuit shall be entitled to receive its costs, expert witness fees and reasonable attorney's fees, including costs and fees on appeal. The failure of either party to require performance by the other party of any provision hereof shall not affect the full right to require such performance at any time thereafter; nor shall the waiver

by either party of a breach of any provision hereof be taken or held to be a waiver of the provision itself.

19.10 Assignment.

Neither this Agreement nor any rights or obligations of Licensee hereunder may be assigned by Licensee in whole or in part (by operation of law or otherwise) without the prior written approval of GRAFTCODE, provided, however, that if Licensee is an entity or organization and enters into a merger or consolidation of Licensee, or if any entity purchases or otherwise acquires all, or substantially all, of the assets of that segment of Licensee's business relating to the subject matter of this Agreement, Licensee shall be able to assign this Agreement as a whole to the surviving corporation or purchasing or acquiring entity following notice to GRAFTCODE, provided that such surviving or acquiring entity first agrees in writing to be bound by the terms and conditions of this Agreement. GRAFTCODE may assign this Agreement, and any rights or obligations of Licensee hereunder, without the consent of Licensee. Any assignment in derogation of the foregoing shall be null and void. This Agreement shall inure only to the benefit of GRAFTCODE, Licensee, and their valid successors and assigns.

19.11 Remedies.

Except as expressly provided in this Agreement, the parties' rights and remedies under this Agreement are cumulative. Licensee acknowledges that the Software contains valuable trade secrets and proprietary information of GRAFTCODE, that any actual or threatened breach of Sections 4, 5, 6, 7 and 9 will constitute immediate, irreparable harm to GRAFTCODE for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.