

DEVELOPMENT AND DEPLOYMENT AGREEMENT

This Development and Deployment Agreement (the “**Agreement**”) is entered into as of the date you click Agree (the “**Effective Date**”), by and between Boiler Bay Inc., a California Corporation having its principal place of business at 241 32nd Ave. Santa Cruz, CA 95062 (hereinafter referred to as “**Boiler Bay**” or “**Licensor**”) and your Organization, Corporation, or Person (hereinafter referred to as the “**Licensee**”).

The software called AirConcurrentMap (hereinafter referred to as the "Software") is licensed, not sold, to Licensee by Boiler Bay for use subject to the terms of this Agreement, and Boiler Bay reserves any rights not expressly granted to Licensee. Licensee owns the media on which the Software is recorded or fixed, but Boiler Bay and its licensors retain ownership of the Software itself.

AGREEMENT

1. **DEFINITIONS.** For purposes of this Agreement, the following terms are defined as below.
 - a. ***Java Map Implementations*** manifest the behaviors specified for Maps in the Java Collections Framework.
 - b. ***AirConcurrentMap*** is plug-compatible with the Java Map Implementations.
 - c. ***Development*** is the act of including this software where it can be used by the Dependent Application.
 - d. ***Dependent Application*** is the program that makes invocations or is configured so as to be able to invoke methods of AirConcurrentMap.
 - e. ***Deployment*** is any work that includes the AirConcurrentMap product. If your software invokes methods on AirConcurrentMap Objects or has the ability to load the AirConcurrentMap class, the resulting program is a Deployment.
2. **LICENSE RESTRICTIONS AND GRANTS.** Each of the license grants below is subject to all of the terms of this Agreement, including payment of all associated license fees and compliance with all the applicable restrictions stated below.
 - a. **License Restrictions.** Licensee shall not under any circumstances attempt, or knowingly permit or encourage anyone, inside or outside of Licensee’s organization to decompile, decipher, disassemble, reverse engineer or otherwise decrypt or discover the source code for the Software. Licensee shall not copy or transmit any portion of the Software or any email or other documentation provided in support thereof except as authorized below. The Software is licensed, not sold, to Licensee. All rights not specifically granted herein shall be retained

by Boiler Bay and its licensors. Licensee shall not remove, efface or obscure any copyright, United States Patent, or other proprietary notices or legends from any portion of the Software and shall reproduce all such notices and legends if licensed below to reproduce the Software.

- b. **Attribution.** Include the following Boiler Bay Restricted Use, Copyright, Trade Secret, and U.S. Patents Statement with other copyright notices included with any programs that make calls to AirConcurrentMap, provided that there is a place that is appropriate for such statements

- i. This Application contains ‘AirConcurrentMap’ which is Copyright © 2014-2017 Roger L. Deran, All Rights Reserved. The Software is U.S. Patent Applied.

- c. **Use and Deployment License.** Boiler Bay grants to Licensee a non-exclusive, non-transferable license to use or use and make Deployments.

- i. Licensee may not, under any circumstances, grant to a VAR, OEM, or other intermediary, or to an End User, a license to use the Software to develop other Deployments. Licensee must only grant internal and external users the right to use the programs containing the Software developed by the Licensee.

- ii. Licensee’s agreement with its VAR, OEM or End Users shall prohibit the VAR, OEM, or End User from attempting or knowingly permitting or encouraging others to attempt, to decompile, decipher, disassemble, or reverse engineer or otherwise decrypt or discover the source code of all or any portion of the Software or the Dependent Application.

- iii. You may not distribute the airconcurrentmap.jar alone, or put it in a public repository like maven central. You may put airconcurrentmap.jar in a private source repository such as subversion or git, or a private maven repository or similar private binary repository or private file system of your own. You may not distribute the original archive in which airconcurrentmap.jar or this license file were originally distributed.

3. **FEES.**

- a. **Fees.** Licensee shall pay Licensor the Fee Specified at BoilerBay.com, You will receive notification when your purchase is confirmed to be completed..

- b. **Licensee Taxes.** Licensee shall be responsible for any sales or use or other taxes (other than taxes based on Boiler Bay's net income) to the extent that any such taxes may arise in connection with this Agreement.
- c. **Attorney's Fees.** Should it become necessary for either party to take legal action against the other party in order to enforce compliance with the terms of this agreement, the parties shall be responsible for their own legal expenses.
- d. **Currency.** All dollar amounts shall be in United States of America Dollars.

4. **WARRANTIES AND SUPPORT.**

- a. **Warranty.** Boiler Bay warrants that it holds all rights necessary to grant the licenses hereby granted to the Licensee and that the Software does not infringe any copyright, trademark, trade secret, or United States patent.
- b. **Limited Warranty.** Boiler Bay warrants that for a period of 365 days (one year) following delivery to Licensee, the Software will perform substantially in accordance with the accompanying Boiler Bay documentation. Boiler Bay does not warrant that the Software will be error-free or will operate without interruption. Licensee's exclusive remedy for breach of the warranty contained in this Limited Warranty Section shall be, at Boiler Bay's discretion, the correction, within a reasonable period of time, of any such failure to perform or refund of the license fee paid by Licensee with respect to such non-conforming Software, but only to the extent that such non-conformance resulted in the actual loss of use by Licensee. This warranty period shall be extended by the same number of days of the repair or correction period.
- c. **Support.** Boiler Bay shall perform the following functions for its Licensees.
 - i. It shall offer to its Licensees any minor software upgrades that it deems necessary to improve the performance of the Software and any software upgrades that it deems necessary to enable the Software to perform as represented in documentation. Boiler Bay does not provide significant upgrades, such for 4.x. That License must be purchased separately, when the product becomes available.
 - ii. Boiler Bay shall respond to email requests for additional support beyond that contained in its documentation, but only if it deems that those requests should be documented and were not, or if said requests can be responded to efficiently within a brief amount of time – one hour or less – and not totaling more than 10 hours for a single customer during one year of time.

Email us at support@boilerbay.com if you would like additional support, we will provide that for an appropriate fee.

- d. **Boiler Bay Warranty Disclaimer.** THE FORGOING LIMITED WARRANTY IS EXCLUSIVE AND IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED INCLUDING WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. LICENSEE SHALL MAKE NO REPRESENTATIONS OR WARRANTIES ON BOILER BAY'S BEHALF WITHOUT BOILER BAY'S EXPRESS WRITTEN CONSENT. Boiler Bay shall have no liability with respect to claims relating to or arising from the use of non-Boiler Bay products or services, even if Boiler Bay recommended, referred or introduced Licensee to such products or services.
- e. **Licensee's Support to End Users.** Licensee and not Boiler Bay will be responsible for providing support to each End User to which it provides a Deployment.

5. INDEMNIFICATION.

- a. **Boiler Bay Indemnity.** Boiler Bay shall indemnify, defend, and hold Licensee harmless from and against any costs losses, liabilities, claims, expenses (including attorney's fees) and damages actually awarded by a court of competent jurisdiction arising out of any claim that the Software, as used within the scope of this Agreement, infringes on the intellectual property or proprietary rights of any third party, provided that (i) Licensee notifies Boiler Bay promptly in writing of the claim; (ii) Boiler Bay has sole control of the defense and all related settlement negotiations; and (iii) licensee provides Boiler Bay with all necessary assistance, information, and authority to perform the above. Licensee shall have the right to participate in the investigation and defense of any such claims at Licensee's own expense.
- b. **Exclusions.** Boiler Bay shall have no liability for any claim of infringement based on (i) use of other than the latest commercially available version of the Software made available to the Licensee, to the extent the infringement would have been avoided by use of such version; (ii) modification of the Software by Licensee; or (iii) the combination or use of the Software with materials not furnished by Boiler Bay to the extent such infringement would have been avoided by use of the Software alone.
- c. **Alternatives.** In the event the Software is held to, or Boiler Bay reasonably believes is likely to be held to, infringe on the intellectual property or proprietary rights of any third party, Boiler Bay shall have the right at its sole option and expense to (i) substitute or modify the Software so that it is non-infringing, while retaining equivalent features and functionality; or (ii) obtain for Licensee a license

to continue using the Software under commercially reasonable terms; or (iii) if (i) and (ii) are not reasonably practicable, terminate this Agreement as to the infringing Software and return to Licensee any license fees paid by Licensee hereunder with respect thereto.

- d. **Sole Obligation.** The foregoing states the sole obligation and exclusive liability of Boiler Bay, and Licensee's sole recourse and remedy, for any infringement or claim of infringement by the Software.
- e. **Licensee Indemnity.** Licensee agrees to indemnify, defend, and hold Boiler Bay harmless from and against any costs losses, liabilities, claims or expenses (including attorney's fees) arising out of: (i) any claim that any Dependent Application infringes on the intellectual property or proprietary rights of any third party, except to the extent such infringement is caused by the Software, provided that (a) Boiler Bay promptly notifies Licensee in writing of the claim; (b) Licensee has sole control of the defense and all related settlement negotiations; and (c) Boiler Bay provides Licensee with all necessary assistance, information, and authority to perform the above; or (ii) the distribution of any Dependent Application or other added functionality by any third party; or (iii) the use of any Dependent Application by any End User or third party. Boiler Bay shall have the right to participate in the investigation and defense of any such claims at Boiler Bay's own expense.

6. **TERM AND TERMINATION.**

- a. **Term and Termination.** This Agreement shall become effective on the Effective Date and remain in effect unless terminated as provided below. Either party may terminate this Agreement if the other party materially breaches a material term hereof and fails to cure such breach within thirty (30) days following receipt of written notice to the breaching party. Upon termination of this Agreement all licenses granted to Licensee pursuant to this Agreement shall automatically terminate. The foregoing notwithstanding, any use or Deployments made within or outside of the Licensee's organization, where those uses and Deployments were made in full compliance with all of the requirements and restrictions of this Agreement shall remain in effect so long as such licenses are used in accordance with the respective license grant contained in this Agreement or the End User Agreement, as applicable.
- b. **Survival.** This Section 6, and the Definitions, Boiler Bay Warranty Disclaimer, Confidentiality, Limitation of Liability, Consequential Damages Waiver, and Miscellaneous Sections, any outstanding obligations to submit any reports or pay any fees, and any other terms of this Agreement that by their nature extend beyond termination, survive termination or expiration of this Agreement.

7. **CONFIDENTIALITY.** Boiler Bay and Licensee will hold in strict confidence the terms of this Agreement and any other information provided by one party (the “**Disclosing Party**”) to the other (the “**Receiving Party**”) under this Agreement and identified as confidential or defined herein as Confidential Information. “**Confidential Information**” means the proprietary and confidential information of either party, including, without limitation, all information, software, email correspondence, client names, know-how, marketing and development plans, techniques and materials, and other information related to clients, price lists, pricing policies and financial information, and technical and product information, methods of production, use, operation and application: which are not generally known to the public; and in which such party or its suppliers or clients has rights. Information shall not be considered Confidential Information if the Receiving Party demonstrates that such information: (i) is or becomes a part of the public domain through no act or omission of the other party; or (ii) is lawfully disclosed to the other party by a third party without restriction on disclosure; or (iii) is developed by any supplier, partner, officer, director or employee of the Receiving Party who had no access to the disclosed information as demonstrated by bona fide evidence in the Receiving Party’s possession; or (iv) was previously known by the Receiving Party without confidentiality constraints; or (v) is disclosed by either party through the operation of law. In the event of a dispute about whether information qualifies as Confidential Information or not, the Receiving Party shall bear the burden of proof of demonstrating by clear and convincing evidence that the information falls under one of the above exceptions. Each party shall use the Confidential Information of the other party solely in the performance of its business obligations under this Agreement, exercising the highest degree of care in the protection of such Confidential Information as it affords its own Confidential Information, and shall not disclose the Confidential Information other than 1) to its affiliates and only those of its employees and representatives who need to know the Confidential Information to perform the Agreement; or 2) as required by law or court order (provided that the party with rights in the Confidential Information was provided with prompt notice of the legal requirement for the disclosure of the Confidential Information). Each party shall use commercially reasonable efforts (by instruction, agreement or otherwise), and in no event less than the same efforts such party uses to protect its own valuable proprietary information and data, to maintain the confidentiality of the Confidential Information of the other party. Upon termination of this Agreement for any reason, the Receiving Party shall return to the Disclosing Party all Confidential Information, and shall not make copies of the same, except as strictly necessary for archival purposes and to fulfill those obligations or exercise those rights that survive termination as set forth in Section 6.1 (Term and Termination) and Appendix B (Termination). The provisions of this Section 7 are necessary for the protection of the business and goodwill of Disclosing Party and are considered by the Receiving Party to be reasonable for such purpose. The Receiving Party agrees that any breach of this Section 7 will cause Disclosing Party substantial and irreparable damages and, therefore, in the event of any such breach, in addition to other remedies that may be available, Disclosing Party shall have the right to seek specific performance and other injunctive

and equitable relief, in which event the Receiving Party expressly waives any requirement that Disclosing Party post a bond or undertaking, make a deposit or give any other security.

8. **LIMITATION OF LIABILITY.** Except in the event of a party's violation of its obligations under Section 5 (Indemnification) or Section 7 (Confidentiality), or Licensee's breach of Section 2.1 (License Restrictions), and to the greatest extent allowable by law, EACH PARTY'S ENTIRE LIABILITY TO THE OTHER FOR DAMAGES IN ANY WAY RELATING TO THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION, SHALL NOT EXCEED ANY LICENSE FEES RECEIVED BY BOILER BAY UNDER THIS AGREEMENT. Liability claims must be noticed by registered mail to the party against which the claim is made within three months after the event causing the alleged liability happened, in any case not later than 30 days after the time when such event was discovered.
9. **CONSEQUENTIAL DAMAGES WAIVER.** IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES, LOST PROFITS OR LOST DATA, OR ANY OTHER INDIRECT DAMAGES, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
10. **MISCELLANEOUS.** Boiler Bay and Licensee are independent contractors. Licensee may assign this agreement to an affiliate or to the succeeding party in the case of a merger, acquisition or change of control so long as in doing so, Boiler Bay is notified in writing within ninety (90) days of the closure of such transaction. Any permitted assignee shall be bound by the terms and conditions of this Agreement. Licensee may not download, export, or re-export the Software except as authorized by Boiler Bay and except in compliance with all applicable laws and regulations, including United States export control restrictions. It is Licensee's responsibility to comply with such restrictions as they may be amended from time to time. If any provision of this Agreement is held to be illegal, unenforceable or void, then each other provision will remain in effect. No failure of either party to enforce any provision of this Agreement shall be construed as a waiver of that or any other provision. This Agreement sets forth the entire agreement between the parties on the subject matter hereof and supersedes all prior proposals, agreements, and representations between them, whether written or oral. This Agreement supersedes any conflicting terms in any purchase order or other document submitted by Licensee, whether or not formally rejected by Boiler Bay. This Agreement may be changed only in a writing signed by both parties. Neither party shall be liable for any delay or failure in performance, except for failure to pay fees, due to causes beyond its reasonable control.
11. **COMPLIANCE WITH LAW.** Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder. Licensee shall be solely responsible for complying with the laws and regulations applicable in the territory,

or any nation, or political subdivision thereof, in which it engages in business in performing its responsibilities hereunder as well as those applicable to the distribution and sale of the Software by Licensee, including, without limitation, tax, export and foreign exchange laws, export controls imposed by the U.S. Export Administration Act of 1979, as amended, and the United States Foreign Corrupt Practices Act. Additionally, Licensee specifically acknowledges that the Software is subject to United States export controls, pursuant to the Export Administration Regulations, 15 C.F.R. Parts 730 to 774. Licensee shall strictly comply with all requirements of the Export Administration Regulations with respect to the Software. Licensee expressly agrees that, without the prior written authorization of Boiler Bay and the United States Government, Licensee shall not, and shall cause its representatives (if any) to agree not to (a) export, re-export, divert or transfer the Software or any direct product thereof to any destination, company or person restricted or prohibited by the United States export controls, or (b) disclose any data derived from the Software or any direct product thereof to any national or any country when such disclosure is restricted or prohibited by the United States export controls. Licensee shall bear all expenses and costs related to compliance with any law and/or regulations. **NOTICE.** All notices and other communications which may be given by one Party to the other under this Agreement shall be given in writing and sent via email and physical mail, via appropriate methods, depending on severity of content.

12. **PUBLICITY.** Nothing in this Agreement shall be deemed to give either Party any right to use the other Party's trademarks or trade names without the other Party's prior written consent. No press release disclosing this agreement or the Parties' relationship shall be released without the prior written approval of its terms by the other Party.
13. **GOVERNING LAW; VENUE.** This Agreement shall be governed by and construed in accordance with the laws of the State of California, without regard to or application of choice of law rules or principles. Venue for any legal action arising out of this Agreement shall be the state courts residing in Santa Cruz County, California, or the federal district court in or closest to Santa Cruz County, CA, and the parties hereby consent to the personal jurisdiction of such courts. Each party agrees to comply with all applicable laws, regulations, and ordinances relating to their performance hereunder.
14. **OFFICIAL LANGUAGE.** This Agreement shall be executed in the English language. In case of any conflict between the English version and any translated version of this Agreement, the English language version shall govern.
15. **NO AGENCY.** Boiler Bay and Licensee each acknowledge and agree that the relationship established by this Agreement is that of independent contractors, and nothing contained in this Agreement shall be construed to: (i) give either party the power to direct or control the day to day activities of the other; (ii) deem the parties to be acting as partners, joint venturers, co-owners or otherwise as participants in a joint undertaking; or (iii) permit either party or any of either party's officers, directors, employees, agents or

representatives to create or assume any obligation on behalf of or for the account of the other party for any purpose whatsoever.

16. **DEDICATED PERSONNEL** Each Party must designate a responsible party to make and receive email messages that contain complaints or other statements about this software. To complete that action, if the personnel is different than stated at the time this contract comes into effect, send email to jennifer2@boilerbay.com and to support@boilerbay.com.
17. **COUNTERPARTS; EXCHANGES BY FAX.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The exchange of a fully executed Agreement (in counterparts or otherwise) by fax or e-mail shall be sufficient to bind the parties to the terms and conditions of this Agreement.

Once This Agreement has been approved – its License Fee has been paid in full – it shall be in effect and the terms of this Agreement Shall take Effect. Boiler Bay and the Licensee shall honor the terms of this Agreement.