Terms and Conditions

This is the dotMailer Software Development Kit License Agreement.

1. Introduction

1.1 The DotMailer Software Development Kit (referred to in this License Agreement as the "SDK") is licensed to you subject to the terms of this License Agreement. This License Agreement forms a legally binding contract between you and dotMailer in relation to your use of the SDK.

1.2 "dotMailer" means dotMailer Limited., No. 1 Croydon 12-16 Addiscombe Road CR0 0XT, (registered in England and Wales under Co. No. 03762341) and VAT number 945 6513 05

2. Accepting this License Agreement

2.1 In order to use the SDK, you must agree to the terms of this License Agreement. You may not use the SDK if you do not accept this License Agreement.

2.2 You agree to be legally bound by the terms of this License Agreement (as may be modified and posted on our website from time to time) by:

(A) clicking to accept or agree to this License Agreement, where this option is made available to you; or

(B) using the SDK. In this case, you agree that use of the SDK constitutes acceptance of the terms of the Licensing Agreement from that point onwards.

2.3 You may not use the SDK and may not accept the Licensing Agreement if you are a person barred from receiving the SDK under the laws of England and Wales or any other countries including the country in which you are resident or from which you use the SDK.

2.4 If you are agreeing to be bound by this License Agreement 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 License Agreement. If you do not have the requisite authority, you may not accept the Licensing Agreement or use the SDK on behalf of your employer or other entity.

3. SDK License from dotMailer

3.1 Subject to the terms of this License Agreement, dotMailer grants you a limited, worldwide, royalty-free, non- assignable and non-exclusive license to use the SDK solely to develop applications to run on the dotMailer platform.

3.2 You agree that dotMailer or third parties own all legal right, title and interest in and to the SDK, including any Intellectual Property Rights that subsist in the SDK. "Intellectual Property Rights" means all copyrights, patents, utility models, trademarks service marks, registered designs, moral rights, design rights (whether registered or unregistered)technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world.. dotMailer reserves all rights not expressly granted to you.

3.3 Except to the extent required by applicable third party licenses, or in order to create an independent interoperable software application, you may not copy (except for backup purposes), translate, modify, adapt, redistribute, decompile, reverse engineer, disassemble, or create derivative works of the SDK or any part of the SDK. Except to the extent required by applicable third party licenses, you may not load any part of the SDK onto a mobile handset or any other hardware device except a personal computer, combine any part of the SDK with other software, or distribute any software or device incorporating a part of the SDK.

3.4 Use, reproduction and distribution of components of the SDK licensed under an open source software license are governed solely by the terms of that open source software license and not this License Agreement.

3.5 You agree that the form and nature of the SDK that dotMailer provides may change without prior notice to you and that future versions of the SDK may be incompatible with applications developed on previous versions of the SDK. You agree that dotMailer may stop (permanently or temporarily) providing the SDK (or any features within the SDK) to you or to users generally at dotMailer's sole discretion, without prior notice to you.

3.6 Nothing in this License Agreement gives you a right to use any of dotMailer's trade names, trademarks, service marks, logos, domain names, or other distinctive brand features.

3.7 You agree that you will not remove, obscure, or alter any proprietary rights notices (including copyright and trademark notices) that may be affixed to or contained within the SDK.

3.8 You agree that you will not use the SDK in any manner, or transfer or export the SDK or any copies into any country, other than in compliance with applicable laws.

3.9 You agree that you will not allow any other person to use the SDK other than in accordance with the terms of this License Agreement

4. Agreement

4.1 The dotMailer agrees that it obtains no right, title or interest from you (or your licensors) under this License Agreement in or to any software applications that you develop using the SDK, including any intellectual property rights that subsist in those applications.

4.2 You agree to use the SDK and write applications only for purposes that are permitted by (a) this License Agreement and (b) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions (including any laws regarding the export of data or software to and from the United Kingdom or other relevant countries).

4.3 You agree that if you use the SDK to develop applications for general public users, you will protect the privacy and legal rights of those users. If the users provide you with user names, passwords, or other login information or personal information, you must make the users aware that the information will be available to your application, and you must provide a legally adequate privacy notice and protection for those users. If your application stores personal or sensitive information provided by users, it must do so securely. If the user provides your application with dotMailer Account information, your application may only use that information to access the user's dotMailer Account when, and for the limited purposes for which, the user has given you permission to do so.

4.4 You agree that you will not engage in any activity with the SDK, including the development or distribution of an application, that interferes with, disrupts, damages, or accesses in an unauthorised manner the servers, networks, or other properties or services of any third party including, but not limited to, dotMailer or any communications carrier.

4.5 You agree that you are solely responsible for (and that dotMailer has no responsibility to you or to any third party for) any data, content or resources that you create, transmit or display through the dotMailer platform and/or applications for the dotMailer platform and you shall be liable to the dotDigitalGroup for any loss or damage which dotMailer may suffer as a result of you creating, transmitting or displaying such data, content or resources.

4.6 You agree that you are solely responsible for (and that dotMailer has no responsibility to you or to any third party for) any breach of your obligations under this License Agreement, any applicable third party contract, terms of service, or any applicable law or regulation, and you shall be liable to the dotDigitalGroup for any loss or damage which dotMailer or to any third party who may suffer loss or damage as a result of any such breach.

4.7 The distribution of the file "dotMailer.Sdk.dll" with your own software is permitted under this Agreement provided that ;

   i.   you indemnify, defend, and hold harmless the dotDigitalgroup from any claims, including legal fees, related to the distribution or use of your programs;

ii. you require distributors and external end users to agree to terms that protect dotMailer.Sdk.dII which are at least equivalent to those set out in this agreement;

iii. you add significant primary functionality to dotMailer.Sdk.dII in your programs;

iv. you notify dotDigitalGroup by email to "integrations@dotmailer.com" of your wish to include the SDK within your own software;

v. you do not distribute dotMailer.Sdk.dII with malicious, deceptive or unlawful programs;

vi. you do not use dotDigitalGroup's trademarks in your programs' names or in a way that suggests that your programs come from, or are endorsed by dotDigitalGroup;

vii. you do not alter any copyright, trademark or patent notice within the SDK;

viii. you do not rent, lease or lend the SDK;

5. Your Developer Credentials

5.1 You agree that you are responsible for maintaining the confidentiality of any developer credentials that may be issued to you by dotMailer or which you may choose yourself and that you will be solely responsible for all applications that are developed under your developer credentials.

6. Privacy and Information

6.1 In order to continually innovate and improve the SDK, dotMailer may collect certain usage statistics from the software including but not limited to a unique identifier, associated IP address, version number of the software and information on which tools and/or services in the SDK are being used and how they are being used.

6.2 The data collected is examined in aggregate to improve the SDK and is maintained in accordance with dotMailer's Privacy Policy.

7. Third Party Applications for the dotMailer Platform

7.1 If you use the SDK to run applications developed by a third party or that access data, content or resources provided by a third party, you agree that dotMailer is not responsible for those applications, data, content, or resources. You understand that all data, content or resources which you may access through such third party applications are the sole responsibility of the person from which they originated and that dotMailer is not liable for any loss or damage that you or a third party may experience as a result of the use or access of any of those third party applications, data, content, or resources.

7.2 You should be aware the data, content, and resources presented to you through such a third party application may be protected by intellectual property rights which are owned by the providers of the information (or by other persons or companies on their behalf). You may not modify, rent, lease, loan, sell, distribute or create derivative works based on such data, content, or resources (either in whole or in part) unless you have the specific written consent of the relevant owners.

7.3 You acknowledge that your use of such third party applications, data, content, or resources may be subject to separate terms between you and the relevant third party. In that case, this License Agreement does not affect your legal relationship with these third parties.

8. Using dotMailer APIs

8.1 If you use any API to retrieve data from dotMailer, you acknowledge that the data may be protected by intellectual property rights which are owned by dotMailer or those parties that provide the data (or by other persons or companies on their behalf). Your use of any such API may be subject to additional terms of service. You may not modify, rent, lease, loan, sell, distribute or create derivative works based on this data (either in whole or in part) unless this is permitted in the relevant terms of service.

8.2 If you use any API to retrieve a user's data from dotMailer, you acknowledge and agree that you shall retrieve data only with the user's explicit consent and only when, and for the limited purposes for which, the user has given you permission to do so.

9. Terminating this License Agreement

9.1 This License Agreement will continue until terminated by either you or dotMailer as set out below.

9.2 If you want to terminate this License Agreement, you may do so immediately by ceasing your use of the SDK and any relevant developer credentials.

9.3 The dotMailer may at any time, terminate this License Agreement with you by giving you 7 days written notice) if:

(A) you have breached any provision of this License Agreement; or

(B) The dotMailer is required to do so by law; or

(C) the partner with whom dotMailer offered certain parts of the SDK (such as APIs) to you has terminated its relationship with dotMailer or ceased to offer certain parts of the SDK to you; or

(D) The dotMailer decides to no longer provide the SDK or certain parts of the SDK to users in the country in which you are resident or from which you use the service, or the provision of the SDK or certain SDK services to you by dotMailer is, in dotMailer's sole discretion, no longer commercially viable.

9.4 When this License Agreement terminates, all of the legal rights, obligations and liabilities that you and dotMailer have benefited from, been subject to (or which have accrued over time whilst this License Agreement has been in force) or which are expressed to continue indefinitely, shall be unaffected by termination, and the provisions of clause 14.7 shall continue to apply to such rights, obligations and liabilities indefinitely.

10. DISCLAIMER OF WARRANTIES

10.1 You expressly understand and agree that your use of the SDK is at your sole risk and that the SDK is provided "as is" and "as available" without any warranty of any kind from the dotDigitalGroup. .

10.2 Your use of the SDK and any material downloaded or otherwise obtained through the use of the SDK is as your own discretion and risk and you are solely responsible for any damage to your computer system or other device or loss of data that results from such use. .

10.3 The dotDigitalGroup expressly excludes all warranties, express or implied terms, conditions, representations or endorsements whatsoever with regard to the SDK.

11. LIMITATION OF LIABILITY

11.1 The dotDigitalGroup, its subsidiaries, affiliates and licensors accept no liability for any indirect or consequential loss or damage, or for any direct or indirect loss of data, profit, revenue or business in each case, however caused, even if foreseeable. If the dotDigitalGroup, its subsidiaries, affiliates or licensors are liable to you for any reason, such liability will be limited to the amount paid by you for the SDK. This limit does not apply to any liability for death or personal injury resulting from negligence or for fraudulent misrepresentation.

12. Indemnification

12.1 To the maximum extent permitted by law, you agree to defend, indemnify and hold harmless dotMailer, its affiliates and their respective directors, officers, employees and agents from and against any and all claims, actions, suits or proceedings, as well as any and all losses, liabilities, damages, costs and expenses (including reasonable attorney's fees) arising out of or accruing from (a) your use of the SDK, (b) any application you develop on the SDK that infringes any Intellectual Property Right of any person or defames any person or violates their rights of publicity or privacy, and (c) any non-compliance by you with this License Agreement.

13. Changes to the License Agreement

13.1 The dotMailer may make changes to the License Agreement as it distributes new versions of the SDK. When these changes are made, dotMailer will make a new version of the License Agreement available on the website where the SDK is made available.

14. General Legal Terms

14.1 This License Agreement constitute the whole agreement between you and dotMailer and governs your use of the SDK (excluding any services which dotMailer may provide to you under a separate written agreement), and replaces any and all prior agreements between you and dotMailer in relation to the SDK.

14.2 You agree that if dotMailer does not exercise or enforce any legal right or remedy which is contained in this License Agreement (or which dotMailer has the benefit of under any applicable law), this will not be taken to be a formal waiver of dotMailer's rights and that those rights or remedies will still be available to dotMailer.

14.3 If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this License Agreement is invalid, then that provision will be removed from this License Agreement without affecting the rest of this License Agreement. The remaining provisions of this License Agreement will continue to be valid and enforceable.

14.4 You acknowledge and agree that each member of the group of companies of which dotMailer is the parent shall be third party beneficiaries to this License Agreement and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this License Agreement that confers a benefit on (or rights in favour of) them. Other than this, no other person or company shall be third party beneficiaries to this License Agreement.

14.5 The rights granted in this License Agreement may not be assigned or transferred by you without the prior written approval of dotMailer. You are not permitted to delegate your responsibilities or obligations under this License Agreement without the prior written approval of the dotDigitalGroup.

14.7 This License Agreement, and your relationship with dotMailer under this License Agreement, shall be governed by the laws of England and Wales and you and dotMailer agree to submit to the exclusive jurisdiction of the courts of England to resolve any legal matter arising from this License Agreement. Notwithstanding this, you agree that dotMailer shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

14.8 Unless stated otherwise in this Agreement, all notices are to be given to the registered address stated for the party at the beginning of this License Agreement.

Version 1.2 : June, 2012