

## Telerik End User License Agreement for Kendo UI Mobile

(Last Updated July 11, 2012)

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**1. Licensed Use of the Software.** This is a license agreement and not an agreement for sale. Subject to the terms of this Agreement, Telerik hereby grants to You the following limited, non-exclusive, non-transferable licenses (the “Licenses”) to use the Telerik computer software identified as Kendo UI Mobile and any updates, upgrades, modifications and error corrections thereto provided to You by Telerik (the “Programs”) and any accompanying documentation (the “Documentation and, together with the Programs, the “Software”) as set forth below.

### 1.1 License Grant for Use in Development

**1.1.1 Developer License Grant.** If You purchase a Developer License, Your Licensed Developers may use the Software in source and minified form in the development of Your Integrated Products.

For purposes of this Agreement:

*“Your Integrated Products”* are limited to those software applications which: (i) are developed by Your Licensed Developers; (ii) add substantial functionality beyond the functionality provided by the incorporated components of the Software; and (iii) are not commercial alternatives for, or competitive in the marketplace with, the Software or any components of the Software.

*“Licensed Developers”* (i) are limited to the number of Your employees or contractors authorized by You to use the Software to develop software specifically for You and (ii) must correspond to the maximum number of seats You have purchased from Telerik hereunder. This means that, at any given time, the number of Licensed Developers cannot exceed the number of seats that You have purchased from Telerik and for which you have paid Telerik all applicable License Fees pursuant to this Agreement. The Software is in “use” on a computer when it is loaded into temporary memory (i.e. RAM) or installed into permanent memory (e.g. hard disk or other storage device). Your Licensed Developers may install the Software on multiple machines, so long as the Software is not being used simultaneously for development purposes at any given time by more Licensed Developers than You have Seats.

**1.1.2 Testing and Building License.** You may also use the Software in the testing and building of Your Integrated Products. This license is not limited to a number of seats.

**1.1.3 Support.** The standard support package entitles you to enter ten (10) support requests via Telerik’s ticketing system with a 48 hour response time (excluding Saturdays and Sundays). In no event will Telerik provide support of any kind to end-users of Your Integrated Products.

**1.1.4 Updates.** For one (1) year from the date on which you purchase the License for the Software, You will be eligible to receive all major updates and minor updates for the version of the Software that you license hereunder and source code for the Software. Updates replace and/or supplement (and may disable) the version of the Software that formed the basis for your eligibility for the update. You may use the resulting updated Software only in accordance with the terms of this License.

**1.1.5 Source Code.** The Software’s source code is provided to You so that you can create modifications under the terms of this Agreement.

**1.1.5.1** While Telerik does not claim any ownership rights in Your Integrated Products, any modifications You develop will be the exclusive property of Telerik, and You agree to and hereby do assign all right, title and interest in and to such modifications and all rights associated therewith to Telerik.

**1.1.5.2** You will be entitled to use modifications of the Software’s source code developed by You under the terms of this Agreement and Telerik hereby grants You a license to use such modifications pursuant to Section 1.1.

**1.1.5.3** You acknowledge that the Software’s source code is confidential and contains valuable and proprietary trade secrets of Telerik. Under no circumstances may any portion of the Software’s source code or any modified version of the source code be distributed, disclosed or otherwise made available to any third party.

**1.1.5.4** Telerik DOES NOT provide technical support for any source code that has been modified by any party other than Telerik.

**1.1.5.5** The Software’s source code is provided “as is”, without warranty of any kind. Refunds are not available for any licenses that include a right to receive source code.

**2. Redistribution.** If you have purchased a Developer License, You may distribute the Programs as embedded in Your Integrated Products to Your end-users only pursuant to an end-user license that meets the requirements of this Section. You are not permitted to distribute the Software pursuant to this Section: as a standalone product; or as a part of any product other than Your Integrated

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### **3. No Trademark License**

You may not use the Telerik product names, logos or trademarks to market Your Integrated Product.

### **4. Delivery**

Telerik shall make a master copy of the Software available for download by Licensee in electronic files only.

### **5. Term and Termination**

This Agreement and the License granted hereunder shall continue until terminated in accordance with this Section. Unless otherwise prohibited by law, and without prejudice to Telerik's other rights or remedies, Telerik shall have the right to terminate this Agreement and the License granted hereunder immediately if You breach any of the material terms of this Agreement, and You fail to cure such material breach within thirty (30) days of receipt of notice from Telerik. Upon termination of this Agreement, all Licenses granted to You hereunder shall terminate automatically and You shall immediately cease use and distribution of the Software; provided, however, that any sublicenses granted to Your Authorized End-Users in accordance with Section 2 shall survive such termination. You must also destroy (i) all copies of the Software not integrated into a live, functioning instance(s) of Your Integrated Product(s) already installed, implemented and deployed for your Authorized End-User(s), and (ii) any product and company logos provided by Telerik in connection with this Agreement.

### **6. Product Discontinuance**

Telerik reserves the right to discontinue the Software or any component of the Software, whether offered as a standalone product or solely as a component, at any time. However, Telerik is obligated to provide support in accordance with the terms set forth in this Agreement for all discontinued Software or components for a period of 1 (one) year after the date of discontinuance.

### **7. Intellectual Property**

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### **8. Limited Warranty**

Telerik warrants solely to You that the Software will perform substantially in accordance with the accompanying written materials for a period of ninety (90) days after the date on which You purchase the License for the Software. Telerik does not warrant the use of the Software will be uninterrupted or error free at all times and in all circumstances, nor that program errors will be corrected. This limited warranty shall not apply to any error or failure resulting from (i) machine error, (ii) Your failure to follow operating instructions, (iii) negligence or accident, or (iv) modifications to the Software by any person or entity other than Telerik. In the event of a breach of warranty, Your sole and exclusive remedy and Telerik's sole and exclusive obligation, is repair of all or any portion of the Software. If such remedy fails of its essential purpose, Licensee's sole remedy and Telerik's maximum liability shall be a refund of the paid purchase price for the defective Software only. This limited warranty is only valid if Telerik receives written notice of breach of warranty no later than thirty (30) days after the warranty period expires. EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS SECTION 8, TELERIK DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF TITLE, NON-INFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

### **9. Limitation of Liability**

To the maximum extent permitted by applicable law, in no event will Telerik be liable for any indirect, special, incidental, or consequential damages arising out of the use of or inability to use the Software, including, without limitation, damages for loss of goodwill, work stoppage, computer failure or malfunction, or any and all other commercial damages or losses, even if advised of the possibility thereof, and regardless of the legal or equitable theory (contract, tort or otherwise) upon which the claim is based. In any case, Telerik's entire liability under any provision of this agreement shall not exceed in the aggregate the sum of the license fees Licensee paid to Telerik for the Software giving rise to such damages, notwithstanding any failure of essential purpose of any limited remedy. Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so this exclusion and limitation may not be applicable. Telerik is not responsible for any liability arising out of content provided by Licensee or a third party that is accessed through the Software and/or any material linked through such content. Any data included in the Software upon shipment from Telerik for testing use only and Telerik hereby disclaims any and all liability arising therefrom.

### **10. Indemnity**

You agree to indemnify, hold harmless, and defend Telerik and its resellers from and against any and all claims, lawsuits and proceedings (collectively "Claims"), and all expenses, costs (including attorney's fees), judgments, damages and other liabilities

resulting from such Claims, that arise or result from (i) Your use of the Software in violation of this Agreement, (ii) the use or distribution of Your Integrated Product or (iii) Your modification of the Software's source code.

## **11. Confidentiality**

Except as otherwise provided herein, each party expressly undertakes to retain in confidence all information and know-how transmitted or disclosed to the other that the disclosing party has identified as being proprietary and/or confidential or that, by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as proprietary and/or confidential, and expressly undertakes to make no use of such information and know-how except under the terms and during the existence of this Agreement. However, neither party shall have an obligation to maintain the confidentiality of information that (i) it received rightfully from a third party without an obligation to maintain such information in confidence; (ii) the disclosing party has disclosed to a third party without any obligation to maintain such information in confidence; (iii) was known to the receiving party prior to its disclosure by the disclosing party; or (iv) is independently developed by the receiving party without use of the confidential information of the disclosing party. Further, either party may disclose confidential information of the other party as required by governmental or judicial order, provided such party gives the other party prompt written notice prior to such disclosure and complies with any protective order (or equivalent) imposed on such disclosure. Each party's obligations under this Section 11 shall apply at all times during the term of this Agreement and for five (5) years following termination of this Agreement.

## **12. Governing Law**

This License will be governed by the law of the Commonwealth of Massachusetts, U.S.A., without regard to the conflict of laws principles thereof. If any dispute, controversy, or claim cannot be resolved by such good faith discussion between the parties, then it shall be submitted for resolution to a state or Federal court or competent jurisdiction in Boston, Massachusetts, USA, and the parties hereby agree to submit to the jurisdiction and venue of such court. Neither the Uniform Computer Information Transactions Act and the United Nations Convention nor the International Sale of Goods shall not apply to this Agreement. If any provision of this Agreement is to be held unenforceable, such holding will not affect the validity of the other provisions hereof. Failure of a party to enforce any provision of this Agreement shall not constitute or be construed as a waiver of such provision or of the right to enforce such provision.

## **13. Entire Agreement**

This Agreement sets forth our entire agreement with respect to the Software and supersedes any prior or contemporaneous communications regarding the Software. You agree that You are not relying on any representation or obligation other than those set forth in this Agreement. Use of any purchase order or other Licensee document in connection herewith shall be for administrative convenience only and all terms and conditions stated therein shall be void and of no effect unless otherwise agreed to in writing by both parties.

## **14. No Assignment**

You may not assign, sublicense, sub-contract, or otherwise transfer this Agreement, or any rights or obligations under it, without Telerik's prior written consent.

## **15. Survival**

Sections 1.1.5.5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15 and 16 shall survive the expiration or termination of this Agreement.

## **16. Severability**

If a particular provision of this Agreement is terminated or held by a court of competent jurisdiction to be invalid, illegal, or unenforceable, this Agreement shall remain in full force and effect as to the remaining provisions.

YOU ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, THAT YOU UNDERSTAND THIS AGREEMENT, AND UNDERSTAND THAT BY CONTINUING THE INSTALLATION OF THE SOFTWARE PRODUCT, BY LOADING OR RUNNING THE SOFTWARE PRODUCT, OR BY PLACING OR COPYING THE SOFTWARE ONTO YOUR COMPUTER HARD DRIVE, YOU AGREE TO BE BOUND BY THIS AGREEMENT'S TERMS AND CONDITIONS. YOU FURTHER AGREE THAT, EXCEPT FOR WRITTEN SEPARATE AGREEMENTS BETWEEN TELERIK AND YOU, THIS AGREEMENT IS A COMPLETE AND EXCLUSIVE STATEMENT OF THE RIGHTS AND LIABILITIES OF THE PARTIES.