

# Standard Commercial Licence for MiniBPM

## Agreement:

### 1. Definitions

“**Author**” means Particular Programs Ltd, a company incorporated in England and Wales [registration number 07801337] having its registered office at Flat 1, 141 Gloucester Terrace, London W2 6DX;

“**Licence**” means this agreement;

“**You**” means the individual or company to whom the Licence has been issued, superprinted at the foot of each page of the Licence;

“**Charges**” means the single sum for which the Standard Commercial Licence for MiniBPM is listed at the time of this agreement on the Author’s informational website entitled Breakfast Quay;

“**Materials**” means the software code and documentation identified by the Author as comprising MiniBPM and so published by the Author at the time of this agreement on the Author’s informational website entitled Breakfast Quay;

“**Source Code**” means those Materials that are provided in human-readable format, whether modified or unmodified by the Licensee;

“**Binary Code**” means those Materials that are provided in an executable format such as a static or dynamic library file, as well as any result of compiling the Source Code into an executable format such as a static or dynamic library file or executable software program;

“**Software Development Kit**” means any software program that allows a software developer to create other software where the Software Development Kit provides some of the functionality of the software so created; and

“**Product**” means a product or software program [other than a Software Development Kit] that is distributed under the Licensee’s name that incorporates a substantial part of the Binary Code and that adds significant primary functionality to that of the Materials.

### 2. Charges and Term of Licence

- 2.1 The Licence will come into force when the Charges have been paid by You and received by the Author.
- 2.2 The Licence will continue in force indefinitely, unless terminated in accordance with the provisions of Clause [7].

### 3. Licence grant

- 3.1 The Author hereby grants to You a non-exclusive worldwide licence to distribute the Binary Code subject to the provisions of Clause [4] as part of any number of Products during the term of the Licence.

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### 4. Attribution and Restrictions

- 4.1 You will place the following text [or text of substantially identical meaning] in the Product so that it is visible to the user of the Product in a prominent location as set out in the Appendix to the Licence: "This product uses the MiniBPM tempo estimator from Breakfast Quay".
- 4.2 You will not distribute any part of the Materials other than the Binary Code.
- 4.3 You will not distribute any part of the Materials as part of a Software Development Kit or in any form other than a Product as defined in Clause [1].

### 5. Warranties

- 5.1 The Author warrants to You that the Author has full power to enter into the Licence and to perform its obligations under the Licence.
- 5.2 You warrant to the Author that You have full power to enter into the Licence and to perform Your obligations under the Licence.

### 6. Limitations and exclusions of liability

- 6.1 Nothing in the Licence will:
  - (a) limit or exclude the liability of a party for death or personal injury resulting from negligence;
  - (b) limit or exclude the liability of a party for fraud or fraudulent misrepresentation by that party;
  - (c) limit or exclude any liability of a party under Section 12 of the Sale of Goods Act 1979 or Section 2 of the Supply of Goods and Services Act 1982;
  - (d) limit any liability of a party in any way that is not permitted under applicable law; or
  - (e) exclude any liability of a party that may not be excluded under applicable law.
- 6.2 The limitations and exclusions of liability set out in this Clause [6]:
  - (a) are subject to Clause [6.1];
  - (b) govern all liabilities, including liabilities arising in contract, in tort [including negligence] and for breach of statutory duty; and
  - (c) govern all liabilities arising under the Licence or in relation to the subject matter of the Licence.
- 6.3 The Author will not be liable in respect of any loss of profits, income, revenue, use or production.
- 6.4 The Author will not be liable in respect of any loss or corruption of any data, database or software.
- 6.5 The Author will not be liable in respect of any special, indirect or consequential loss or damage.

### 7. Termination

- 7.1 You may terminate the Licence at any time by giving at least 30 days' written notice to the Author.
- 7.2 The Author may terminate the Licence immediately by giving written notice to You if You commit any material breach of any term of the Licence.

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### 8. Effects of termination

- 8.1 Upon termination all the provisions of the Licence will cease to have effect, save that the following provisions of the Licence will survive and continue to have effect [in accordance with their terms or otherwise indefinitely]: Clauses 1, 6, 8 and 9.
- 8.2 On termination of the Licence, You will immediately cease to use the Materials and cease to distribute the Binary Code.

### 9. General

- 9.1 No breach of any provision of the Licence will be waived except with the express written consent of the party not in breach.
- 9.2 If a Clause of the Licence is determined by any court or other competent authority to be unlawful and/or unenforceable, the other Clauses of the Licence will continue in effect.
- 9.3 The Licence may not be varied except by a written document signed by or on behalf of each of the parties.
- 9.4 Subject to Clause [6.1]:
- (a) the Licence will constitute the entire agreement between the parties in relation to the subject matter of the Licence, and supersedes all previous agreements, arrangements and understandings between the parties in respect of that subject matter;
  - (b) the Licensee will have no remedy in respect of any misrepresentation (whether written or oral) made to it upon which it relied in entering into the Licence; and
  - (c) the Author will have no liability other than pursuant to the express terms of the Licence.
- 9.5 The Licence will be governed by and construed in accordance with English law; and the courts of England will have exclusive jurisdiction to adjudicate any dispute arising under or in connection with the Licence.

### Appendix: Prominent Attribution

For the purpose of Clause [4.1] a “prominent location” for the attribution text must satisfy the following requirements:

1. **It must be obvious.** It must be accessible through a function that a user of the program would routinely use to find further information about the application, such as an “About” menu function where that is a standard used on the platform for that purpose, or if there is no such standard, a single typical interaction with a clearly-indicated control within the main or home screen of the program.
2. **It must be immediate.** The attribution text must be clearly visible and readable as soon as the About function or equivalent is invoked, without requiring any further interaction from the user such as scrolling or clicking.
3. **It must be built-in.** The attribution text must be displayed by and within the application itself, without redirecting to any other program or network resource.