

Talking Mimes Must Die (TMMD)

END USER LICENSE AGREEMENT

1 APPLICATION OF AGREEMENT

- 1.1 This Agreement applies to your use of the Software and/or Workshop Materials (as those terms are defined below). By downloading, installing and/or using the Software and/or Workshop Materials:
- a you agree to this Agreement; and
 - b where you download, install and/or use the Software and/or Workshop Materials on behalf of another person (e.g. a company), you confirm that you are authorised to, and do in fact, agree to this Agreement on that person's behalf and that, by agreeing to this Agreement on that person's behalf, that person is bound by this Agreement.
- 1.2 If you do not agree to this Agreement, you must not download, install, access and/or use the Software and/or Workshop Materials.

2 INTERPRETATION

- 2.1 In this Agreement:

Documentation means the user and technical documentation for the Software provided by TLA, and includes any update of that documentation.

Intellectual Property Rights includes copyright, and all worldwide rights conferred under statute, common law or equity in relation to inventions (including patents), registered and unregistered trademarks and designs, circuit layouts, data and databases, confidential information, know-how, and all other rights resulting from intellectual activity. *Intellectual Property* has a consistent meaning, and includes any enhancement, modification or derivative work of the Intellectual Property.

TLA means TLA Limited, a New Zealand company, company number 5705278.

Software means the software known as *Talking Mimes*, or *Talking Mimes Must Die* (TMMD), including any Update.

Workshop Materials means the documentation and any other collateral, such as hardware sold or rented for use in running the software and associated workshops, supplied by *TLA* or any company licensed by *TLA* to distribute materials for running a TMMD workshop, and any amendments to these materials.

Update means a new version of the Software or Workshop Materials released or made available to you by *TLA* or any company licensed by *TLA* to distribute them.

You or your means you, or, if clause 1.1b applies, both you and the other person on

whose behalf you are acting.

2.2 In this Agreement:

- a clause and other headings are for ease of reference only and do not affect the interpretation of this Agreement;
- b words in the singular include the plural and vice versa;
- c a reference to:
 - i a **party** to this Agreement includes that party's permitted assigns;
 - ii **personnel** includes officers, employees, contractors and agents, but a reference to your personnel does not include TLA;
 - iii a **person** includes an individual, a body corporate, an association of persons (whether corporate or not), a trust, a government department, or any other entity;
 - iv **including** and similar words do not imply any limit; and
 - v a statute includes references to regulations, orders or notices made under or in connection with the statute or regulations and all amendments, replacements or other changes to any of them; and
- d no term of this Agreement is to be read against a party because the term was first proposed or drafted by that party.

3 LICENSE

TLA grants to you, and you accept, a non-exclusive and non-transferable license for the duration of this Agreement to use the Software, Documentation and Workshop Materials solely on the terms and conditions of this Agreement.

4 LICENSE CONDITIONS

4.1 You must:

- a use the Software, Documentation and Workshop Materials for lawful purposes only;
- b not copy (except making copies for your own back-up purposes), reproduce, translate, decompile, reverse-engineer, resell, modify, vary, sub- license or otherwise deal in the Software or the Documentation or the Workshop Materials except:
 - i as expressly provided for in this Agreement; or
 - ii to the extent expressly permitted by law; or
 - iii when modifying or reproducing Workshop Materials in whole or in part to improve outcomes for people with disabilities – this is permissible under the [Creative Commons BY-SA 4.0 license](#)

- c ensure the Software, Documentation and Workshop Materials are protected at all times from misuse, damage, destruction or any form of unauthorised use, copying or disclosure;
- d maintain all proprietary notices on the Software, Documentation and Workshop Materials;
- e not transfer, assign or otherwise deal with or grant a security interest in the Software, the Documentation, the Workshop Materials, or your rights under this Agreement; and
- f not challenge TLA's ownership of (including the Intellectual Property Rights in) the Software or the Documentation or the Workshop Materials.

5 PRICE AND OBLIGATIONS

5.1 TLA may make the Software and/or Workshop Materials available to you for free.

5.2 Where you download, install, access and/or use the Software and/or Workshop Materials, then:

- a this clause 5 applies; and
- b this Agreement applies except to the extent varied in this clause 5.

5.3 The Software and/or Workshop Materials are provided to you on an *as is* basis, and, despite any other provision in this Agreement, all conditions, warranties, guarantees and indemnities in relation to the Software and Workshop Materials are excluded by TLA to the fullest extent permitted by law.

5.4 No Fees are payable for your use of the Software.

5.5 Nothing in these Terms imposes any obligation to any parties:

- a on you: to purchase services; or
- b on TLA: to maintain any feature or part of the Software.

6 UPDATES

6.1 TLA may, at its discretion, from time to time make available or provide you with Updates.

7 INTELLECTUAL PROPERTY

7.1 TLA owns all Intellectual Property Rights in the Software, Documentation and Workshop Materials.

7.2 If you provide TLA with ideas, comments or suggestions relating to the Software or the Documentation (together **feedback**):

- a all Intellectual Property Rights in that feedback, and anything created by TLA as a result of that feedback (including new material enhancements, modifications or derivative works), are owned solely by TLA; and
- b TLA may use or disclose any feedback for any purpose.

8 LIABILITY

8.1 To the maximum extent permitted by law:

- a the Software, Documentation and Workshop Materials are provided "as is" without warranty of any kind, either expressed or implied, including, but not limited to, the implied warranties of merchantability and fitness for a particular purpose;
- b without limiting clause 8.1a:
 - i you acknowledge that the Software is designed for use for educational purposes only and not for medical, life safety or mission critical purposes; and
 - ii TLA makes no representation concerning the quality of the Software, Documentation or Workshop Materials, and does not promise that the Software or Workshop Materials will be error-free, bug-free, or will operate without interruption;
- c you use the Software, Documentation or Workshop Materials at your own risk; and
- d TLA is not liable or responsible to you or any other person for any claim, damage, loss, liability and cost under or in connection with this Agreement, the Software or Documentation or Workshop Materials, or your use of (or inability to use) the Software, Documentation or Workshop Materials. This exclusion applies regardless of whether TLA's liability or responsibility arises in contract, tort (including negligence), equity, breach of statutory duty, or otherwise.

8.2 To the maximum extent permitted by law and only to the extent clause 8.1 does not apply, the maximum aggregate liability of TLA under or in connection with this Agreement or relating to the Software, Documentation and Workshop Materials, whether in contract, tort (including negligence), breach of statutory duty or otherwise, will be limited (at TLA's option) to:

- a remedying, repairing or replacing the Software and/or Documentation and/or Workshop Materials (as applicable); and/or
- b refunding the licence fees paid by you for the Software.

8.3 Without limiting clause 8.1, TLA is not liable to you under or in connection with this Agreement for any:

- a loss of profit, revenue, savings, business, data and/or goodwill; or

b consequential, indirect, incidental or special damage or loss of any kind.

8.4 Except to the extent permitted by law, nothing in this Agreement has the effect of contracting out of the New Zealand Consumer Guarantees Act 1993 or any other liability or consumer protection law that cannot be excluded. To the extent TLA's liability cannot be excluded but can be limited, TLA's liability will be limited as set out in clause 8.2.

9 TERMINATION

9.1 TLA may, by notice to you, immediately terminate this Agreement if you are in breach of this Agreement.

9.2 On termination of this Agreement you must return to TLA or destroy all copies of the Software and Documentation in your possession or control.

9.3 Termination of this Agreement does not affect each party's rights and obligations accrued before the termination date.

10 GENERAL

10.1 Any illegality, unenforceability or invalidity of a provision of this Agreement does not affect the legality, enforceability or validity of the remaining provisions of this Agreement.

10.2 Any variation to this Agreement must be in writing and signed by both parties.

10.3 This Agreement sets out everything agreed by the parties relating to the Software, Documentation and Workshop Materials supersedes and cancels anything discussed, exchanged or agreed prior. The parties have not relied on any representation, warranty or agreement relating to the Software or Documentation or Workshop Materials that is not expressly set out in this Agreement, and no such representation, warranty or agreement has any effect.

10.4 This Agreement is governed by, and must be interpreted in accordance with, the laws of New Zealand. Each party submits to the non-exclusive jurisdiction of the Courts of New Zealand in relation to any dispute connected with this Agreement.