



Software License Agreement Terms & Conditions

Grafiti LLC (hereinafter "LICENSOR") and the licensee identified in the ORDER FORM (hereinafter "LICENSEE") agree as follows:

1. Grant

- 1.1 Subject to the provisions contained herein, LICENSOR grants to the LICENSEE a non-exclusive license for the use of the copyrighted computer software product(s) specified in the ORDER FORM (hereinafter the SOFTWARE) by AUTHORIZED END-USER (as defined below) at the Site specified in the ORDER FORM. In case of purchase through a re-seller / distributor, only authorised one approved by LICENSOR will be provided a license. For purposes of this Agreement, "AUTHORIZED END-USER" shall mean any person who has access to the SOFTWARE and is affiliated with the LICENSEE as (i) a full-time or part-time employee, or a (ii) full-time or part-time faculty member. For purposes of this Agreement, a Site is defined as the specific geographic locality where in is situated a single organizational entity. A specific geographic locality may be a building, a building complex, an academic campus or a corporate office. LICENSOR reserves the right to determine whether a given locality and organizational entity shall be considered a site under Licensor policy. This section 1.1 shall not apply if this Agreement is for a single-user license of the SOFTWARE.
- 1.2 If this Agreement is for a single-user perpetual license of the SOFTWARE as indicated in the ORDER FORM, then LICENSOR grants LICENSEE a non-exclusive right for one (1) designated individual the right to use the SOFTWARE on a home, work or portable computer as long as this individual is the only person using the SOFTWARE.
- 1.3 LICENSOR will ship one (1) copy of the SOFTWARE or email the link of e-media of the software specified in the ORDER FORM to LICENSEE within fifteen (15) days of the effective date of this Agreement.
- 1.4 LICENSOR grants LICENSEE a non-transferable, nonexclusive license to make the number copies of the SOFTWARE set forth in the ORDER FORM for use on computers owned and controlled by LICENSEE, provided that each such copy shall remain subject to all terms of this Agreement, and shall include the copy right notice and any other proprietary notice set forth in the media. This notice must appear externally on any distribution medium and internally in machine-readable form. LICENSEE further agrees to complete the customization process described in the documentation before making any copies of the SOFTWARE, and that all copies made will specify the site license name as shown in the ORDER FORM.
- 1.5 LICENSEE may from time-to-time order additional copies of the SOFTWARE or other copyrighted software products from LICENSOR pursuant to this Agreement, and if such orders are accepted in writing by LICENSOR, these products shall be considered to be included in the definition of SOFTWARE. LICENSEE may submit subsequent orders for other products LICENSOR make available under this Agreement and if such orders are accepted in writing by LICENSOR, these products shall be included in the definition of SOFTWARE.
- 1.6 LICENSOR retains all title, ownership and copyrights to the SOFTWARE, including the media upon which the SOFTWARE is provided and all copies duplicated by LICENSEE under this Agreement.
- 1.7 A perpetual license of the version of the SOFTWARE ordered is defined as a version of the software that works with the operating system and other hardware and software components that are listed in the installation requirements only and is not subject to any warranties or guarantees of operability or compatibility with hardware and software components that the version of the software ordered is not designed for.
- 1.8 A perpetual license of the version of the SOFTWARE ordered will be tested for operability and compatibility with the Operating system and other component software that the SOFTWARE version is designed to work with and two (2) prior versions of the Operating system unless otherwise specified.

2. Maintenance

- 2.1 For so long as this agreement is in effect, LICENSOR shall provide maintenance beginning the date LICENSEE receives the SOFTWARE.
- 2.2 Maintenance, as used in this Section 2, includes enhancements, upgrades and improvements to the SOFTWARE, when and if developed, and reasonable efforts to correct errors or deficiencies in the SOFTWARE. Maintenance further includes reasonable technical assistance via the telephone to Licensee's designated support representative. LICENSEE agrees that the determination of the extent of technical support required shall rest exclusively with LICENSOR and that LICENSOR is not required to correct every error or problem LICENSEE may have with the SOFTWARE.

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- 2.3 Maintenance will be provided only for the latest release of Licensee's version of the SOFTWARE, and may, but need not be provided if LICENSEE has modified the SOFTWARE or if a maintenance payment is past due.
- 2.4 LICENSEE shall have the sole and exclusive responsibility to provide technical support to any AUTHORIZED ENDUSER.

3. Payments

- 3.1 LICENSEE agrees to pay LICENSOR the LICENSEE FEE specified in the ORDER FORM within thirty (30) days of the date set forth on the LICENSOR invoice.
- 3.2 If LICENSEE orders and LICENSOR accepts a subsequent order per Section 1.6, then LICENSEE agrees to pay the applicable fee within thirty (30) days of the date set forth on the LICENSOR invoice.
- 3.3 If this Agreement is renewed, LICENSEE agrees to pay LICENSOR the renewal(in case of an annual renewal) fee applicable at the time of renewal on or before the anniversary date of each one (1) year renewal term.
- 3.4 LICENSOR agrees to publish current price lists from time to time and to make reasonable efforts to send notice of the approaching payments due and the applicable fee approximately sixty (60) days in advance. If LICENSEE requires a purchase order before payment can be made, LICENSEE agrees to issue such purchase order no less than thirty (30) days prior to the due date.
- 3.5 All payments are exclusive of any tariffs, duties or taxes imposed or levied by any government or governmental agency. LICENSEE shall be liable for payment of all such taxes, however designated, levied or based on Licensee's possession or use of the SOFTWARE or on this Agreement, including without limitation, state or local sales, use, value-added and personal property tax, but excluding any tax on the net income of LICENSOR.
- 3.6 Any payment required hereunder that is made late (including unpaid portions if incomplete payment) shall bear interest at the rate of one percent (1%) per month. The parties also agree as follows: (a) Any payment received more than thirty (30) days after becoming due shall be deemed "late" for purposes of this paragraph; and (b) Any interest charged or paid in excess of the maximum rate permitted by applicable law shall be deemed the result of a mistake and shall be credited or refunded (at LICENSOR' option) to LICENSEE.

4. Restricted Use

- 4.1 LICENSEE shall use the SOFTWARE under this Agreement only on computers which are; 1) owned or leased by LICENSEE and 2) controlled by LICENSEE. The number of AUTHORIZED END-USERS of the SOFTWARE shall not exceed the number of copies of SOFTWARE specified in the ORDER FORM (which number may be modified in the future, by mutual agreement between the parties). If the SOFTWARE is installed on a server or network, each AUTHORIZED END-USER who can access the SOFTWARE is considered to be using a copy of the SOFTWARE. All computers must be situated in the single location specified in the ORDER FORM, except that home use by full-time employees is permitted. This Section 4.1 shall not apply if this Agreement is for a single-user license of the SOFTWARE.
- 4.2 LICENSEE agrees to use the SOFTWARE only as indicated hereunder and not for commercial timesharing, rental, or service bureau use.
- 4.3 LICENSEE agrees not to create, or attempt to create, or permit to help others to create, the source code from the SOFTWARE furnished pursuant to this Agreement. LICENSEE agrees that it will not reverse engineer or decompile the SOFTWARE, except as permitted by statutory law
- 4.4 LICENSEE shall maintain records of each copy it makes of the SOFTWARE, which shall include at a minimum the AUTHORIZED END-USER, telephone number, room location and mailing address to denote the precise location of each computer for which a copy is made. This section 4.4 shall not apply if this agreement is for a single-user license of the SOFTWARE.
- 4.5 LICENSEE shall warn and advise each AUTHORIZED END-USER that receives a copy of the SOFTWARE that 1) the user is not permitted to copy the SOFTWARE, 2) the SOFTWARE cannot be transferred except as permitted herein and 3) LICENSEE must at all times have positive knowledge of the precise location of each copy of the SOFTWARE. This section 4.5 shall not apply if this agreement is for a single-user license of the SOFTWARE.

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5. Term and Termination

- 5.1 This Agreement shall become effective upon signing by LICENSEE and LICENSOR and shall run for a period of one (1) year for annual license from the effective date of this Agreement, which day shall be the Anniversary date. The term of this Agreement automatically renews for one (1) year terms from the anniversary date unless LICENSEE or LICENSOR provides written notice of nonrenewal of the entire Agreement at least Sixty (60) days prior to the anniversary. In case of perpetual license, the software can be used for life.
- 5.2 LICENSOR may terminate this Agreement upon written notice if LICENSEE violates any of the provisions of this Agreement and fails to correct the violation within thirty (30) days following a written notice specifying the breach.
- 5.3 Upon termination or nonrenewal of this Agreement, there shall be no refund of any payments, and LICENSEE shall pay promptly any fees which may be due.
- 5.4 In case of an annual license, upon termination or nonrenewal of this Agreement, LICENSEE shall return to LICENSOR all media received under this Agreement and shall destroy all copies, including partial copies, of the SOFTWARE. LICENSEE shall instruct all users for whom copies have been made under this Agreement that they are obliged to destroy at once any and all copies in their possession and shall require each user to submit written confirmation that the instructions have been followed. LICENSEE shall then promptly forward written notice to LICENSOR that all programs and materials containing the SOFTWARE have been destroyed or deleted from all computer libraries and storage and memory devices and are no longer in use or usable by LICENSEE.

6. Limited Warranties

- 6.1 LICENSOR warrants that it has the right to grant this license.
- 6.2 The media on which the SOFTWARE is furnished are warranted to be free of defects in workmanship and material under normal use for a period of sixty (60) days from the date of shipment by LICENSOR. The sole responsibility of LICENSOR and Licensee's exclusive remedy under this warranty will be to receive a replacement of the media, or a full refund if LICENSOR is unable to deliver media free from defects in workmanship and materials.
- 6.3 LICENSEE and LICENSEE alone is responsible for determining which SOFTWARE meets its particular needs, for installing the SOFTWARE, and for the results obtained. THIS SOFTWARE IS LICENSED "AS IS" WITHOUT WARRANTY AS TO ITS PERFORMANCE, EXCEPT FOR THE DISKETTE WARRANTY PROVIDED ABOVE. THERE ARE NO WARRANTIES EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH WARRANTIES ARE EXPRESSLY DISCLAIMED. IN NO EVENT SHALL LICENSOR BE RESPONSIBLE FOR ANY INDIRECT OR CONSEQUENTIAL DAMAGES OR LOST PROFITS, EVEN IF LICENSOR HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. EXCEPT AS SET FORTH IN SECTION 6.4, LICENSOR' MAXIMUM LIABILITY ARISING OUT OF, OR RELATING TO THIS AGREEMENT SHALL NOT EXCEED THE TOTAL FEES PAID HEREUNDER AS SET FORTH IN THE ORDER FORM BELOW.
- 6.4 LICENSOR agrees to defend, or settle at its option, any action against LICENSEE arising from a claim that the SOFTWARE infringes any US or European third-party patent or any copyright or trademark provided that;
 - i) LICENSOR is promptly notified of such action and is given control over the defence or settlement thereof;
 - ii) the SOFTWARE has not been modified by LICENSEE; and
 - iii) the charge of infringement has not arisen from the use of the SOFTWARE in combination with other hardware or SOFTWARE components where it is the combination which is charged to infringe. LICENSOR shall, at its option and expense, secure for LICENSEE the right to continue using the SOFTWARE or replace or modify the SOFTWARE so that it becomes no infringing, or grant LICENSEE a credit minus a reasonable depreciation for the use of the SOFTWARE, but in no event shall such credit be greater than the LICENSEE fee paid hereunder.

7. General Provisions

- 7.1 LICENSEE agrees that this Agreement and the SOFTWARE may not be assigned, sublicensed or transferred without the prior written consent of LICENSOR, which consent may be withheld in the sole discretion of LICENSOR.
- 7.2 LICENSEE grants LICENSOR the right to audit the books and records of LICENSEE regarding the use of the SOFTWARE and the copies made, including the right to reserve a list showing each copy's custodian and precise location upon written notice of five (5) days, and to physically conduct such an audit.

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- 7.3 LICENSOR shall not be liable for delays or non-performance of this Agreement occasioned by strikes, fires, accidents or other causes beyond the control of LICENSOR.
- 7.4 This Agreement supersedes all prior agreements, proposals, representations and communications between the parties relating to the subject matter herein. This Agreement shall also prevail over any purchase order submitted for the SOFTWARE.
- 7.5 The headings for each section are stated for convenience only and are not to be construed as limiting.
- 7.6 If a part of this Agreement is held unenforceable or invalid or prohibited under law, it shall be struck from this Agreement and shall not affect the enforceability of the other parts of this Agreement.
- 7.7 This agreement will be governed by the laws of the state of California.

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