

SOFTWARE LICENSE AGREEMENT SeMoA

Revision : 1.9

24th April, 2001

This Software License Agreement (hereinafter referred to as this "Agreement") dated as of the EFFECTIVE DATE (as hereinafter defined) is made and entered into between

... a corporation duly organized and existing under the laws of ... and having its principal office and place of business .. (hereinafter referred to as "LICENSEE")

and

Fraunhofer-Gesellschaft zur Förderung der Angewandten Forschung e. V., a non-profit organization duly organized and existing under the laws of the Federal Republic of Germany and having its principal office at Leonrodstraße 54, 80636 München, Germany, acting on behalf of its Fraunhofer Institut für Graphische Datenverarbeitung having its principal office at Rundeturmstraße 6, 64283 Darmstadt, Germany (hereinafter referred to as "FhG")

WITNESSETH:

WHEREAS, FhG is the owner of certain "SEMOA SOFTWARE" (as hereinafter defined), and wishes to have this SEMOA SOFTWARE utilized by LICENSEE; and

WHEREAS, FhG intends to make sure the SEMOA SOFTWARE (including SEMOA SOURCE CODE and OBJECT CODE) is free for all its users; and

WHEREAS, the SEMOA SOFTWARE License is designed to make sure that each licensee has the freedom to distribute copies of free software including SEMOA SOFTWARE SOURCE CODE and OBJECT CODE, that each licensee can change the SEMOA SOFTWARE SOURCE CODE and OBJECT CODE or use pieces of it in new free programs; and

WHEREAS, to protect each licensee's rights and to protect the free distribution of SEMOA SOFTWARE FhG needs to make restrictions. These restrictions translate to certain responsibilities for each licensee if licensee distributes copies of SEMOA SOFTWARE and / or if licensee modifies it; and for FhG's protection, FhG wants to make certain that each licensee understands that there is only a limited warranty and liability for this free software; and

WHEREAS any free program is threatened constantly by software patents, FhG wishes to avoid the danger that redistributors of SEMOA SOFTWARE or DERIVATIONS thereof will individually obtain patent licenses on portions of SEMOA SOFTWARE or DERIVATIONS, in effect making the program proprietary. To prevent this, FhG has made it clear that any patent on a portion of SEMOA SOFTWARE or DERIVATIONS thereof must be licensed for everyone's free use or not licensed at all; and

WHEREAS, LICENSEE wishes to obtain a non-exclusive license to use the SEMOA SOFTWARE solely for use in accordance with the terms of this Agreement; and

WHEREAS, FhG intends this Agreement to confer a license with LICENSEE retaining to its own use all ownership rights in the SEMOA SOFTWARE, including, but not limited to copyrights, trade mark rights, implementation rights and licensing rights therein, and further intends that no license, expressed or implied, for use other than herein set out shall be transferred hereby.

NOW THEREFORE, in consideration of the premises and the faithful performance of the mutual covenants hereinafter set forth the parties hereto hereby agree as follows:

1 Definitions

For the purpose of this Agreement, the following terms when used with a capital initial letter shall have the respective meanings set forth below:

- 1.1 "SEMOA SOFTWARE" means the information and/or data including SOURCE CODE and OBJECT CODE as described in Annex 1 of this Agreement, which information shall relate to the software provided by FhG under this Agreement. This Annex 1 shall be deemed part of this Agreement.
- 1.2 "APIs" means the application programming interfaces for the SEMOA SOFTWARE.
- 1.3 "SOURCE CODE" means software in human-readable, high-level language form, which when compiled or assembled, becomes the executable "OBJECT CODE" of a software program. All references to SOURCE CODE in this Agreement shall include both human readable (listing) and machine readable (source files) forms and all tools and documentation needed to build such software, as well as program documentation as it becomes available, including flow charts, programmers comments and design specifications for such software.
- 1.4 "OBJECT CODE" means machine-executable code in binary format, typically the result of processing the SOURCE CODE with an assembler or compiler.
- 1.5 "LICENSED PRODUCTS" means software products of LICENSEE, marketed under an established or registered brandname or trademark of LICENSEE and/or LICENSEE'S AFFILIATES, utilizing directly or indirectly in whole or in part the SEMOA SOFTWARE as defined in Annex 1.
 - (a) "FREE LICENSED PRODUCTS" means LICENSED PRODUCTS which are not sold, used, leased or otherwise disposed of by LICENSEE; LICENSEE'S AFFILIATES and/or and third part authorized by LICENSEE and/or LICENSEE'S AFFILIATES against a compensation in money or any other consideration, but instead are disposed of for free, solely for the purpose of generating a general public license without any restriction concerning their functionality.
 - (b) "LICENSED TRADE MARK" means the German Trade Mark "SEMOA" 39870680, Application Date December 8, 1998, Publication Date of Registration February 18, 1999.
- 1.6 "DERIVATIONS" means any addition to or deletion from the substance or structure of either the SOURCE CODE or any previous DERIVATIONS. When the SOURCE CODE or any DERIVATION is released as a series of files, DERIVATIONS are:
 - Any addition to or deletion from the contents of a file containing SOURCE CODE or previous DERIVATIONS.
 - Any new file that contains any part of the SOURCE CODE or previous DERIVATIONS.

- (a) "LICENSEE'S AFFILIATES" means any company which is owned or controlled, as hereinafter defined, by LICENSEE, but only as long as such control or ownership by LICENSEE exists.
 - (b) As used in Article 1.5 a company shall be deemed to own or control another if such company directly or indirectly owns more than 50% (fifty percent) in nominal value of the issued equity share capital of such other company, or more than 50% (fifty percent) of the shares entitled to vote upon the election of:
 - i. the directors, or
 - ii. persons performing functions similar to those performed by directors or
 - iii. persons otherwise having the right to elect or appoint (a) directors having the majority vote of the Board of Directors or (b) other persons having the majority vote of the highest and most potent directive body, of such other company,
- 1.7 "EFFECTIVE DATE" means date of last signature.
- 1.8 "TERRITORY" means any countries of the world, except for the LICENSED TRADE MARK, which is registered in Germany only.

2 GRANT OF RIGHT AND LICENSE

- 2.1 FhG hereby grants to LICENSEE a gratuitous, non-exclusive, non-transferable, non-assignable license with the right to sublicense to make copy, test, market, distribute SOURCE CODE and OBJECT CODE versions of the SEMOA SOFTWARE, and any derivative works thereof created by LICENSEE solely as part of FREE LICENSED PRODUCTS provided that:
- (a) LICENSEE exposes or publishes the APIs for the SEMOA SOFTWARE in a form in which applications other than FREE LICENSED PRODUCTS could call such APIs; and
 - (b) LICENSEE permits further redistribution of the SEMOA SOFTWARE by LICENSEE's customers of FREE LICENSED PRODUCTS and further LICENSEE informs LICENSEE's customers of FREE LICENSED PRODUCTS that the use of FREE LICENSED PRODUCTS is authorized and/or licensed; and
 - (c) LICENSEE includes a valid copyright notice in or on FREE LICENSED PRODUCTS; and
 - (d) LICENSEE includes the LICENSED TRADE MARK in or on FREE LICENSED PRODUCTS in case of authorized/licensed use in Germany; and

(e) derivative works meet the conditions:

- i. LICENSEE must cause the modified files to carry prominent notices stating that LICENSEE changed the files and the date of any change.
- ii. LICENSEE must cause any work that LICENSEE distributes or publishes, that in whole or in part contains or is derived from the SEMOA SOFTWARE or any part thereof, to be licensed as a whole in SOURCE CODE and in OBJECT CODE at no charge to all third parties under the terms of this License Agreement.
- iii. If the modified program normally reads commands interactively when run, LICENSEE must cause it, when started running for such interactive use in the most ordinary way, to print or display an announcement including an appropriate copyright notice and a notice that there is a limited warranty and liability and that user may redistribute the program under these conditions, and telling the user how to view a copy of this License Agreement. (Exception: if the SEMOA SOFTWARE itself is interactive but does not normally print such an announcement, LICENSEE's work based on the SEMOA SOFTWARE is not required to print an announcement.)

These requirements apply to the modified work as a whole. If identifiable sections of that work are not derived from the SEMOA SOFTWARE, and can be reasonably considered independent and separate works in themselves, then this License Agreement, and its terms, do not apply to those sections when LICENSEE distribute them as separate works. But when LICENSEE distributes the same sections as part of a whole which is a work based on the SEMOA SOFTWARE, the distribution of the whole must be on the terms of this License Agreement, whose permissions for other licensees extend to the entire whole, and thus to each and every part regardless of who wrote it.

Thus it is not the intent of this section to claim rights or contest LICENSEE's rights to work written entirely by LICENSEE, rather, the intent is to exercise the right to control the distribution of derivative or collective works based on the SEMOA SOFTWARE.

In addition, mere aggregation of another work not based on the SEMOA SOFTWARE with the SEMOA SOFTWARE (or with a work based on the SEMOA SOFTWARE) on a volume of a storage or distribution medium does not cause the other work to fall within the scope of this License Agreement.

Except as expressly granted in this Agreement, LICENSEE shall have no other rights in SEMOA SOFTWARE. Under no circumstances will anything in this Agreement be construed as granting, by implication, estoppel or otherwise, a license to any other technology owned by FhG other than the SEMOA SOFTWARE.

- 2.2 LICENSEE will deliver free of charge and at its own expense ten (10) samples of each type of FREE LICENSED PRODUCTS due for release, as soon as they become available, to the address of IGD as specified in Article 10.

3 USE OF SEMOA SOFTWARE AS A LIBRARY

LICENSED PRODUCTS and FREE LICENSED PRODUCTS that contain no derivative of any portion of SEMOA SOFTWARE, but are designed to work with SEMOA SOFTWARE by being compiled or linked with it, is called a "work that USES SEMOA SOFTWARE". Such a work, in isolation, is not a derivative work of SEMOA SOFTWARE, and therefore falls outside the scope of this License.

Said work can be used, sold, distributed, licensed or otherwise commercially disposed of by LICENSEE in his own sole discretion under terms of LICENSEE'S free choice.

LICENSEE must give prominent notice with each copy of the work that SEMOA SOFTWARE is used in it and that SEMOA SOFTWARE and its use are covered by this License. LICENSEE must supply a copy of this License. If the work during execution displays copyright notices, LICENSEE must include the copyright notice for SEMOA SOFTWARE among them, as well as a reference directing the user to the copy of this License.

4 TRADEMARKS

Neither party shall be entitled to use in its advertising, publicity or otherwise the other party's trademarks or trade-names in any manner or from, except as otherwise agreed in writing.

5 LIMITATIONS

- 5.1 FhG shall retain all right, title and interest in and to the SEMOA SOFTWARE subject to the license granted in Article 2. LICENSEE shall be entitled to establish all proprietary rights of itself in the intellectual property represented by LICENSEE-created enhancements and new features, whether in the nature of trade secrets, copyrights or patent rights or other rights. FhG shall be entitled to establish all proprietary rights for itself in the intellectual property represented by FhG-created enhancements and new features, whether in the nature of trade secrets, copyrights or patent rights or other rights. FhG shall be entitled to establish all proprietary rights for itself in

the intellectual property represented by FhG-created enhancements and new features, whether in the nature of patent rights or other rights.

- 5.2 FhG makes no representation, extends no warranties or indemnification of any kind, expressed or implied, nor assumes any responsibilities whatsoever with respect to the commercial utility of any of the FREE LICENSED PRODUCTS or with respect to the manufacture, use, sale or other disposition by LICENSEE, vendee or transferee of products incorporating or made by use of inventions licensed under this Agreement.
- 5.3 Nothing in this Agreement shall constitute or be construed as a warranty or representation by FhG that the FREE LICENSED PRODUCTS or SEMOA SOFTWARE is free from any claim of infringement of any patent or any other intellectual property right owned by any third party arising out of the manufacture, sale or use of the FREE LICENSED PRODUCTS by or for LICENSEE or LICENSEE's AFFILIATES.
- 5.4 FhG only declares and guarantees herewith that FhG is duly authorized and entitled to grant the license according to the provisions of this Agreement.
- 5.5 LICENSEE and LICENSEE's AFFILIATES shall at all times during the term of this Agreement and thereafter, indemnify, defend and hold FhG, its trustees, officers, employees and affiliates, harmless against all claims and expenses, including legal expenses and reasonable attorney's fees, arising out of the death of or injury to any person or persons or out of damage to property and against any other claim, proceeding, demand expense and liability of any kind whatsoever resulting from the production, manufacture, use, lease, consumption or advertisement of the FREE LICENSED PRODUCTS or arising from any obligation of LICENSEE hereunder. In no event shall FhG, its trustees, officers, employees and affiliates be liable for special, direct, indirect or consequential damages, losses, costs, charges, claims, demands, fees or expenses of any nature or kind.
- 5.6 LICENSEE shall use its best efforts to bring FREE LICENSED PRODUCTS to market through a thorough, vigorous and diligent program for exploitation and to continue active, diligent marketing efforts for FREE LICENSED PRODUCTS during the term of this Agreement.
- 5.7 LICENSEE commits itself to undertake all reasonable technical and legal efforts to prohibit the commercial redistribution of the FREE LICENSED PRODUCTS by LICENSEE and/or LICENSEE's AFFILIATES and/or its customers.

6 DURATION AND TERMINATION OF AGREEMENT

6.1 This Agreement shall be effective as of the EFFECTIVE DATE, after the last of the parties hereto has signed this Agreement.

This Agreement shall continue in full force and effect 7 years subsequent to the EFFECTIVE DATE.

5.1.1 LICENSEE is entitled to terminate this AGREEMENT by giving 6 (six) month written notice prior to December 31 of each calendar year following December 31, 2003 by registered letter.

6.2 In the event a party hereto substantially fails to comply with any of its obligations under this Agreement or of any Annex hereto and does not remedy the failure of performance within one (1) month after it has been notified in writing thereof, the other party may, by written notice, terminate this Agreement at the end of said period, without prejudice to any damages or legal redress to which it may be entitled. Any such termination shall not affect the rights to which have fallen due under this Agreement prior to such termination.

6.3 Should either party hereto become insolvent or be subjected to bankruptcy or winding up proceedings, the other party may, by written notice, terminate this Agreement immediately.

6.4 Should a third party, which does not own or control (as defined in Article 1.11.) LICENSEE as of the EFFECTIVE DATE, come to own or control LICENSEE after the execution of this Agreement by the parties, FhG may, by written notice, terminate this Agreement immediately.

7 MARKINGS

7.1 The form, location and language used in such markings shall be in accordance with the laws and practices of the country where such markings are used.

7.2 LICENSEE shall give clear reference to FhG and its technology in any FREE LICENSED PRODUCT ("About Box") and associated documentation, including a credits text "SEMOA SOFTWARE licensed by Fraunhofer IGD".

8 ASSIGNMENT / TRANSFER

8.1 FhG may assign or transfer this Agreement to any other company, person, firm or entity; provided, however, that FhG shall give notice of such assignment to LICENSEE prior to or concurrently with the effective date of such

assignment and provide further, however, that all of the terms and conditions of this Agreement shall be binding upon such assignee.

- 8.2 LICENSEE may not assign or transfer this Agreement in part or in its entirety to any third party without the prior written confirmation of FhG.

9 CONFIDENTIAL INFORMATION

- 9.1 The license granted in Article 2. is expressly conditioned upon LICENSEE retaining in confidence all information and know-how transmitted to LICENSEE by FhG that FhG 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 (hereinafter referred to as "CONFIDENTIAL INFORMATION"), and will make no use of the CONFIDENTIAL INFORMATION except under the terms and during the existence of this Agreement.
- 9.2 LICENSEE shall have no obligation to maintain the confidentiality of CONFIDENTIAL INFORMATION that:
- (a) LICENSEE received rightfully from another party prior to its receipt from FhG; or
 - (b) FhG has disclosed to a third party without an obligation to maintain such information in confidence; or
 - (c) is independently developed by LICENSEE. Further, LICENSEE may disclose CONFIDENTIAL INFORMATION as required by governmental or judicial order, provided LICENSEE gives FhG prompt notice of such order and complies with and protective order (or equivalent) imposed on such disclosure.
- 9.3 LICENSEE shall not reproduce, duplicate, copy or otherwise disclose, distribute, or disseminate the CONFIDENTIAL INFORMATION in any media, except on LICENSEE's premises to LICENSEE's permanent employees.
- 9.4 LICENSEE's obligation under this Article 8. shall survive any termination or expiration of this Agreement and shall extend to the earlier of such time as the CONFIDENTIAL INFORMATION is in the publicly domain or ten (10) years following termination or expiration of this Agreement.

10 MISCELLANEOUS PROVISIONS

10.1 Notices

All notices, summons and communications related to this Agreement and sent by either party hereto to the other shall be written in English and shall be given in writing by letter, telex or facsimile directed,

in respect of FhG to:

Fraunhofer-Gesellschaft zur Förderung der Angewandten Forschung e. V. Leonrodstraße 68, 80636 München - Germany

Attn: Director of Patent and License Department
Telefax: +49 89 1205-124

and to:

IGD - Fraunhofer-Institut für Graphische Datenverarbeitung Rundeturmstraße 6, 64283 Darmstadt - Germany

Attn: Dr. Christoph Busch
Telefax: +49 6151 155 499

in respect of LICENSEE to:

.....

.....

.....

.....

Attn:
Telefax:

or such other addresses as may have been previously specified (in the manner set forth above) in writing by either party to the other.

10.2 INFRINGEMENT

10.1 FhG shall not be under any liability to LICENSEE or LICENSEE's AFFILIATES for any infringement or alleged infringement of any patent or other intellectual property right owned or claimed by any third party arising out of the manufacture, sale or use of the FREE LICENSED PRODUCTS by or for LICENSEE or LICENSEE's AFFILIATES.

10.2 If LICENSEE shall become aware of any actual or apparent infringement by third parties of the SEMOA SOFTWARE, LICENSEE shall give prompt written notice to FhG/IGD of such fact, it being understood and agreed that FhG/IGD alone shall decide, in its sole discretion, whether, and if so, what, measures shall be taken as a result of any such infringement.

10.3 Nothing contained in this Agreement shall be construed:

- (a) as imposing on either party any obligation to institute any suit or action for infringement of the SEMOA SOFTWARE-copyrights hereunder, or to defend any suit or action brought by a third party which challenges or concerns the validity of SEMOA SOFTWARE-copyrights hereunder;
- (b) as conferring by implication, estoppel or otherwise any license or right to copy or to simulate the appearance, trade dress and/or design of any product of FhG;
- (c) as conferring by implication, estoppel or otherwise any license under the rights licensed pursuant to Article 2. hereof of manufacture, use, license or otherwise dispose of any product or device other than a FREE LICENSED PRODUCT.

10.3 Amendment

This Agreement or any provision thereof may be amended or modified only with the mutual consent of the parties as set out in a written instrument, signed by a duly authorized officer of each of the parties, and expressly stating the parties' intent to amend this Agreement.

10.4 Non-Waiver

If at any time a party shall elect not to assert its rights under any provision of this Agreement, such action or lack of action in that respect shall not be construed as a waiver of its rights under said provision or of any other provision of this Agreement.

10.5 Dispute Settlement

This Agreement shall be governed by the laws of the Federal Republic of Germany, without giving effect to its conflict of law provisions.

10.6 Binding Effect

This Agreement shall be binding upon and shall inure to the benefit of, the parties hereto and their assigns permitted under Article 7. hereof.

10.7 Severability

Should any part or provisions of this Agreement be held unenforceable or in conflict with the law of any jurisdiction, the validity of the remaining parts or provisions shall not be affected by this holding. Such unenforceable part or provision shall then be replaced, upon mutual written consent between the parties hereto, by other enforceable part or provisions which, in its effects, corresponds or comes closest to the effect of such unenforceable part or provision.

10.8 Entire Agreement

This Agreement including its Annexes embodies the entire understanding of the parties and cancels and supersedes any prior representations, warranties, or agreement between the parties relating hereto, and this Agreement is executed and delivered upon the basis of this understanding.

10.9 Administrative Expenses

LICENSEE shall bear all those costs and expenses arising in connection with payments originating from this Agreement.

10.10 Confidentiality

Notwithstanding anything to the contrary in this Agreement and subject to the conditions set forth in Article 8.1 of this Agreement, LICENSEE and FhG agree to maintain confidential the terms and conditions of this Agreement. LICENSEE and FhG shall only disclose information concerning the content of this Agreement to employees of LICENSEE, LICENSEE's AFFILIATES, FhG on a need-to-know basis for the proper implementation of this Agreement. FhG is entitled to disclose to third parties that LICENSEE has entered into this Agreement.

IN WITNESS WHEREOF,

each of the Parties hereto has caused this Agreement to be executed in two (2) original copies, one (1) for LICENSEE and one (1) for FhG by its duly authorized officer or representative.

_____, _____

München, _____

LICENSEE

Fraunhofer-Patentstelle
für die Deutsche Forschung

Name:

(Dr. M. Paulus)

Title:

Director of Patent and License Department

11 Annex 1 to the SOFTWARE License Agreement

11.1 Description of SEMOA SOFTWARE

"SEMOA SOFTWARE" consists of the files listed in file "FILES" that came with this license file. Each entry in "FILES" consists of a name and the MD5 hash of the file with this name. The MD5 hash of the complete file "FILES" is:

3ed7d256917fa8d35699b6d9fbfdc29a

In addition, "SEMOA SOFTWARE" includes a number of files which are generated dynamically, for instance the JavaDoc API documentation.