Jyloo Software GmbH Synthetica Look And Feel Single Application Software License Agreement

This License Agreement (the "Agreement") is between Jyloo Software GmbH with a principal place of business at Sonnenstr. 10, 86874 Tussenhausen, GERMANY ("Licensor"), and the customer ("Licensee") identified on the electronic order form submitted on behalf of Licensee (the "Order Form").

Licensor agrees to license its Synthetica Look and Feel software (the "Software") to Licensee on the terms and conditions described more fully herein. Software means a complete and unchanged copy of the object code version of the Synthetica software (including images) identified in the Order Form and posted on a download page of the Synthetica website (the "Download Page") made available to Licensee immediately after payment as provided in Section 3.

By installing, copying, or otherwise using the Software, you are agreeing to be bound by the terms of this Agreement. If you do not agree to the terms of this Agreement, you are not authorized to use the software.

- 1. <u>License Grant</u>. Licensor grants to Licensee a limited, non-exclusive, non-transferable, and worldwide right to (a) use, publicly perform, display and support the Software, and (b) to copy, make derivative works of, market, and distribute any portion of the Software directly and indirectly to Licensee's end user customer in connection with or as part of a Licensee product without modifying the Software.
- 2. Restrictions. Licensee shall not (a) provide its end user customers (each, an "End User") with any versions of the Software on a stand-alone basis; (b) sublicense, transfer or assign this License Agreement or any of Licensee's rights or obligations under this License Agreement, in whole or in part; (c) remove or obscure any copyright and trademark notices relating to the Software; (d) lease, license, use, make available, distribute or modify all or any part of the Software to any third party, except as otherwise expressly permitted herein; (e) copy the Software onto any public or distributed network; (f) create derivate works to compete with the Software; (g) use and distribute the Software together with more than one unique software product.
- 3. <u>Payments.</u> No later than thirty (30) days after submission of the Order Form, Licensee shall pay Licensor the license fee on the date Licensee submitted the Order Form. All payments shall be made in Euros or U.S. dollars. Licensee shall be responsible for paying all local, state, federal and international sales, value added, excise and other taxes and duties payable in connection with this License, other than taxes based upon Licensor's net income. Licensee shall not be permitted to access the Download Page until Licensor has received payment in full.
- 4. <u>Termination</u>. Licensor may terminate this License immediately if the Licensee shall breach any of the provisions of this License and such breach remains uncured 30 days after receipt of notice. In the event that Licensee becomes liquidated, dissolved, bankrupt or insolvent, whether voluntarily or involuntarily, or shall take any action to be so declared, Licensor shall have the right to terminate this License immediately. Upon expiration, cancellation or other termination of this License, Licensee shall immediately: (a) discontinue distribution of products that include the Software; and (b) destroy all copies of the Software, including (without limitation) as linked or compiled in any product. Sections 3 through 11 shall survive the termination of this License for any reason.

5. Support and Maintenance.

(a) In connection with the license granted hereunder, Licensor will provide Licensee with the following at no additional charge: (a) free upgrades to all minor revisions (V3.X.X) of the Software as long as a valid Support Subscription exists.

- (b) In addition, upon Licensee's request, Licensor shall provide e-mail support to Licensee with regard to the Software. Licensee shall pay Licensor a Support Fee as specified in the Order Form for each year of support. Such e-mail support shall entitle Licensee to receive a satisfactory response from Licensor within ten (10) working days of Licensee's request for assistance.
- (c) Upgrades to Software major releases are not part of this agreement. In case Licensee requires a major upgrade, a license agreement renewal is necessary.

6. Representations and Warranties.

- (a) Ownership. Licensor hereby represents and warrants that: (a) it has the right to enter into this Agreement; (b) it is the owner of the Software or otherwise has the right to grant to Licensee the rights and licenses granted herein; (c) that the Software and licenses granted to Licensee are free of any and all restrictions, settlements, judgments or adverse claims; (d) to the best of its knowledge, the Software does not infringe, misappropriate or violate any patent, copyright, trademark, trade secret or other proprietary rights of any third party; (e) there is currently no actual or threatened suit by any third party based on an alleged infringement, misappropriation or violation of such rights by Licensor; and (f) no further consent from any other person or entity is or will be required for Licensee to use and exercise the rights granted related to the Software granted to it under this Agreement.
- (b) General Warranties. Licensor hereby represents and warrants that the Software shall: (a) contain industry-standard devices or mechanisms to maintain the security and integrity of the data transmitted and stored by the Software and to protect against unauthorized access to the data stored by the Software; (b) be free of any viruses, worms, time bombs, Trojan horses or other harmful, malicious or destructive code; and (c) be free of software disabling devices, time-out devices, counter devices or devices intended to collect data regarding usage of the Software without the knowledge of Licensee.
- (c) Software Performance Warranty. Licensor represents and warrants that the Software shall conform in all material respects with the description of the Software set forth in the documentation.
- (d) Services Warranty. Licensor represents and warrants that each of Licensor's employees, agents and subcontractors assigned to perform any services hereunder, including training or maintenance services, shall have the proper skills, training, and professional background to perform such services and that such services will be performed in a competent and professional manner. Licensor further represents and warrants that each deliverable shall be subject to each representation and warranty, which applies to Software in this Section 6 (Representations and Warranties).
- (e) Disclaimer of Warranties. LICENSOR EXPRESSLY DISCLAIMS, AND LICENSEE EXPRESSLY WAIVES, ALL WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING WARRANTIES OF MERCHANTIBILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, SYSTEM INTEGRATION, NON-INTERFERENCE AND ACCURACY OF INFORMATIONAL CONTENT. LICENSOR DOES NOT WARRANT THAT THE LICENSED SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR THAT THE OPERATION OF THE LICENSED SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT ERRORS WILL BE CORRECTED. THE ENTIRE RISK OF THE LICENSED SOFTWARE'S QUALITY AND PERFORMANCE IS WITH LICENSEE. Without limiting the generality of the foregoing disclaimer, Licensee acknowledges that the Licensed Software is not specifically designed, manufactured or intended for use in the planning, construction, maintenance, control or direct operation of nuclear facilities, aircraft navigation, control or communication systems, weapons systems or direct life support systems.

- 7. Proprietary Rights. Licensee agrees that the copyright, patent, trade secrets and all other intellectual proprietary rights of whatever nature in the Software and related documentation, including derivative works, are and shall remain the exclusive property of Licensor and any third party suppliers. Nothing in this License should be construed as transferring any aspects of such rights to Licensee or any third party. Licensor reserves all rights not expressly granted herein.
- 8. <u>Indemnification</u>. Licensee hereby indemnifies and agrees to defend Licensor against any and all damages, judgments and costs (including reasonable attorneys' fees) related to any claim based upon: (a) an allegation that the Licensee Application infringes the intellectual property of a third party; (b) use of the Software in a manner prohibited under this License or in a manner for which the Licensed Software was not designed; (c) integration or use of the Software with the Licensee Application (where use of the Software alone would not infringe this agreement); (d) changes made by Licensee to the Software (where use of unmodified Software would not infringe this agreement); (e) changes made, or actions taken, by Licensor upon Licensee's direct instructions; or (f) bodily injury, property damage or any other damage or injury due to the use or inability to use an Integrated Product.
- 9. Limitation of Liability. LICENSOR SHALL HAVE NO LIABILITY WITH RESPECT TO ITS OBLIGATIONS UNDER THIS AGREEMENT OR OTHERWISE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING (WITHOUT LIMITATION) ANY LOST PROFITS OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANY OTHER PROVISION IN THIS AGREEMENT, THE LIABILITY OF LICENSOR FOR ANY REASON AND UPON ANY CAUSE OF ACTION SHALL BE LIMITED TO THE AMOUNT PAID TO LICENSOR BY LICENSEE UNDER THIS AGREEMENT. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING (WITHOUT LIMITATION) BREACH OF CONTRACT, BREACH OF WARRANTY, NEGLIGENCE, MISREPRESENTATIONS AND OTHER TORTS. THE PARTIES AGREE THAT THE REMEDIES AND LIMITATIONS HEREIN ALLOCATE THE RISKS BETWEEN THE PARTIES AS AUTHORIZED BY APPLICABLE LAWS. THE LICENSE FEES ARE SET IN RELIANCE UPON THIS ALLOCATION OF RISK AND THE EXCLUSION OF CERTAIN DAMAGES AS SET FORTH IN THIS AGREEMENT.
- 10. <u>Authority</u>. Each party to this Agreement represents that the person executing this Agreement on such party's behalf is authorized to execute this Agreement and upon execution, this Agreement shall be a valid and binding agreement of the parties enforceable in accordance with its terms.

11. Miscellaneous.

(a) *Interpretation*. Failure by Licensor to exercise any right or remedy does not signify acceptance of the event giving rise to such right or remedy. No action arising out of this License may be brought by Licensee more than one year after the cause of action has accrued. If any part of this License is held by a court of competent jurisdiction to be illegal or unenforceable, the validity or enforceability of the remainder of this License shall not be affected and such provision shall be deemed modified to the minimum extent necessary to make such provision consistent with applicable law and, in its modified form, such provision shall be enforceable and enforced. Licensor reserves the right not to accept any Order Form. Any invoice issued by Licensor in connection with this License shall be deemed a part of this Agreement. To the extent of any inconsistency between an Order Form and an invoice issued by Licensor, the terms and conditions of the invoice shall prevail; Licensee shall be deemed to have accepted an invoice upon payment of such invoice. In the event that Licensee placed an order by telephone or through an authorized sales representative, the invoice issued by Licensor shall constitute the Order Form.

- (b) *Binding*. This Agreement will be binding upon and inure to the benefit of the parties, their respective successors and permitted assigns. Except, without the prior written consent of Licensor, Licensee may not assign this License or its rights or obligations under this License to any person or party, whether by operation of law or otherwise; any attempt by Licensee to assign this License without Licensor's prior written consent shall be null and void. There are no intended third party beneficiaries of this License. The parties are, and shall remain, independent contractors; nothing in this License is designed to create, nor shall create between them, a partnership, joint venture, agency, or employment relationship.
- (c) Governing Law; Dispute Forum. The parties hereby agree that any disputes arising under this Agreement may be brought by either Party in that Parties chosen jurisdiction. In no event shall the United Nations Convention on Contracts for the International Sale of Goods apply to, or govern, this License. Notwithstanding the foregoing, either party may bring a counterclaim in an action in the same jurisdiction in which the originating claim was filed, and either party may enforce any judgment rendered by such court in any court of competent jurisdiction. Licensee shall comply at its own expense with all relevant and applicable laws related to use and distribution of the Software as permitted in this License. Notwithstanding the foregoing, Licensor may seek injunctive or other equitable relief in any jurisdiction in order to protect its intellectual property rights. The parties have agreed to execute this License in the English language, and the English language version of the Agreement will control for all purposes. Any action brought under this License shall be conducted in the English or German language.
- (d) Notice. Unless otherwise agreed, any notice under this License shall be delivered and addressed to Licensee at the address set forth on the Order Form, and to Licensor. Notice shall be deemed received by any party: (a) on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified; (b) on the third day after deposit, if mailed by certified, first class, postage prepaid, return receipt requested mail, or by reputable, expedited overnight courier; or (c) on the fifth day after deposit, if sent by reputable, expedited international courier. Either party may change its address for notice purposes upon notice in accordance with this Section. Licensor may identify Licensee as a commercial licensee, including on the Licensor's web site.
- (e) Entire Agreement. This Agreement (including the Order Form and the invoice) comprises the entire agreement, and supersedes and merges all prior proposals, understandings and agreements, oral and written, between the parties relating to the subject matter of this License. This Agreement may be amended or modified only in a writing executed by both parties. To the extent of any conflict or inconsistency between this License and any invoice or other document submitted by Licensee to Licensor, this License will control. Licensor's acceptance of any document shall not be construed as an acceptance of provisions which are in any way in conflict or inconsistent with, or in addition to, this License, unless such terms are separately and specifically accepted in writing by an authorized officer of Licensor.