

Elm-Pair Software License Terms

1. *Order.* These terms, together with the order referencing them, make up a software license agreement. The software, the developer, and the customer are all identified on the order.
2. *Versions.* This agreement covers all versions of the software that the vendor makes generally available, or specifically provides to the customer, while this agreement continues.
3. *Modifications.* The customer may make changes to the software's source code, compile those changes, and run changed versions of the software.
4. *Billing.*
 - (a) *Charges.* The customer agrees to pay the fees on the order. The vendor agrees to charge the customer's payment card per the order.
 - (b) *Billing Errors.* The customer agrees to give the vendor notice of any suspected billing error within thirty days after the charge is made. Both sides agree to resolve any potential billing errors promptly and in good faith. The vendor agrees to refund the part of any charge resolved to be an overpayment within seven days of resolution.
5. *Term and Termination.*
 - (a) *Fixed Term.* This agreement will continue for one year.
 - (b) *Termination.* Either side can terminate this agreement immediately if the other side breaches and fails to cure their breach within fourteen days of notice.
6. *Use.*
 - (a) *Permitted Use.* The customer may use the software only for its own computing needs.
 - (b) *Prohibited Uses.* The customer may not:
 - (i) sell, lease, license, or sublicense the software or documentation
 - (ii) allow access to the software by others not licensed under this agreement
 - (iii) share copies of the software or documentation with others not licensed under this agreement
 - (iv) make so much of the functionality of the software available to others as software-as-a-service that the service competes with the software for customers
 - (v) assist or allow others to use the software against the terms of this agreement
7. *Licenses.*
 - (a) *Software Copyright License.* The vendor grants the customer a standard license for any copyrights in the software that the vendor can license, to copy, install, back up, and use the software as allowed under this agreement.

- (b) *Software Patent License.* The vendor grants the customer a standard license for any patents the vendor can license or becomes able to license, to use the software as allowed under this agreement.
- (c) *Documentation Copyright License.* The vendor grants the customer a standard license for any copyrights in the documentation that the vendor can license, to read, back up, and copy the documentation.
- (d) *Standard License Terms.* A standard license means a nonexclusive license for the term of this agreement, for versions of the software covered by this agreement, that is conditional on payment of all fees as required by this agreement and subject to any use limits in this agreement.
- (e) *No Other Licenses.* Apart from the licenses in *Section 7 (Licenses)*, this agreement does not license or assign any intellectual property rights.

8. *Open Source.*

- (a) *Open Source Compliance.* Some components of the software may be open source software available under free, public licenses. If the public license terms for any open source component conflict with the terms of this agreement, only the public license terms apply to that component, not the terms of this agreement. If the license terms for any open source component require an offer of source code or other information related to that component, the vendor agrees to provide on written request.
- (b) *Dual Licensing.* If any part of the software is or becomes available under a public license:
 - (i) While the customer's licenses continue, the customer must abide by this agreement, not the public license.
 - (ii) After the customer's licenses end, the customer must abide by the public license.
 - (iii) The customer must abide by the terms of the public license for any versions of the software not covered by this agreement.

9. *Delivery.*

- (a) *Materials.* The vendor agrees to deliver the following to the customer within three days:
 - (i) a copy of the software in compiled form
 - (ii) a copy of the software's source code in the preferred form for making changes
 - (iii) copies of any scripts or configuration files necessary to compile the software's source code
 - (iv) a copy of the software's documentation
- (b) *Method.* The vendor agrees to deliver all materials by e-mail or by making them available to download online, without any additional charge. The vendor agrees to

make new versions of the software covered by this agreement available in the same way, within three days of making it generally available.

10. *Technical Support.*

- (a) *Basic Support.* During its regular business hours, the vendor agrees to respond to e-mail support requests from customer about configuration of, use of, and problems with the software and its documentation. The vendor does not agree to any specific service levels for response to support requests.
- (b) *Access.* On the vendor's request, the customer agrees to give the vendor prompt access to personnel, systems, and information needed to respond to support requests.
- (c) *Confidentiality.* On the customer's request, the vendor will agree to the terms of a standard, published, mutual nondisclosure agreement with the customer, for the purpose of fulfilling its support obligations under this agreement.

11. *Warranties.*

- (a) *Perform As Documented.* The vendor guarantees that the software will perform as described in its documentation while this agreement continues, except when:
 - (i) using older version of the software than the latest provided under this agreement
 - (ii) using the software with modifications
 - (iii) running the software using hardware or software different from that required, according to the documentation
 - (iv) combining the software with other software or hardware in ways not described in the documentation
- (b) *Malware.* The vendor guarantees that the software it delivers will be free of malicious code, such as computer worms and viruses.
- (c) *Limiting Code.* The developer guarantees that the software it delivers will be free of code that automatically limits or disables software functionality, other than:
 - (i) code that limits or disables functionality on failure to validate license keys
 - (ii) code that limits or disables functionality based on automatic monitoring of agreed limits on usage
- (d) *Software Dependencies.* If the software depends on, installs, configures, or links to other software in order to function, the vendor guarantees that those software dependencies will be either provided in the copies of the software delivered to the customer or generally available for the customer to download, free or charge, from a well known website or Internet service, such as an open source software package repository.

12. *Liability.*

- (a) ***Disclaimer. Section 11 (Warranties) sets out the only warranties the vendor provides for the software. The vendor disclaims any warranties the law might***

otherwise imply, like warranties of merchantability, fitness for any particular purpose, title, or noninfringement.

- (b) ***Unforeseeable Damages.*** *Neither side will be liable for breach-of-contract damages they could not have reasonably foreseen when entering into this agreement.*
 - (c) ***Liability Cap.*** *Except for Section 12(d) (Uncapped Liabilities), neither side's total liability for breach of this agreement will exceed the amount of fees the vendor received from the customer under this agreement during the twelve months before the first claim is made. This limit applies even if the side liable is advised that the other may suffer damages, and even if the customer paid no fees at all.*
 - (d) ***Uncapped Liabilities.*** *Section 12(c) (Liability Cap) does not apply to:*
 - (i) the customer's obligations to pay fees
 - (ii) the vendor's obligations to indemnify the customer
 - (iii) liabilities the law requires to be unlimited
13. ***Indemnities.*** *These indemnities apply as long as the customer has paid all licensing fees as required by this agreement:*
- (a) ***General Indemnity.*** *Subject to Section 13(e) (Indemnification Process), the vendor agrees to indemnify the customer for legal claims by others alleging that the software infringes any copyright, trademark, or trade secret right, or breaks any law.*
 - (b) ***Patent Indemnity.*** *The vendor will not indemnify the customer for any claims by others alleging that the software infringes any patent.*
 - (c) ***Scope of Indemnity.*** *Throughout this agreement, to indemnify means to indemnify and hold the customer harmless for all liability, expenses, damages, costs, and reasonable attorney fees, as well as to defend the indemnified party.*
 - (d) ***Only Remedy.*** *Both sides agree that indemnification will be the only legal remedy for claims covered by indemnity.*
 - (e) ***Indemnification Process.*** *Both sides agree that to receive indemnification under this agreement, they must give notice of any covered claim quickly, allow the other side to control investigation, defense, and settlement, and cooperate with those efforts. Both sides agree that if they fail to give notice of any covered claim quickly, indemnification will not cover amounts that could have been defended against or mitigated if notice had been given quickly. Both sides agree that if they take control of the defense and settlement of any covered claim, they will not agree to any settlements that admit fault or impose obligations on the other side without their signed, written permission.*
 - (f) ***Repair, Replace, Refund.*** *If the vendor or the customer receives written notice of a claim that the software infringes any intellectual property right or breaks any law, or vendor reasonably anticipates a claim of that kind:*

- (i) The developer may provide the customer a new version of the software that no longer infringes or breaks the law. That new version will be covered by this agreement. The customer will not pay any additional fee for the new version.
- (ii) If the problem is infringement, the developer may get licenses for the customer so that the customer's use of the software no longer infringes.
- (iii) If the problem is illegality, the developer may get the approvals, licenses, or other requirements needed to abide by the law.
- (iv) The developer may refund any fees the customer has prepaid under this agreement for time remaining in the term of this agreement, on a proportional basis, and end this agreement immediately by giving the customer notice.

14. *General Contract Terms.*

- (a) *Notices.* Both sides agree to give notice under this agreement, the side giving notice must send by e-mail to the address the recipient gave on the order, or to a different address given later for notices going forward, in the English language. If either side finds that e-mail can't be delivered to the e-mail address given, the sender may give notice by registered mail to the address on file for the recipient with the state under whose laws it is organized.
- (b) *Governing Law.* This agreement will be governed by the law of The Netherlands.
- (c) *No CISG.* The United Nations Convention on Contracts for the International Sale of Goods will not apply to this agreement.
- (d) *No UCITA.* As far as the law allows, the Uniform Computer Information Transactions Act will not apply to this agreement.
- (e) *Dispute Resolution.* The parties do not agree to mediation or arbitration of disputes related to this agreement.
- (f) *Enforcement.* Only the parties may enforce rights under this agreement.
- (g) *Only Terms.* Both sides intend the terms of this agreement, together with the order, as the final, complete, and only expression of their agreement about the software.
- (h) *Unenforceable Terms.* If a court decides that any part of this agreement is invalid or unenforceable for any reason, and that enforcing the rest of this agreement would not defeat the purpose of this agreement, then rest of this agreement will still apply.
- (i) *Excuses.* Neither side will be liable for any failure or delay meeting any obligation under this agreement caused by:
 - (i) failure of the other side or its personnel to meet their obligations under this agreement
 - (ii) actions done or delayed at the written request of the other side
 - (iii) fire, flood, earthquake, and other natural disasters

- (iv) declared and undeclared wars, acts of terrorism, sabotage, riots, civil disorder, rebellions, and revolutions
- (v) extraordinary malfunction of Internet infrastructure, data centers, or communication utilities
- (vi) government actions taken in response to any of these causes
- (j) *Amendments.* Both sides may change or add to the terms of this agreement only by signing a written amendment.
- (k) *Waivers.* Both sides will waive terms of this agreement, if at all, only in signed writing.
- (l) *No Assignment.* Neither side may assign any right under this agreement without the other side's signed, written permission. Neither side will unreasonably refuse permission. Any attempt to assign against the terms of this agreement will have no legal effect.
- (m) *No Delegation.* Neither side may delegate any performance under this agreement. Any attempt to delegate will have no legal effect.