pdf-tools.com
Premium PDF Technology

GENERAL LICENSE AGREEMENT FOR BINARY PDF TOOLS

Version 1.4.1

RECITALS

This License Agreement is between PDF Tools AG, located at Geerenstrasse 33, 8185 Winkel, Switzerland ("SUPPLIER"), and the legal entity specified in the license fee bill ("LICENSEE").

WHEREAS, SUPPLIER and LICENSEE, desire to enter into a License Agreement whereby SUPPLIER will license to LICENSEE, certain computer software programs.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants and agreements set forth below, the parties agree as follows:

1 DEFINITIONS

1.1   BINARY PDF TOOL means the compiled, linked and executable code of one of SUPPLIER'S PDF tools including but not limited to PDF Library SDK, PDF Prep Tool Suite, PDF Command Line Suite, PDF Form Filling & Flattening Tool, PDF Batch Stamp Tool for Windows, Unix and Mac/OS X, also referred to as CLASSIC PDF TOOLS, and the SUPPLIER'S line of 3-Heights™ PDF tools for Windows, Unix, Mac/OS X and other platforms, also referred to as 3-Heights™ PDF TOOLS.

1.2   LICENSED SOFTWARE means the particular BINARY PDF TOOL licensed to LICENSEE by SUPPLIER under this Agreement.

1.3   END-USER APPLICATION means the LICENSEE'S own application that contains all or part of the LICENSED SOFTWARE.

1.4   END-USER means the organizations or corporations and the personnel employed by, or associated with the organizations of the LICENSEE, where the LICENSEE authorizes use of the END-USER APPLICATION. LICENSEE shall permit the END-USER to use the LICENSED SOFTWARE only as expressly permitted by the terms of this AGREEMENT.

1.5   SERVER COMPUTER means a computer that can be accessed by concurrent users. Examples of SERVER COMPUTERs are computers that run Windows NT Server, Windows 2000 Server or Windows 2003 Server operating systems, and most UNIX systems.

1.6   CLIENT COMPUTER means a computer designed for and used by a single user. Examples of CLIENT COMPUTERs are desktop computers and laptops that run Windows 98, Windows NT Workstation, Windows 2000 Workstation or Windows XP operating systems.

1.7   CONCURRENT USER LIMIT defines the maximum number of users that are permitted to access the LICENSED SOFTWARE concurrently.

2 LICENSE GRANT

SUPPLIER grants to LICENSEE, for the term of this Agreement, a non-exclusive, non-transferable, corporation/company-wide right to:

2.1 Internal Use

2.1.1   Use the LICENSED SOFTWARE and (where desired and permitted) incorporate into, or use alongside LICENSEE'S own applications for internal use only.

2.1.2   Copy and distribute the LICENSED SOFTWARE, for internal use only.

2.2 Product Distribution

2.2.1   Copy and distribute the LICENSED SOFTWARE as an integral part of its END-USER APPLICATION to END-USERS.

2.2.2   LICENSEE is responsible for any and all use of the LICENSED SOFTWARE, whether the use is by LICENSEE or END-USER, and LICENSEE is responsible for ensuring the enforcement of all terms of this Agreement.

2.3 General Terms

2.3.1   No other use of the LICENSED SOFTWARE is permitted.

2.3.2   The LICENSED SOFTWARE shall only be used by authorized users employed by or associated with the LICENSEE, and those employed by or associated with the LICENSEE's END-USER, as permitted by the LICENSEE.

2.3.3   The license fee for the LICENSED SOFTWARE permits the distribution of a specified number of copies of the LICENSED SOFTWARE for LICENSEES own internal use, and use by the LICENSEE's END-USER, and expressly forbids the LICENSEE to sell or otherwise permit use of the LICENSED SOFTWARE by any other party.

2.3.4   The maximum number of copies that LICENSEE may distribute is determined by the number of license purchased as specified in the license fee bill or a separate document.

2.3.5   LICENSED SOFTWARE is limited to a specific operating system type (e.g. Windows 32 bit systems/Intel, Mac OS/X, Intel/Linux, Free BSD, Sun Solaris, IBM AIX, HP-UX) as specified in the license fee bill or a separate document.

2.4 LICENSE TYPES

2.4.1   CLIENT LICENSE

A CLIENT LICENSE allows deploying the LICENSED SOFTWARE to one (1) CLIENT COMPUTER. It does not include the right for access by concurrent users.

2.4.2 SERVER LICENSE

A SERVER LICENSE allows deploying the LICENSED SOFTWARE to one (1) SERVER (or CLIENT) COMPUTER or a server cluster at one physical location. The CONCURRENT USER LIMIT (the maximum number of users that may access the LICENSED SOFTWARE concurrently) is identified in the license fee bill or a separate document.

2.4.3 OEM LICENSES

An OEM LICENSE is required when the LICENSED SOFTWARE is incorporated into a software product that is used outside of LICENSEE'S company, e.g. when the software product is sold or distributed to customers of LICENSEE. OEM Licenses are issued for one (1) specific LICENSEE application.

2.4.3 EVALUATION LICENSE

An EVALUATION LICENSE allows evaluating the LICENSED SOFTWARE to determine if the LICENSED SOFTWARE meets the LICENSEE'S requirements. An EVALUATION LICENSE may **not** be used for development, testing or production.

3 PROPRIETARY PROTECTION

3.1   LICENSEE acknowledges and agrees that the LICENSED SOFTWARE contains valuable trade secrets and proprietary information that are the property of SUPPLIER. LICENSEE covenants and agrees not to encumber the LICENSED SOFTWARE in any manner, nor market, sell, assign, lease, transfer, license or sub-license the LICENSED SOFTWARE or any part or parts thereof, other than in accordance with the terms and conditions of this Agreement.

3.2   LICENSEE shall protect the confidentiality of the LICENSED SOFTWARE and any documentation provided with the LICENSED SOFTWARE, and of all trade secrets and proprietary or other confidential information contained in such software documentation or libraries to at least the degree as the protection provided LICENSEE with respect to LICENSEE's own proprietary and confidential materials. Notwithstanding the preceding sentence, the protection required by LICENSEE under this paragraph shall not be less than reasonable protection. LICENSEE shall not knowingly allow or facilitate any attempt to recreate, generate, or reverse-engineer any version or any portion of any version of the LICENSED SOFTWARE by any person, nor shall LICENSEE aid, abet, or knowingly permit others to do so.

3.3.   LICENSEE shall be liable to SUPPLIER for any and all damages incurred by LICENSEE as a direct or indirect result of any unauthorized disclosure of confidential information, including court costs and reasonable attorney fees. Additionally, LICENSEE acknowledges and agrees that disclosure of the trade secrets or proprietary or other confidential information of SUPPLIER or uses of the LICENSED SOFTWARE in breach of this Agreement is likely to cause SUPPLIER harm for which damages may not be adequate remedy, and that SUPPLIER shall, therefore, be entitled to equitable relief to restrain such breach, without prejudice to any other right or remedy.

4 LIMITATION OF WARRANTY AND LIABILITY.

THE LICENSED SOFTWARE AND ASSOCIATED DOCUMENTATION ARE PROVIDED "AS IS", WITHOUT WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, EXCEPT AS OTHERWISE PROVIDED IN SECTION 5 BELOW. SUPPLIER'S MAXIMUM LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO THE REFUND OF ALL LICENSE FEES PAID FOR THE THEN CURRENT LICENCE TERM BY LICENSEE. SUPPLIER WILL NOT BE LIABLE FOR ANY PROPERTY DAMAGE, PERSONAL INJURY LOSS OF USE, INTERRUPTION OF BUSINESS, LOSS OF PROFITS, LOSS OF DATA OR OTHER BUSINESS INFORMATION OR OTHER SPECIAL INCIDENTAL OR CONSEQUENTIAL DAMAGES HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE.

5 PATENT AND COPYRIGHT

5.1   SUPPLIER will defend and indemnify and hold LICENSEE harmless against any action claiming that the unmodified LICENSED SOFTWARE constitutes a direct infringement of any valid copyright under the laws of the United States, Canada, or any other country, provided that SUPPLIER has sole control of such action and provided LICENSEE notifies SUPPLIER immediately in writing of the claim and gives authority, information and assistance as are necessary to settle or defend such claim.

5.2   In event of an infringement claim subject to the foregoing indemnification, SUPPLIER shall use reasonable efforts on behalf of LICENSEE either to obtain the right to continue using the LICENSED SOFTWARE or to replace or modify the LICENSED SOFTWARE so that it becomes non-infringing. In the event neither of these alternatives is reasonably available, the parties agree to terminate this Agreement as to any infringing LICENSED SOFTWARE. In the event of termination under this section, SUPPLIER'S total liability shall be limited to an amount equal to the license fees paid by LICENSEE to SUPPLIER for the infringing LICENSED SOFTWARE.

5.3   SUPPLIER shall have no liability for, and LICENSEE shall indemnify and hold SUPPLIER harmless from, any claim in which the alleged infringement arises from (1) the use of other than a current, unaltered version of the LICENSED SOFTWARE, or (2) the use of LICENSED SOFTWARE that has been modified or merged with other programs by LICENSEE.

5.4   SUPPLIER'S maximum liability for all claims arising under this Section shall be limited to an amount equal to the total amount of all fees paid by LICENSEE under this agreement.

6 MAINTENANCE

6.1   No Annual Maintenance, technical support, or updates are included in the license fees for the LICENSED SOFTWARE.

6.2   The LICENSEE may elect to purchase optional Annual Maintenance if offered by SUPPLIER. If Annual Maintenance is purchased, SUPPLIER shall support, maintain and update the LICENSED SOFTWARE during the maintenance period purchased.

6.2.1   If Annual Maintenance is purchased, the annual maintenance period shall commence upon the date of invoice of the LICENSED SOFTWARE and expire one (1) year after.

6.2.2   The fee for the Annual Maintenance shall be 20 % of the then current prevailing license fee for the LICENSED SOFTWARE. Maintenance renewals may be subject to a minimum cost. SUPPLIER reserves the right to increase at any time the Annual Maintenance fee for subsequent maintenance years.

6.2.3   Maintenance support shall mean providing electronic-mail assistance between 08.00 and 16.00 GMT, Monday through Friday, and shall be limited to recording of reported bugs, clarifying whether reported bugs are caused by errors or defects in the LICENSED SOFTWARE, and making good faith efforts to provide work-around advice and bug fix releases, if necessary, where bugs are caused by errors or defects in the LICENSED SOFTWARE. SUPPLIER will attempt to provide work-around advice and bug fixes only for those errors or defects that are reproducible on its equipment, located in its offices, and which appear in the unmodified LICENSED SOFTWARE. Annual Maintenance shall not include training or deployment assistance.

6.2.4   Support and maintenance provided by SUPPLIER shall extend only to two authorized representatives of the LICENSEE.

6.2.5   As a subscriber to Annual Maintenance, LICENSEE will receive revisions, new versions, and/or updates for the LICENSED SOFTWARE, when available from SUPPLIER. New products designated as such by SUPPLIER shall not be considered updates. LICENSEE will receive one (1) copy of each new revision or update. If SUPPLIER replaces a version of a LICENSED SOFTWARE product, SUPPLIER will support and maintain the replaced version for six (6) months after the release of a new version, after which time only the new version shall be supported and maintained.

6.2.6   SUPPLIER shall have the right to suspend maintenance and updates during any period that LICENSEE is not current in its obligations to SUPPLIER including, but not limited to, payment of fees to SUPPLIER.

7 PAYMENT

7.1   One hundred percent (100%) of the initial license fees and, if selected, Annual Maintenance fees are payable upon execution of this Agreement. All fees are non-refundable.

8 GENERAL PROVISIONS

8.1   If any provision of this Agreement is declared void or unenforceable by a court of competent jurisdiction, the validity of this Agreement and all other provisions shall not be affected.

8.2   This Agreement shall be governed and interpreted in accordance with the laws of the Canton of Zurich in Switzerland.

8.3   The prevailing party in any legal action or proceeding brought to enforce any term or provision of this Agreement shall be entitled to recover its reasonable costs and attorney's fees.

9 TERM AND TERMINATION

9.1   This Agreement shall be effective upon implicit or explicit acceptance by LICENSEE and SUPPLIER. Sending a license fee bill to LICENSEE implies acceptance by SUPPLIER. Payment of license fees to SUPPLIER implies acceptance by LICENSEE.

9.2   Unless terminated earlier under the provisions of this agreement, this Agreement shall remain in force for a period of five (5) years from the effective date of this Agreement, but may be extended upon written agreement by both parties.

9.3   Either party shall have the right at its sole discretion, to terminate this Agreement prior to the expiration of the term of this Agreement upon the occurrence of the other party's failure to pay any amounts due under this Agreement or the other party's failure to perform any of its obligations under this Agreement if the nonperformance is not corrected within thirty (30) days after written notice. SUPPLIER shall have the right, at its sole discretion, to terminate this Agreement prior to the expiration of the term of this Agreement upon the occurrence of the filing of a petition for Bankruptcy, or any listing of LICENSEE as debtor, whether voluntary or involuntary, or an assignment of the LICENSEE'S assets for the benefit of creditors.

9.4   Immediately after termination of this Agreement, under terms of section 9.2, LICENSEE shall cease making or distributing copies of the LICENSED SOFTWARE, except where these copies are for support purposes necessary to fix errors in an already deployed END-USER APPLICATION. No new application development shall be permitted unless the term is extended by mutual consent, as in Clause 9.2 above.

9.5   All END-USER APPLICATIONS deployed during and after the term of this Agreement may continue to use the modified or unmodified LICENSED SOFTWARE in perpetuity.

10 ENTIRE AGREEMENT

10.1   This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior negotiations and agreements with respect to this subject matter, whether oral or written.

10.2   The license fee bill constitutes an integral part of this agreement. It specifies the identification of the LICENSED SOFTWARE, the licensed software version, the name and location of the LICENSEE, and the amount to be paid for the LICENSED SOFTWARE.

10.3   3-Heights™ is a registered trademark of PDF Tools AG.