Big Faceless Organization End User License Agreement

Big Faceless Graph Library License

IMPORTANT NOTICE TO END USER:

CAREFULLY READ THE FOLLOWING LEGAL AGREEMENT. PLEASE NOTE THAT IF YOU DO NOT AGREE TO THE

TERMS OF THIS AGREEMENT, DO NOT PRESS THE "I ACCEPT" BUTTON AT THE END. ONLY PRESS THE "I

ACCEPT" BUTTON IF YOU AGREE TO THE TERMS OF THIS AGREEMENT.

1   Definitions & interpretation

1.1   Definitions

In this Agreement, the following words and expressions will have the following meanings unless

otherwise stated:

'Authorised User' means the named person for whom a license has been paid by You. Use by

anyone other than the named user is unlawful and automatically terminates your rights under

this Agreement.

'Development Environment' means the resources used in the course of developing a product, but

specifically excluding any access by members of the public or by other people not specifically

part of the development cycle of the product.

'Graph Library, means the Big Faceless Graph Library which is a product of and is Copyright

(c) Big Faceless Organization.

'Licensor' means Kensington Software Management Limited (Company Number 4526134) whose registered address is: 4-6 Canfield Place, London NW63BT, England

'Link to' means the Graph Library is linked in binary form to a product and is required by the build process of that product to build successfully.

'Product' means a computer program, including a program required to generate the out put of a website.

'Website' means any Website owned and maintained by the Licensor relating to the Product.

'You' are the person or organisation licensing the Graph Library and the Product and are, accordingly, the Licensee in respect of it.

1.2   Interpretation

1.2.1   Any headings in this Agreement are for ease of use and are not intended to form part of this Agreement nor effect its interpretation.

1.2.2   Reference to something in the masculine form includes the feminine and neuter forms and vice versa and reference to the singular includes the plural and vice versa.

1.2.3   Reference to clauses and schedules in this Agreement are to clauses of and schedules to this Agreement unless the context otherwise requires.

1.2.4   For all purposes in this Agreement, "writing" includes electronic transmissions.

2   License Grant

2.1 The Graph Library product is licensed under exactly one of the following license

types. You agree to abide by the restrictions listed below.

(a) Trial Download License

Under this License the Graph Library may be downloaded for free and used by You for a limited

period for development and initial testing. The intention is to allow You time to assess

whether the Graph Library is suitable for their purposes. Under this License, the Graph

library MAY NOT be used outside of a development environment. In addition, under this Licensee

the Graph Library MAY NOT be used after the trial period has expired - the "trial period"

being defined as the period of 30 days immediately following the first download of the Graph

library from the Website of the Graph Library.

(b) CPU License

Under this License You are granted the non-transferable, non-exclusive and perpetual right to

link the Graph Library to part of an applet, product or website running on (or in the case of

applets, downloaded from) a fixed number of production servers - defined as a computer run by

You including the development environment. The price of this License depends on the total

number of CPUs used by programs linked to the Graph Library, not the number of physical

machines used. This License may be transferred between servers, provided that the number of

server CPUs concurrently running products linked to the Graph Library never exceeds the number

of server CPUs specified in this License Agreement.

(c) OEM License

(i) Under this License You are granted the global, irrevocable, non-transferable,

non-exclusive and perpetual right to link the Graph Library to products requiring the Graph library as an integral part, and that are developed, marketed and distributed by You and distributed to third parties. The price of this License is based on the total number of products distributed that are linked to the Graph Library, including any non-free updates to the Product. The products distributed by You and linked to the Graph Library must add considerable functionality to the Graph Library. Programs, which in essence mimic the functionality of the Graph Library, or a subset thereof, are expressly prohibited under this License.

(ii) This License includes the right for You to sub-license to third parties the right to use this Graph Library only as part of the product developed by You - any other use will require a separate license agreement with the Licensor. This License specifically excludes use which falls under the category of a "CPU License" as defined above.

(iii) You undertake and warrant that you will not reveal, divulge or disclose to any third party whatsoever the key code of this OEM License and further undertake to embed the OEM key code in a secure manner. The key must be hard coded into the source and not be stored external to the code. In addition, it should not be accessible by anyone not covered within the license agreement.

3   Copyright

3.1 You acknowledge that no title to the intellectual property in any part of the Product is transferred to You. You further acknowledge that title and full ownership rights to the Product will remain the exclusive property of The Licensor and its suppliers and You will not acquire any rights to the Product except as expressly set out in this Agreement. You agree that any copies of any part of the Product will contain the same proprietary notices which appear on and in the Product (as appropriate).

3.2 The Licensor warrants that all intellectual property rights in the Product either reside with itself or its suppliers and that the Licensor is entitled to enter into this Agreement and that use of the Product by an Authorised User is not in breach of any third party's intellectual property rights. The Licensor agrees to indemnify You against all costs, claims and liabilities arising from breach of this warranty provided that you immediately notify the Licensor about any alleged breach and render all reasonable assistance to the Licensor (at the cost of the Licensor) in defending any such claim.

3.3 You agree that this License does not include ownership of the source-code for the Graph Library, which may be covered by a separate license.

4   Third party copyright notices

4.1   The PNG encoding routine used by the Big Faceless Graph Library, which is part of this package, is available from http://users.boone.net/sammy/wb/pngencoder. It was written by and is Copyright (c) 2001, Walter Brameld bugar@bigfoot.com, and is included here with his kind permission.

4.2   The image quantization routines used by the Big Faceless Graph Library, which is part of this package, were written and released into the public domain by the author(s) of the Ij package, available from http://rsb.info.nih.gov/ij.

4.3   The Flash output routines used by the Big Faceless Graph Library were written by Nick Main, and are available at http://www.anotherbigidea.com/javaswf. They are Copyright (c) 2001, David N. Main, All rights reserved. For those routines, the following clause applies:

THIS SOFTWARE IS PROVIDED BY THE AUTHOR ``AS IS'' AND ANY EXPRESS OR IMPLIED

WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF

MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE ARE DISCLAIMED. IN NO EVENT

SHALL THE AUTHOR BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL,

EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, PROCUREMENT

OF SUBSTITUTE GOODS OR SERVICES; LOSS OF USE, DATA, OR PROFITS; OR BUSINESS

INTERRUPTION) HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN

CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING

IN ANY WAY OUT OF THE USE OF THIS SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY

OF SUCH DAMAGE.

5   Restrictions

5.1 You may not resell, transfer, rent or lease the Product. You are not allowed to
transfer the rights obtained under this License to any third party, except as defined under
the Runtime License defined above.

5.2 The Graph Library is distributed in digital form only from the Website. We will not
distribute the product in any other form.

6   Support

6.1 In the event of bugs being found in the Graph Library over and above those known bugs
and limitations listed in the accompanying documentation and not including enhancements to the
documented functionality of the Graph Library, the Licensor agrees to provide updates free of
charge which can be downloaded from the Website and used with the same license key as the
original version licensed by You. Although the licensor will endeavour to keep the Graph

library bug-free, they specifically exclude any warranty to that effect, and also specifically

deny any time span either express or implied for the correction of any bugs found.

6.2 Technical support over and above the level described in the clause above is available

by email only from the licensor at an additional cost.

7   Reverse Engineering

You will not attempt to reverse compile, modify, translate, or disassemble the Product or any

part of the Product (including anything that may from time to time be available in the

Members' Area) in whole or in part (except as provided for by section 50B of the Copyright,

Design and Patents Act 1998 (as amended)).

8   Audit Assessment

Upon reasonable notice, the Licensor or its designated third party shall have the right to conduct

an internal audit of your system to ensure compliance with this agreement. If the audit determines

that You are out of compliance with this agreement, You shall be liable for all software and

expenses incurred during assessment.

9   Limited Warranties and Exclusions of Liability

9.1 No warranty of any kind, including the implied warranty of merchantability and fitness for purpose,
is available if this product is licensed under the "Trial Download" License

defined above. For other license types ONLY, the following apply:

9.2 The Licensor warrants that the Product may be used substantially in accordance with any online information on the Website at the time of purchase and with any demonstration contained within the Website and as described in its accompanying documentation.

9.3 The Licensor further warrants that the Graph Library is free from backdoors and any form of disablement, which would damage or render any system using the Graph Library inoperable. This specifically excludes the expiry of the trial period key, which renders the Graph Library inoperable at the end of the trial period as described in the appropriate licensing section above. This key can be overridden by purchasing a full License. The Licensor further warrants that even in the event of the breach of this License by You, the Licensor will not impair the operation of the Graph Library except pursuant to an order of court.

9.4 EXCEPT FOR THE LIMITED WARRANTIES SET OUT ABOVE, THE LICENSOR MAKES NO OTHER EXPRESS OR IMPLIED WARRANTIES TO THE EXTENT PERMITTED BY LAW AND SPECIFICALLY DISCLAIMS THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. IF SUCH DISCLAIMER IS NOT PERMITTED BY LAW, THE DURATION OF ANY SUCH IMPLIED WARRANTIES IS LIMITED TO [90] DAYS FROM THE DATE OF DELIVERY.

9.5 Any information and advice on the Website is by its nature general and should not be relied on by You without obtaining independent advice and verification. The Licensor cannot therefore accept responsibility for any losses arising as a result of reliance placed on such information and advice.

10   Severability

In the event of invalidity of any provision of this Agreement, the parties agree that such

invalidity shall not affect the validity of the remaining portions of this Agreement.

11   No Liability for Consequential Damages

EXCEPT FOR THE LICENSOR'S INDEMNIFICATION AND EACH PARTY'S CONFIDENTIALLITY OBLIGATIONS

HEREUNDER, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO YOU FOR ANY CONSEQUENTIAL, SPECIAL,

INCIDENTAL OR INDIRECT DAMAGES OF ANY KIND ARISING OUT OF THE USE OF THE PRODUCT, EVEN IF
THE

LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.   IN NO EVENT WILL THE
LICENSOR'S

LIABILITY FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED

THE LICENSE FEE PAID BY YOU.

12   Confidentiality Obligations

12.1   If either party (the "Recipient") obtains access to Confidential information of the

other through disclosure by the other (the "Disclosing Party") or by any other means, the

Recipient agrees that it will not use the Confidential Information (except as authorised in

the Agreement) or disclose the Confidential Information to any third party without the prior

written consent of the Disclosing Party. For the purpose of this Agreement, "Confidential

Information" shall mean all information about or belonging to the Disclosing Party that is not

a matter of public knowledge and all trade secrets and intellectual property owned or licensed

by the Disclosing Party. The restrictions of this paragraph shall not apply to any information

that: (i) is already rightfully known by the Recipient free of any confidentiality obligation;

(ii) is or becomes publicly known except through any wrongful act of the Recipient; (iii) is

independently developed by the Recipient without breach of this Agreement; or (iv) is subject

to disclosure pursuant to a subpoena, judicial or governmental requirement or order, provided

that the Recipient has given the Disclosing Party sufficient prior notice of such subpoena, requirement, or order, to permit the Disclosing Party a reasonable opportunity to object to the subpoena, requirement, or order and to allow the Disclosing Party the opportunity to seek a protective order or other appropriate remedy. The obligations described in this paragraph shall survive termination of the Agreement.

12.2   Either party shall have the right to publish, cause to have published, or use the name of the other party and any information about its relationship with the other party, including but not limited to the inclusion of the other party's name in reference lists or for advertising or other promotional purposes, unless this is expressly prohibited in writing by

13   Termination

13.1   The Licensor may forthwith terminate this Agreement (without prejudice to any prior accrued rights) in the event of the following:

13.1.1   You failing to remedy any breach of this Agreement (insofar as such breach is reasonably capable of remedy) within 30 days of written notice of such breach;

13.1.2   You being subject to a bankruptcy or winding up notice or petition or a receiving order or having an administrator appointed in respect of your affairs (save as part of a restructuring or amalgamation otherwise than by reason of your insolvency).

13.2   You will forthwith on termination remove all copies of any part of the Product from your computer system(s) and remove all license keys.

14   General

14.1   If any party does not fully enforce its rights under this Agreement at any time, it will not prevent it from doing so later in respect of a particular breach or any future breach.

14.2   Any notice served pursuant to this Agreement must be in writing, addressed to a party at the last known address for that party and sent by:

(a) first class mail, in which case the notice will (if properly addressed) be deemed received (if posted on a working day) on the next working day or (if not posted on a working day) within two working days; or (b)   by email or fax, in which case the notice will (if properly addressed) be deemed received immediately if received before 5:30 p.m. on a working day but if later, then on the next working day provided the notice is also posted by first class mail and properly addressed.

14.3   Neither party will be responsible for any breach of this Agreement insofar as that breach is a result of something beyond that party's reasonable control but if that situation arises, the relevant party will do everything it reasonably can to overcome that problem as soon as reasonably possible.

14.4   This Agreement is not intended to benefit anyone other than the parties to it.

15   Entire Agreement

15.1   This is the entire agreement between You and The Licensor which supersedes any prior agreement, whether written or oral, relating to the subject matter of this Agreement.

15.2   We reserve the right to amend our terms and conditions at any time. The amended

terms will be effective from the date they are   posted on our website.

16   Applicable Law

This Agreement is subject to the laws of England and Wales the parties agree to submit all

disputes for settlement to the Courts of England and Wales.

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