

# SOFTWARE SOURCE CODE LICENSE AGREEMENT

## PROLOG

This agreement (the "Agreement") sets forth the terms and conditions for licensing and use of Source Code (the "Software") from Envied Design.net, with a principal address at 604 Duke Street, Johnson City, TN 37601 USA, ("Licensor") to you ("Licensee"). Clicking the "yes" or "I accept" button and/or downloading and/or accessing the Source Code indicates that you have read and understand this Agreement and accept its terms and conditions effective immediately.

Licensor and Licensee hereby agree as follows:

## 1. TERMS

- 1.1 Licensor grants Licensee a non-exclusive, transferrable(as outlined in this agreement) license to use source code in projects to be distributed in a binary format.
- 1.2 Licensor does not grant licensee right to use, distribute, or display trademarks, servicemarks, copyrighted materials, or intellectual property in public displays unless ownership by the licensor is made obvious and apparent.
- 1.3 Source code may not be distributed outside of licensee's organization unless licensee is transferring this license, and has made the recipient fully aware of this agreement's existence and it's terms
- 1.4 Licensee may resell licenses purchased from licensor, given that each license has been paid for in full to licensor prior to resell.
- 1.5 Upon transfer or resell of license to use the source code, licensee will make all reasonable attempts to destroy copies of licensor's intellectual property, including deletion from storage devices, or destruction of containing media.

## 2. TERM AND TERMINATION

- 2.1 Licensor retains the right to terminate this agreement at any time and for any cause with thirty(30) days written notice to Licensee.
- 2.2 This agreement is in effect as long as Licensee holds any copy of the Source Code on any Licensee computer or storage media either onsite or offsite.
- 2.3 Upon termination or expiration of this agreement for any reason whatsoever, Licensee shall immediately: (i) cease all use of Product Source Code; and (ii) make all reasonable efforts to destroy and/or remove all copies of Source Code from Licensee computers and storage media.
- 2.4 Except as otherwise expressly provided herein, upon the expiration or termination of this Agreement Licensee shall not be entitled to, and to the fullest extent permitted by law waives, any statutorily prescribed or other compensation, reimbursement or damages for loss of goodwill, clientele, prospective profits, investments or anticipated sales or commitments of any kind.

## 3. WARRANTY AND DISCLAIMERS

- 3.1 Licensee warrants that the support services to be provided to End Users will be performed with the same degree of skill and professionalism as is demonstrated by like professionals performing services of a similar nature.

**3.2** Licensor makes no warranties with respect to any Software, license, or service and disclaims all Statutory or implied warranties, including without limitation warranties of merchantability, fitness for a particular purpose, or arising from a course of dealing or usage of trade and any warranties of noninfringement. Licensor does not warrant that the Software will meet any requirements or that the operation of the software will be uninterrupted or error free. Licensee will handle and be responsible for all warranty returns from its End-Users or Resellers.

## **4. LIMITATION OF LIABILITY**

**4.1** Notwithstanding anything else in this agreement or otherwise, Licensor will in no event be liable with respect to any subject matter of this agreement under any contract, tort, or other legal or equitable theory for consequential damages, lost profits, lost data, or cost of procurement of substitute goods, technology or services.

## **5. INDEMNIFICATION**

**5.1** Licensee shall defend any action brought against Licensor, its officers, directors, agents and employees, and shall pay all costs, liabilities, damages and legal fees finally awarded against Licensor in, or paid in settlement of, such action, to the extent such action is based on a third-party claim: (i) where Licensee's modification, use or distribution of the Licensor Products is not in strict accordance with this Agreement; (ii) of any misrepresentation or any breach of any warranty, covenant or agreement on the part of Licensee; or (iii) such third party claim or action against Licensor is for injuries or damage to persons or property caused or claimed to have been caused by the negligent acts or omissions of Licensee personnel while in the course of performing work under this Agreement; (iv) such claim or proceeding relates to any warranty, representation, liability limit, remedy, indemnity, or other obligation stated by Licensee in its license agreement or other agreement between Licensee and such third party

## **6. LEGAL COMPLIANCE**

**6.1** Licensee acknowledges that the Software and the technical data received from Licensor in accordance with the terms hereunder may be subject to United States export and import controls, and in the performance of its obligations, Licensee shall at all times strictly comply with all laws, regulations and orders, and agrees to commit no act which, directly or indirectly, would violate any United States or other countries', regulations or orders.

## **7. REMEDIES**

**7.1** This Agreement shall be governed by the laws of the State of Tennessee, as applied to agreements entered into and to be performed entirely within Tennessee between Tennessee residents, without regard to the principles of conflict of laws or the United Nations Convention on Contracts for the

International Sale of Goods.

- 7.2 The U.S. federal and state courts of the State of Tennessee located in Greene County shall have sole and exclusive jurisdiction and venue to adjudicate over any actions relating to the subject matter of this Agreement. The parties hereto consent to the exclusive jurisdiction of the courts specified above, and expressly waive any objection to the jurisdiction, venue, or convenience of such courts.
- 7.3 The parties agree that a breach of this Agreement adversely affecting Licensor's intellectual property rights in the Licensor Products or Documentation may cause irreparable injury to Licensor for which monetary damages may not be an adequate remedy and Licensor shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law.

## 8. NOTICES

- 8.1 All notices under this Agreement are to be delivered by (i) depositing the notice in the mail, using registered mail, return receipt requested, addressed to the address below or to any other address as the party may designate by providing notice, (ii) telecopying the notice by using the telephone number set forth below or any other telephone number as the party may designate by providing notice, (iii) overnight delivery service addressed to the address below or to any other address as the party may designate by providing notice, or (iv) hand delivery to the individual designated below or to any other individual as the party may designate by providing notice. The notice shall be deemed delivered (i) if by registered mail, four (4) days after the notice's deposit in the mail, (ii) if by telecopy, on the date the notice is delivered, (iii) if by overnight delivery service, on the day of delivery, and (iv) if by hand delivery, on the date of hand delivery.

If to Licensor:  
Anthony Cyphers  
604 Duke Street  
Johnson City, Tennessee 37601  
USA  
Telephone: 423-946-3264.

**Last Modified: January 22, 2009**

**END**