

GEFRAN SPA SOURCE CODE LICENSE AGREEMENT

IMPORTANT: PLEASE READ THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT CAREFULLY BEFORE USING THE SUPPLIED SOFTWARE

1. This License Agreement is a legal agreement between you (either an individual or a single entity) and GEFRAN SPA for GEFRAN SPA's software product(s) identified in the order confirmation/delivery note/reference contract which may include associated software components, media, printed materials, and "online" or electronic documentation ("SOFTWARE PRODUCT"). By installing, copying, or otherwise using the SOFTWARE PRODUCT, you agree to be bound by the terms of this agreement. This license agreement represents the entire agreement concerning the program between you (the "user") and GEFRAN SPA, (the "licensor"), and it supersedes any prior proposal, representation, or understanding between the parties. The SOFTWARE PRODUCT is protected by copyright laws and international copyright treaties, as well as other intellectual property laws and treaties. The SOFTWARE PRODUCT is licensed, not sold.

If you do not agree to the following conditions, please return the software immediately and unused. Any fees for rights of use which have already been paid will be refunded.

2. License Rights and Restrictions

2.1 Source Code License.

GEFRAN SPA hereby grants you a non-exclusive, non-transferable, royalty-free and limited license to:

2.1.1 Use and reproduce as many copies as are reasonably necessary of the SOURCE CODE at your facility only for the purpose of exercising the rights granted under this AGREEMENT;

2.1.2 Modify and create DERIVATIVE WORKS of the SOURCE CODE at your facility; and

2.1.3 Use, reproduce, have reproduced, sell (via sublicense), distribute (via sublicense), perform or otherwise transfer (via sublicense), directly or through distributors or resellers, DERIVATIVE WORKS, only in object code format.

2.2 Restrictions.

2.2.1 No right is granted to you hereunder to permit, authorize, license or sublicense any third party to view or use the SOURCE CODE.

2.2.2 No right is granted to you hereunder to sell, distribute or otherwise transfer the DERIVATIVE WORKS except as provided in Section 2.1.3 above.

2.2.3 You shall not use the SOURCE CODE in any manner not specifically permitted under this AGREEMENT.

2.2.4 You shall not store, backup, archive, use, modify or create works derivative of the SOURCE CODE at any location other than your facility, and in any place within your facility other than on a controlled, secure area or system to which access is limited to the authorized employees. You shall not store or transmit the SOURCE CODE on or through the Internet.

2.2.5 No right is granted under any patents, copyrights, trade secrets, trademarks or other proprietary rights of GEFRAN, except as expressly granted herein.

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2.2.6 The source code provided by Gefran can only be used for application development to be installed on Gefran hardware. Any other use is forbidden.

2.3 No Support. The terms of this AGREEMENT do not entitle you to receive any support or maintenance services from GEFRAN with respect to the SOURCE CODE; provided, however, that GEFRAN shall support the SOURCE CODE under the terms of the applicable sales/distribution agreement and shall make other development support available to you under the terms of a separate and mutually agreed-upon services agreement and associated mutually agreed-upon statements of work, on a time and materials basis.

2.4 Delivery. GEFRAN shall provide You with one (1) copy of the SOURCE CODE, which shall include all information reasonably necessary for You to assemble, compile, link or otherwise "build" an executable version of the SOURCE CODE. In addition, GEFRAN shall provide You with one (1) copy of each bug-fix, patch or update within thirty (30) days of commercial release of the same.

3. Ownership

3.1 Source Code. You acknowledge and agree that GEFRAN shall retain and own all right, title and interest in and to all SOURCE CODE, subject to any rights You may have pursuant to the sales/distribution agreement.

4. Reporting and Audit Rights

4.1 Reporting. You shall keep accurate records relating to the location of all copies of the SOURCE CODE and the name and contact information of all authorized employees, and shall update, in a timely manner, such information and report the updated information within thirty (30) days in the event of any changes.

4.2 Survival. The terms of this Section 4 shall survive any termination or expiration of this AGREEMENT for a period of two (2) years.

5. Indemnity

5.1 Indemnity. You agree to defend, indemnify and hold GEFRAN harmless from and against any damages, costs and expenses (including, without limitation, reasonable attorneys fees and costs) arising from or relating to any third party claims, actions or demands that the sale, distribution or other transfer of any DERIVATIVE WORKS by yourself or your distributors or resellers infringes the INTELLECTUAL PROPERTY RIGHTS of any third party. The foregoing shall only apply to any such claims that would not have occurred but for your modifications to the SOURCE CODE.

5.2 Conditions to Indemnity. Your obligations under Section 5.1 are contingent upon (1) GEFRAN giving prompt written notice to you of any such claim, action or demand, (2) GEFRAN allowing you to control the defense and related settlement negotiations; provided that in no event shall you incur any financial obligations on behalf of GEFRAN without GEFRAN's prior written consent, and (3) GEFRAN reasonably assisting in the defense at your expense. Notwithstanding the foregoing, you shall not settle any such claim, demand or action adversely affecting GEFRAN'S INTELLECTUAL PROPERTY RIGHTS without the prior written consent of GEFRAN.

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6. Limitation on Liability

GEFRAN SHALL NOT BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR INDIRECT DAMAGES, INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS OPPORTUNITY, DATA OR USE, INCURRED BY YOU OR ANY THIRD PARTY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

7. Warranty and Disclaimer

7.1 Warranty. GEFRAN warrants that it has all right, power and authority to enter into this Agreement and to grant the licenses granted hereunder.

7.2 Disclaimer. EXCEPT AS SET FORTH IN SECTION 7.1 ABOVE, GEFRAN MAKES NO REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE SOURCE CODE. ALL EXPRESS OR IMPLIED REPRESENTATIONS AND WARRANTIES, INCLUDING WITHOUT LIMITATION ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, IS HEREBY EXPRESSLY DISCLAIMED. YOU SPECIFICALLY ACKNOWLEDGE THAT THE SOURCE CODE IS PROVIDED "AS IS" AND MAY HAVE BUGS, ERRORS, DEFECTS OR DEFICIENCIES.

IN PARTICULAR, THERE IS NO WARRANTY THAT THE PROGRAM PACKAGE FULFILLS THE SPECIFIC REQUIREMENTS OF THE CUSTOMER AND WORKS TOGETHER WITH ALL THE OTHER PROGRAMS SELECTED BY THE CUSTOMER, IN SO FAR AS INTERFACES TO THESE PROGRAMS ARE NOT CONTRACTUALLY AGREED.

8. Confidential Information

8.1 Obligation of Confidentiality. You shall maintain in confidence and shall not disclose any CONFIDENTIAL INFORMATION to any third party without the prior written consent of GEFRAN in each instance, using the same degree of care that you use to protect your own CONFIDENTIAL INFORMATION of a similar nature, which shall in no event be less than a reasonable degree of care; provided that you may disclose CONFIDENTIAL INFORMATION to only those employees that have a need to know such information and who have entered into written confidentiality agreements with you which protect third party information to the degree necessary to comply with the provisions of this Section 8 ("authorized employees"). Any breach by the authorized employees of such confidentiality obligations shall be deemed a breach of this AGREEMENT by yourself.

8.2 You shall establish reasonably appropriate controls to protect the confidentiality of the CONFIDENTIAL INFORMATION and shall keep all authorized employees informed of such controls.

8.3 You shall not, during the term of the sales/distribution agreement, permit any employee identified as an authorized employee hereunder (or who has otherwise had access to the CONFIDENTIAL INFORMATION) to develop any software which is materially similar to or competitive with GEFRAN'S.

8.4 Use of Confidential Information. You shall be free to use for any purpose the residuals resulting from access to or work with CONFIDENTIAL INFORMATION, provided that you maintain the confidentiality of the CONFIDENTIAL INFORMATION as provided herein. The term "residuals" means information in non-tangible form, which may be retained by persons who have had access to the CONFIDENTIAL INFORMATION, including ideas, concepts, know-how or techniques contained therein. Subject to Section 8.3 above, you shall have no obligation to limit or restrict the assignment of any of your employees, or to pay royalties for any work resulting from the use of residuals. However, the foregoing shall not be deemed to grant you any rights or license under GEFRAN's copyrights or patents.

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9. Termination

9.1 Term. This AGREEMENT shall become effective on the EFFECTIVE DATE, and shall remain in effect for the period of time the sales/distribution agreement is in effect, unless earlier terminated pursuant to this Section 9.

9.2 Termination for Cause. GEFRAN shall have the right to terminate this AGREEMENT upon written notice to you upon the occurrence of any of the following:

9.2.1 Upon the material breach of this AGREEMENT by yourself, if such breach remains uncured for forty-five (45) days after written notice thereof by GEFRAN;

9.2.2 Upon the expiration or earlier termination of sales/distribution agreement, for any reason;

9.2.3 Upon the acquisition by a COMPETITOR of (a) all or substantially all of the assets of your company or (b) any majority or controlling stock, voting or other interest in your company, directly or indirectly.

9.2.4 Upon your company making any assignment for the benefit of creditors, filing a petition in bankruptcy, being adjudged bankrupt, becoming insolvent, or being placed in the hands of a receiver, or if the equivalent of any of the proceedings or acts described in this Section 9.2.4 occurs.

9.3 Termination for Convenience. You shall have the right to terminate this AGREEMENT upon thirty (30) days advance written notice to GEFRAN.

9.4 Effect of Termination or Expiration.

9.4.1 In the event this AGREEMENT is terminated by GEFRAN under Section 9.2, all licenses granted to you hereunder shall immediately terminate, and you shall promptly return to GEFRAN the SOURCE CODE, all copies thereof, and any materials incorporating any portion thereof, in your or your distributors or resellers' possession or control. Furthermore, you shall promptly, and shall promptly cause your distributors and resellers to, destroy all copies of any SOURCE CODE stored in any computer memory.

9.4.2 In the event this AGREEMENT expires or is terminated other than due to a breach of this AGREEMENT by yourself, (a) all licenses granted to you hereunder shall immediately terminate, except for the license granted under Section 2.1.3, which shall survive for a period of three (3) years (subject to termination under 9.2 or 9.3); (b) you shall promptly return to GEFRAN the SOURCE CODE, and all copies thereof, in your or your distributors or resellers' possession or control; and (c) you shall promptly, and shall promptly cause your distributors and resellers to, destroy all copies of any SOURCE CODE stored in any computer memory.

9.5 Survival. Sections 1, 2.2, 3, 4, 5, 6, 7, 8, 9.4, 9.5, 10 and 11 shall survive any expiration or termination of this AGREEMENT.

10. Injunctive Relief

It is understood and agreed that any breach of any of the provisions of this AGREEMENT will cause GEFRAN irreparable damage for which recovery of money damages will be inadequate, and that GEFRAN will therefore be entitled to seek timely injunctive relief in addition to any and all other remedies available at law or equity.

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11. Miscellaneous.

11.1 Non-Solicitation. During the term of this AGREEMENT and for a period of three (3) years thereafter, neither party shall solicit or employ (as a consultant, independent contractors or otherwise, except as contemplated herein), any employee of the other party without the prior written consent of the other party.

11.2 Export. Neither the SOURCE CODE nor any copy thereof shall be exported by you at any time for any reason.

11.3 No Assignment. You may not assign any rights or delegate any obligations under this AGREEMENT without the prior written consent of GEFRAN, which consent may be withheld or granted in GEFRAN's sole discretion. Any assignment in violation of this provision shall be void.

GEFRAN S.p.A.

For acceptance

Date: _____

Company Stamp _____

Signature of the
legal representative: _____

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