

Mark Eltgroth LLC Software LICENSE

1. USE OF SOFTWARE, DOCUMENTATION, AND SOFTWARE KEY

You assume responsibility for the selection of a program to achieve your intended results, and for the installation, use, and results obtained from the Program. Program, as used in this Agreement, collectively means all the software contained on the licensed media and the magnetic or other physical media on which the software is contained as well as related materials, all accompanying documentation, and the software key.

The license fee is for use of the Program in object or executable code form only (depending on computer system), the related materials, all accompanying documentation, and the software key. This Program, the related materials, all accompanying documentation, and the software key contain valuable Mark Eltgroth LLC trade secrets and proprietary information. The Program and accompanying documentation are copyrighted by Mark Eltgroth LLC. YOU UNDERSTAND AND AGREE THAT THE PROGRAM, ALL MATERIALS PROVIDED BY Mark Eltgroth LLC UNDER THIS AGREEMENT, ALL ACCOMPANYING DOCUMENTATION, THE SOFTWARE KEY, AND ALL PROGRAM-RELATED INTELLECTUAL PROPERTY RIGHTS ARE AND SHALL AT ALL TIMES REMAIN THE SOLE AND EXCLUSIVE PROPERTY OF Mark Eltgroth LLC. You agree that you obtain no rights in the Program, related materials, accompanying documentation, or the software key other than the use specifically in accordance with the terms of this Agreement.

2. LICENSE OF SOFTWARE, DOCUMENTATION, AND SOFTWARE KEY

A. You are licensed to use the Program on a non-transferable and non-exclusive basis:

- (1) Solely for the internal purposes of your own business; and
- (2) Only on a single machine at one time or, if using a network version, the number of machines agreed upon with Mark Eltgroth LLC.

B. You may:

- (1) Copy the Program into any machine readable or printed form for archival, backup or modification purposes in support of your use of the Program on the single machine;
- (2) Modify the Program and/or merge it into another Program for your use on the single machine. Any portion of the Program which is modified or merged into another program will continue to be subject to the terms and conditions of this Agreement;
- (3) Transfer the Program, related materials, accompanying documentation, and software key to another individual within your business entity if the business entity initially purchased this license;
- (4) Transfer the Program, related materials, accompanying documentation, and software key to another business entity if that business entity acquires, merges, or is consolidated with your business entity;
- (5) Transfer the Program, related materials, accompanying documentation, and software key to another business entity if your business entity provides in writing that the license is being transferred to another business entity and your business entity relinquishes all rights to the Program and the transfer is consented to by Mark Eltgroth LLC; and
- (6) Acquire the Program, related materials, accompanying documentation, and software key from another business entity if the other business entity relinquishes all rights to the Program and your business entity provides in writing acceptance of the Program as well as contact information and the transfer is consented to by Mark Eltgroth LLC.

C. You must reproduce and include the copyright notice, trademark notice, and other notices or legends on any copy, modification or portion of Program which is merged into another program, or in accompanying documentation.

D. YOU MAY NOT DO THE FOLLOWING:

- (1) You may not use, copy, modify or transfer the Program, or any copy, modification or merged portion in whole or in part, except as expressly provided for in this Agreement;
- (2) You may not use the Program for the purpose of any business offering as part of a bureau or other services to the public;
- (3) You may not use the Program in a network, timesharing, multiple CPU, multiple site, or any other situation in which more than one CPU is executing the code except by written agreement with Mark Eltgroth LLC;
- (4) You may not make copies of the Users' Manual
- (5) You may not make copies of the Program disks, other than for backup or archival purposes;
- (6) You may not grant sublicenses or other rights in the Program to others;
- (7) You may not distribute or rent the Program in whole or in part;
- (8) You may not reverse compile, disassemble or reverse engineer the Program or the software key; or
- (9) You may not transfer the software key to others or make copies of the software key except as stated in this Agreement.

E. For purposes of this License, the use of metering software restricting the number of concurrent users is the same as a limited number of copies of software. Metering software on a network which allows a single user access to the software would be the same as a single license.

F. IF YOU TRANSFER POSSESSION OF ANY COPY, MODIFICATION OR MERGED PORTION OF THE PROGRAM TO ANOTHER PARTY, OR TRANSFER POSSESSION OF THE SOFTWARE KEY TO ANOTHER PARTY (EXCEPT AS DESCRIBED HEREIN) YOU WILL BE IN BREACH OF THIS AGREEMENT AND THE LICENSE GRANTED HEREIN SHALL BE AUTOMATICALLY TERMINATED. Mark Eltgroth LLC RESERVES ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU. YOU MAY BE HELD LEGALLY RESPONSIBLE FOR ANY COPYRIGHT INFRINGEMENT THAT IS CAUSED BY YOUR FAILURE TO ABIDE BY THE TERMS OF THIS AGREEMENT.

3. TERM OF LICENSE AGREEMENT

The term of this Agreement shall commence on the date you install the software and shall remain effective until terminated, as follows:

A. You may terminate the Agreement at any time by returning the Program together with all copies, modifications and merged portions in any form to Mark Eltgroth LLC.

- B. Mark Eltgroth LLC may terminate the Agreement upon written notice to you for your failure to comply with any of the terms and conditions of this Agreement; or if you file or have filed against you any bankruptcy proceedings; or if you make an assignment for the benefit of creditors.
- C. Upon termination for any reason, by either you or Mark Eltgroth LLC, you shall provide to Mark Eltgroth LLC, within ten (10) days, written confirmation that the Program (including related materials, accompanying documentation, and software key), together with all copies, modifications, and merged portions in any form, has been deleted from your files and computer system and returned to Mark Eltgroth LLC.

4. MAINTENANCE

Notification of Mark Eltgroth LLC Software updates and/or enhancements will be sent or made available to you, provided the contact information is returned and kept up to date to Mark Eltgroth LLC. Any updates or enhancements you receive from Mark Eltgroth LLC, after payment of the applicable fee, shall be provided under and governed by the terms of this Agreement. You shall have the option of subscribing to annual software Maintenance for any or all of the Programs. The annual cost of said Maintenance shall be fifteen percent (15%) of the software license fee at original time of purchase. You may renew Maintenance for subsequent one year terms at your option. In the event Maintenance is terminated, you shall still retain the right and license to continue using the Program in the latest version prior to termination of Maintenance. In no event shall the Maintenance fee charged to you increase by more than five percent in any one year period. All payments shall be due thirty days from receipt of a correct invoice if renewed. If you terminate Maintenance, it may be renewed later by payment of 100% of the current annual charge for each lapsed year (or part thereof pro rata), and you will be entitled to receive the then current version or back-copies of all amendments and any other materials or documents that would otherwise have been issued. The Maintenance payment shall never exceed the current new license price regardless of how long the license has been out of maintenance.

5. DISCLAIMER OF WARRANTY AND LIMITED WARRANTY

THE SERVICES PERFORMED, PROGRAM, AND ACCOMPANYING DOCUMENTATION ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND EXCEPT AS STATED HEREIN. Mark Eltgroth LLC DOES NOT WARRANT, GUARANTEE OR MAKE ANY REPRESENTATION REGARDING THE USE, OR THE RESULTS OF THE USE, OF THE SERVICES PERFORMED, PROGRAM OR ACCOMPANYING DOCUMENTATION IN TERMS OF CORRECTNESS, ACCURACY, RELIABILITY, CURRENTNESS OR OTHERWISE EXCEPT AS STATED HEREIN. IF THE SERVICES PERFORMED, PROGRAM OR ACCOMPANYING DOCUMENTATION ARE DEFECTIVE, YOU AND NOT Mark Eltgroth LLC OR ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES, ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR OR CORRECTION EXCEPT AS STATED HEREIN. Mark Eltgroth LLC DOES NOT WARRANT THAT THE OPERATION OF THE PROGRAM WILL BE UNINTERRUPTED OR ERROR FREE.

Mark Eltgroth LLC warrants to you that: (a) the disk(s), if any, on which the Program is recorded is free from defects in materials and workmanship under normal use and service for a period of ninety (90) days from the date of delivery, as evidenced by a copy of the receipt, provided the defective original media are received by Mark Eltgroth LLC within the ninety (90) day period. Further, Mark Eltgroth LLC hereby limits the duration of any implied warranty(ies) on the disk and such conformation with the Users' Manual to the respective periods stated above. Some states and countries do not allow limitations on duration of an implied warranty, so the above limitation may not apply to you.

Mark Eltgroth LLC's entire liability and your exclusive remedy as to the disk(s) and conformance to the Users' Manual shall be, at Mark Eltgroth LLC's option, either: (a) return of the purchase price; or (b) replacement of the disk(s) that does not meet Mark Eltgroth LLC's Limited Warranty and is returned to Mark Eltgroth LLC with a copy of the receipt. If failure of the disk(s) has resulted from accident, abuse, or misapplication, Mark Eltgroth LLC shall have no responsibility to replace the disk(s) or refund the purchase price. Any replacement disk will be warranted for the remainder of the original warranty period.

THE ABOVE ARE THE ONLY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, THAT ARE MADE BY Mark Eltgroth LLC ON THIS Mark Eltgroth LLC PRODUCT. NO ORAL OR WRITTEN INFORMATION OR ADVICE GIVEN BY Mark Eltgroth LLC, ITS DEALERS, DISTRIBUTORS, AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY OR IN ANY WAY INCREASE THE SCOPE OF THIS WARRANTY, AND YOU MAY NOT RELY ON ANY SUCH INFORMATION OR ADVICE. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHER RIGHTS, WHICH VARY FROM STATE TO STATE OR COUNTRY TO COUNTRY.

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MISCELLANEOUS

- A. The Program is subject to export and re-export controls and may not be exported or re-exported without an appropriate export license from the US Department of Commerce, US Department of State, or foreign government (as the case may be).
- B. English is the controlling language of this Agreement.
- C. THIS AGREEMENT SHALL BE GOVERNED BY THE LAWS OF THE STATE OF TEXAS (USA), EXCLUSIVE OF ITS CHOICE OF LAW PROVISIONS, AND IT EXPRESSLY EXCLUDES THE APPLICABILITY OF THE "UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS."