

Non-commercial Evaluation License Agreement

Section 1 - Subject Matter of the Agreement

- (1) The subject matter of this agreement is the licensing of the Metrino Software (hereinafter referred to as: SOFTWARE). Licensee is aware of and acknowledges that the SOFTWARE contains third party components which are listed in Exhibit A. Licensee shall comply with the license conditions applying to such third party components, see Exhibit A.
- (2) The SOFTWARE shall be provided in object-code only. The SOFTWARE will be made accessible for download after Licensee's acceptance of the terms and conditions of this license agreement.
- (3) Essential future modifications, extensions or developments of the SOFTWARE are not covered by this agreement. However, future version or releases may be included under this agreement by way of a royalty bearing, separate license agreement between the parties. Licensor may - at its sole discretion - modify the license conditions for future versions or releases.
- (4) No trademarks of Licensor are licensed under this agreement.

Section 2 - Rights of Use

- (1) Licensor shall grant for the term of this agreement the non-exclusive, non-transferable, non-sublicensable right to Licensee to use the SOFTWARE for its own **internal evaluation purposes** only. Any use beyond – especially for commercial, consultancy or production purposes - is expressly excluded. Licensee may neither copy the SOFTWARE nor pass on to or allow access to the SOFTWARE by third parties.
- (2) Any use of the SOFTWARE beyond Section (1) is excluded; violation of this obligation will be subject to claims of compensation and to refrain from continuing such use.
- (3) In case Licensee intends to use the SOFTWARE for commercial purposes it shall contact licensor with regard to the conclusion of a separate, royalty-bearing license agreement.
- (4) Licensee may not modify, develop, reverse-engineer, lease, sell or distribute the SOFTWARE. Licensee shall ensure by appropriate technical and legal means that third parties may not use or access the SOFTWARE. Especially, the SOFTWARE may not be filed on an unprotected server.
- (5) Licensee may not assign this evaluation license as a whole to third parties.
- (6) Licensee shall not be entitled to enter into agreements on behalf of or with effect on Licensor or to create other obligations for Licensor.

Section 3 - Term

- (1) This agreement comes into force after Licensee's acceptance of this license agreement - whereas – for the avoidance of doubt – Licensee's use of the SOFTWARE shall be regarded as acceptance - and may be terminated according to Section 9.
- (2) Licensee is obligated to delete the SOFTWARE completely and permanently after the end of the agreement.

Section 4 - License Fees

The evaluation license under this agreement is granted royalty-free.

Section 5 – Maintenance and Support

Licensor shall not be obligated to provide maintenance or support services under this agreement.

Section 6 - Duties of the Parties

- (1) Licensee shall provide FhG with its name and address and accompanying contact information.
- (2) Licensee shall ensure that the SOFTWARE is marked with Licensor's copyright notice and that this copyright notice shall not be removed without Licensor's prior permission.
- (3) Licensee shall inform Licensor on request on its experiences resulting from the use of the SOFTWARE. Any voluntary feedback on the performance of the SOFTWARE (including without limitation, the identification of any errors, bugs, improvements or modifications) as well as general comments and observations on the SOFTWARE (hereinafter: "Feedback") is welcome. Licensee herewith grants a perpetual, irrevocable, royalty-free, world-wide, sub-licensable and transferable licence to use, reproduce, modify, adapt and publish such Feedback in any way to the Licensor.
- (4) The parties shall inform each other on any unauthorized use of the SOFTWARE without delay. They shall take appropriate measures to prevent such use after prior consultation.

Section 7 - Confidentiality

The parties to the agreement shall not disclose to third parties any information of technical or business nature which has been designated as being confidential as long as and to the extent that

- this information has not become general knowledge by other means;
- this information was not known to the recipient party prior to disclosure or was not made known afterwards by a third party who did not require confidentiality;
- this information was not developed or is not being developed by the recipient party independently of the disclosure; or

- the disclosing party has not given a written waiver of confidentiality.

This confidentiality obligation shall survive the term of this agreement for a period of five years

Section 8 - Liability and Warranty

- (1) The SOFTWARE is still under development and is released for test and evaluation purposes only. As the SOFTWARE is not a commercial product and provided without charge, the SOFTWARE is provided "as is" without any warranty of any kind, express or implied or statutory, including - but not limited to - any implied warranties or conditions of merchantability, fitness for a particular purpose and non-infringement. The use the SOFTWARE is entirely at Licensee's own risk.

Therefore Licensor does not warrant that the software is correct, error-free, complete or adequate to Licensee's purposes. Any compensation claim of Licensee shall be excluded.

- (2) To the extent permitted by law, any liability on the part of Licensor shall be excluded, regardless of the legal reasons involved, for damages in connection with the use of the SOFTWARE. This shall apply in particular with regard to consequential damages such as loss of data, operational breakdowns, or unrealized profits.
- (3) Licensee shall hold harmless Licensor in respect of claims resulting from product liability (if any).
- (4) Licensee acknowledges that the Licensor shall not take any liability or warranty with regards to the Third Party Components.

Section 9 - Termination, Concluding Provisions

- (1) Both parties may terminate this agreement with 3 weeks' notice to the end of a calendar month.

The right to terminate this agreement for good cause remains unaffected. Licensor may terminate for good cause especially if Licensee violates essential obligations deriving from this agreement or continues to do so despite written reminders, or if Licensee violates or has violated legal provisions exercising its rights under this agreement.

- (2) The provisions of Section 7 and 8 shall remain in force even if the agreement has been terminated.
- (3) If any of the provisions of this agreement should be or become invalid, the validity of the remaining provisions shall not be affected. Invalid provisions shall be replaced by valid provisions formulated in such a way that the intended purpose will largely be achieved.
- (4) The agreement as well as any additions or amendments shall be in writing; additions and amendments must be marked as such. Any waiver of these formal requirements shall be in writing.
- (5) This agreement is governed by the laws of the Federal Republic of Germany. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

Sankt Augustin, _____

**Fraunhofer-Gesellschaft zur
Förderung der angewandten
Forschung e.V.**

Fabian Perpeet
Legal Department

Christine Klein
Head of Project Administration

..., _____

...

Exhibit A

- JFreeChart, Open Source (LGPL), <http://www.jfree.org/jfreechart/>
- Open Source Library for OCL – OSLO, Open Source (CPL), <http://oslo-project.berlios.de/>

Z:\Recht und Verträge\Vertraege\Lizenz\Englisch\2009\FOKUS_Evaluation-License 14-4-09.doc