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Zadavatel:

Generální ředitelství cel

Budějovická 7, Praha 4





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- (i) le chargement du Logiciel par tout moyen notamment par téléchargement à partir d'un serveur distant ou par chargement à partir d'un support physique;
- (ii) le premier exercice par le Licencié de l'un quelconque des droits concédés par le Contrat.

3.2 Un exemplaire du Contrat, contenant notamment un avertissement relatif aux spécificités du Logiciel, à la restriction de garantie et à la limitation à un usage par des utilisateurs expérimentés a été mis à disposition du Licencié préalablement à son acceptation telle que définie à l'article 3.1 ci dessus et le Licencié reconnaît en avoir pris connaissance.

Article 4 - ENTREE EN VIGUEUR ET DUREE



4.1 ENTREE EN VIGUEUR

Le Contrat entre en vigueur à la date de son acceptation par le Licencié telle que définie en 3.1.

4.2 DUREE

Le Contrat produira ses effets pendant toute la durée légale de protection des droits patrimoniaux portant sur le Logiciel.

Article 5 - ETENDUE DES DROITS CONCEDES

Le Concédant concède au Licencié, qui accepte, les droits suivants sur le Logiciel pour toutes destinations et pour la durée du Contrat dans les conditions ci-après détaillées.

Par ailleurs, si le Concédant détient ou venait à détenir un ou plusieurs brevets d'invention protégeant tout ou partie des fonctionnalités du Logiciel ou de ses composants, il s'engage à ne pas opposer les éventuels droits conférés par ces brevets aux Licenciés successifs qui utiliseraient, exploiteraient ou modifieraient le Logiciel. En cas de cession de ces brevets, le Concédant s'engage à faire reprendre les obligations du présent alinéa aux cessionnaires.

5.1 DROIT D'UTILISATION

Le Licencié est autorisé à utiliser le Logiciel, sans restriction quant aux domaines d'application, étant ci-après précisé que cela comporte:

- 1. la reproduction permanente ou provisoire du Logiciel en tout ou partie par tout moyen et sous toute forme.*
- 2. le chargement, l'affichage, l'exécution, ou le stockage du Logiciel sur tout support.*
- 3. la possibilité d'en observer, d'en étudier, ou d'en tester le fonctionnement afin de déterminer les idées et principes qui sont à la base de n'importe quel élément de ce Logiciel; et ceci, lorsque le Licencié effectue toute opération de chargement, d'affichage, d'exécution, de transmission ou de stockage du Logiciel qu'il est en droit d'effectuer en vertu du Contrat.*

5.2 DROIT D'APPORTER DES CONTRIBUTIONS

Le droit d'apporter des Contributions comporte le droit de traduire, d'adapter, d'arranger ou d'apporter toute autre modification au Logiciel et le droit de reproduire le logiciel en résultant.

Le Licencié est autorisé à apporter toute Contribution au Logiciel sous réserve de mentionner, de façon explicite, son nom en tant qu'auteur de cette Contribution et la date de création de celle-ci.

5.3 DROIT DE DISTRIBUTION

Le droit de distribution comporte notamment le droit de diffuser, de transmettre et de communiquer le Logiciel au public sur tout support et par tout moyen ainsi que le droit de mettre sur le marché à titre onéreux ou gratuit, un ou des exemplaires du Logiciel par tout procédé.

Le Licencié est autorisé à distribuer des copies du Logiciel, modifié ou non, à des tiers dans les conditions ci-après détaillées.

5.3.1 DISTRIBUTION DU LOGICIEL SANS MODIFICATION

Le Licencié est autorisé à distribuer des copies conformes du Logiciel, sous forme de Code Source ou de Code Objet, à condition que cette distribution respecte les dispositions du Contrat dans leur totalité et soit accompagnée:

- 1. d'un exemplaire du Contrat,*



2. d'un avertissement relatif à la restriction de garantie et de responsabilité du Concédant telle que prévue aux articles 8 et 9,

et que, dans le cas où seul le Code Objet du Logiciel est redistribué, le Licencié permette un accès effectif au Code Source complet du Logiciel pendant au moins toute la durée de sa distribution du Logiciel, étant entendu que le coût additionnel d'acquisition du Code Source ne devra pas excéder le simple coût de transfert des données.

5.3.2 DISTRIBUTION DU LOGICIEL MODIFIÉ

Lorsque le Licencié apporte une Contribution au Logiciel, le Logiciel Modifié peut être distribué sous un contrat de licence autre que le présent Contrat sous réserve du respect des dispositions de l'article 5.3.4.

5.3.3 DISTRIBUTION DES MODULES EXTERNES

Lorsque le Licencié a développé un Module Externe les conditions du Contrat ne s'appliquent pas à ce Module Externe, qui peut être distribué sous un contrat de licence différent.

5.3.4 CITATIONS

Le Licencié qui distribue un Logiciel Modifié s'engage expressément:

1. à indiquer dans sa documentation qu'il a été réalisé à partir du Logiciel régi par le Contrat, en reproduisant les mentions de propriété intellectuelle du Logiciel,
2. à faire en sorte que l'utilisation du Logiciel, ses mentions de propriété intellectuelle et le fait qu'il est régi par le Contrat soient indiqués dans un texte facilement accessible depuis l'interface du Logiciel Modifié,
3. à mentionner, sur un site Web librement accessible décrivant le Logiciel Modifié, et pendant au moins toute la durée de sa distribution, qu'il a été réalisé à partir du Logiciel régi par le Contrat, en reproduisant les mentions de propriété intellectuelle du Logiciel,
4. lorsqu'il le distribue à un tiers susceptible de distribuer lui-même un Logiciel Modifié, sans avoir à distribuer le code source, à faire ses meilleurs efforts pour que les obligations du présent article 5.3.4 soient reprises par le dit tiers.

Lorsque le Logiciel modifié ou non est distribué avec un Module Externe qui a été conçu pour l'utiliser, le Licencié doit soumettre le dit Module Externe aux obligations précédentes.

5.3.5 COMPATIBILITE AVEC LES LICENCES CeCILL et CeCILL-C

Lorsqu'un Logiciel Modifié contient une Contribution soumise au contrat de licence CeCILL, les stipulations prévues à l'article 5.3.4 sont facultatives.

Un Logiciel Modifié peut être distribué sous le contrat de licence CeCILL-C. Les stipulations prévues à l'article 5.3.4 sont alors facultatives.

Article 6 - PROPRIETE INTELLECTUELLE

6.1 SUR LE LOGICIEL INITIAL

Le Titulaire est détenteur des droits patrimoniaux sur le Logiciel Initial. Toute utilisation du Logiciel Initial est soumise au respect des conditions dans lesquelles le Titulaire a choisi de diffuser son oeuvre et nul autre n'a la faculté de modifier les conditions de diffusion de ce Logiciel Initial.

Le Titulaire s'engage à ce que le Logiciel Initial reste au moins régi par le Contrat et ce, pour la durée visée à l'article 4.2.



6.2 SUR LES CONTRIBUTIONS

Le Licencié qui a développé une Contribution est titulaire sur celle-ci des droits de propriété intellectuelle dans les conditions définies par la législation applicable.

6.3 SUR LES MODULES EXTERNES

Le Licencié qui a développé un Module Externe est titulaire sur celui-ci des droits de propriété intellectuelle dans les conditions définies par la législation applicable et reste libre du choix du contrat régissant sa diffusion.

6.4 DISPOSITIONS COMMUNES

Le Licencié s'engage expressément:

- 1. n pas supprimer ou modifier de quelque manière que ce soit les mentions de propriété intellectuelle apposées sur le Logiciel;*
- 2. reproduire à l'identique lesdites mentions de propriété intellectuelle sur les copies du Logiciel modifié ou non.*

Le Licencié s'engage à ne pas porter atteinte, directement ou indirectement, aux droits de propriété intellectuelle du Titulaire et/ou des Contributeurs sur le Logiciel et à prendre, le cas échéant, à l'égard de son personnel toutes les mesures nécessaires pour assurer le respect des dits droits de propriété intellectuelle du Titulaire et/ou des Contributeurs.

Article 7 - SERVICES ASSOCIES

7.1 Le Contrat n'oblige en aucun cas le Concédant à la réalisation de prestations d'assistance technique ou de maintenance du Logiciel.

Cependant le Concédant reste libre de proposer ce type de services. Les termes et conditions d'une telle assistance technique et/ou d'une telle maintenance seront alors déterminés dans un acte séparé. Ces actes de maintenance et/ou assistance technique n'engageront que la seule responsabilité du Concédant qui les propose.

7.2 De même, tout Concédant est libre de proposer, sous sa seule responsabilité, à ses licenciés une garantie, qui n'engagera que lui, lors de la redistribution du Logiciel et/ou du Logiciel Modifié et ce, dans les conditions qu'il souhaite. Cette garantie et les modalités financières de son application feront l'objet d'un acte séparé entre le Concédant et le Licencié.

Article 8 - RESPONSABILITE

8.1 Sous réserve des dispositions de l'article 8.2, le Licencié a la faculté, sous réserve de prouver la faute du Concédant concerné, de solliciter la réparation du préjudice direct qu'il subirait du fait du Logiciel et dont il apportera la preuve.

8.2 La responsabilité du Concédant est limitée aux engagements pris en application du Contrat et ne saurait être engagée en raison notamment: (i) des dommages dus à l'inexécution, totale ou partielle, de ses obligations par le Licencié, (ii) des dommages directs ou indirects découlant de l'utilisation ou des performances du Logiciel subis par le Licencié et (iii) plus généralement d'un quelconque dommage indirect. En particulier, les Parties conviennent expressément que tout préjudice financier ou commercial (par exemple perte de données, perte de bénéfices, perte d'exploitation, perte de clientèle ou de commandes, manque à gagner, trouble commercial quelconque) ou toute action dirigée contre le Licencié par un tiers, constitue un dommage indirect et n'ouvre pas droit à réparation par le Concédant.

Article 9 - GARANTIE

9.1 Le Licencié reconnaît que l'état actuel des connaissances scientifiques et techniques au moment de la mise en circulation du Logiciel ne permet pas d'en tester et d'en vérifier toutes les utilisations ni de détecter l'existence d'éventuels défauts. L'attention



du Licencié a été attirée sur ce point sur les risques associés au chargement, à l'utilisation, la modification et/ou au développement et à la reproduction du Logiciel qui sont réservés à des utilisateurs avertis.

Il relève de la responsabilité du Licencié de contrôler, par tous moyens, l'adéquation du produit à ses besoins, son bon fonctionnement et de s'assurer qu'il ne causera pas de dommages aux personnes et aux biens.

9.2 Le Concédant déclare de bonne foi être en droit de concéder l'ensemble des droits attachés au Logiciel (comprenant notamment les droits visés à l'article 5).

9.3 Le Licencié reconnaît que le Logiciel est fourni "en l'état" par le Concédant sans autre garantie, expresse ou tacite, que celle prévue à l'article 9.2 et notamment sans aucune garantie sur sa valeur commerciale, son caractère sécurisé, innovant ou pertinent.

En particulier, le Concédant ne garantit pas que le Logiciel est exempt d'erreur, qu'il fonctionnera sans interruption, qu'il sera compatible avec l'équipement du Licencié et sa configuration logicielle ni qu'il remplira les besoins du Licencié.

9.4 Le Concédant ne garantit pas, de manière expresse ou tacite, que le Logiciel ne porte pas atteinte à un quelconque droit de propriété intellectuelle d'un tiers portant sur un brevet, un logiciel ou sur tout autre droit de propriété. Ainsi, le Concédant exclut toute garantie au profit du Licencié contre les actions en contrefaçon qui pourraient être diligentées au titre de l'utilisation, de la modification, et de la redistribution du Logiciel. Néanmoins, si de telles actions sont exercées contre le Licencié, le Concédant lui apportera son aide technique et juridique pour sa défense. Cette aide technique et juridique est déterminée au cas par cas entre le Concédant concerné et le Licencié dans le cadre d'un protocole d'accord. Le Concédant dégage toute responsabilité quant à l'utilisation de la dénomination du Logiciel par le Licencié. Aucune garantie n'est apportée quant à l'existence de droits antérieurs sur le nom du Logiciel et sur l'existence d'une marque.

Article 10 - RESILIATION

10.1 En cas de manquement par le Licencié aux obligations mises à sa charge par le Contrat, le Concédant pourra résilier de plein droit le Contrat trente (30) jours après notification adressée au Licencié et restée sans effet.

10.2 Le Licencié dont le Contrat est résilié n'est plus autorisé à utiliser, modifier ou distribuer le Logiciel. Cependant, toutes les licences qu'il aura concédées antérieurement à la résiliation du Contrat resteront valides sous réserve qu'elles aient été effectuées en conformité avec le Contrat.

Article 11 - DISPOSITIONS DIVERSES

11.1 CAUSE EXTERIEURE

Aucune des Parties ne sera responsable d'un retard ou d'une défaillance d'exécution du Contrat qui serait dû à un cas de force majeure, un cas fortuit ou une cause extérieure, telle que, notamment, le mauvais fonctionnement ou les interruptions du réseau électrique ou de télécommunication, la paralysie du réseau liée à une attaque informatique, l'intervention des autorités gouvernementales, les catastrophes naturelles, les dégâts des eaux, les tremblements de terre, le feu, les explosions, les grèves et les conflits sociaux, l'état de guerre...

11.2 Le fait, par l'une ou l'autre des Parties, d'omettre en une ou plusieurs occasions de se prévaloir d'une ou plusieurs dispositions du Contrat, ne pourra en aucun cas impliquer renonciation par la Partie intéressée à s'en prévaloir ultérieurement.

11.3 Le Contrat annule et remplace toute convention antérieure, écrite ou orale, entre les Parties sur le même objet et constitue l'accord entier entre les Parties sur cet objet. Aucune addition ou modification aux termes du Contrat n'aura d'effet à l'égard des Parties à moins d'être faite par écrit et signée par leurs représentants dûment habilités.

11.4 Dans l'hypothèse où une ou plusieurs des dispositions du Contrat s'avèreraient contraire à une loi ou à un texte applicable, existants ou futurs, cette loi ou ce texte prévaudrait, et les Parties feraient les amendements nécessaires pour se conformer à cette loi ou à ce texte. Toutes les autres dispositions resteront en vigueur. De même, la nullité, pour quelque raison que ce soit, d'une des dispositions du Contrat ne saurait entraîner la nullité de l'ensemble du Contrat.

11.5 LANGUE

Le Contrat est rédigé en langue française et en langue anglaise, ces deux versions faisant également foi.

Article 12 - NOUVELLES VERSIONS DU CONTRAT

12.1 Toute personne est autorisée à copier et distribuer des copies de ce Contrat.

12.2 Afin d'en préserver la cohérence, le texte du Contrat est protégé et ne peut être modifié que par les auteurs de la licence, lesquels se réservent le droit de publier périodiquement des mises à jour ou de nouvelles versions du Contrat, qui posséderont chacune un numéro distinct. Ces versions ultérieures seront susceptibles de prendre en compte de nouvelles problématiques rencontrées par les logiciels libres.

12.3 Tout Logiciel diffusé sous une version donnée du Contrat ne pourra faire l'objet d'une diffusion ultérieure que sous la même version du Contrat ou une version postérieure.

Article 13 - LOI APPLICABLE ET COMPETENCE TERRITORIALE

13.1 Le Contrat est régi par la loi française. Les Parties conviennent de tenter de régler à l'amiable les différends ou litiges qui viendraient à se produire par suite ou à l'occasion du Contrat.

13.2 A défaut d'accord amiable dans un délai de deux (2) mois à compter de leur survenance et sauf situation relevant d'une procédure d'urgence, les différends ou litiges seront portés par la Partie la plus diligente devant les Tribunaux compétents de Paris.

Version 1.0 du 2006-09-05.



3.5. EULA 1.0

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 - iii. *Third Party Distribution.* You may permit distributors of your applications to copy and distribute any of this distributable code you elect to distribute with your applications.
- b) *Distribution Requirements.* For any code you distribute, you must:
 - i. add significant primary functionality to it in your applications;
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- iii. *indemnify, defend, and hold harmless Microsoft from any claims, including attorneys' fees, related to the distribution or use of your applications, except to the extent that any claim is based solely on the unmodified distributable code.*
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8. *BINDING ARBITRATION AND CLASS ACTION WAIVER. This Section applies if you live in (or, if a business, your principal place of business is in) the United States. If you and Microsoft have a dispute, you and Microsoft agree to try for 60 days to resolve it informally. If you and Microsoft can't, you and Microsoft agree to binding individual arbitration before the American Arbitration Association under the Federal Arbitration Act ("FAA"), and not to sue in court in front of a judge or jury. Instead, a neutral arbitrator will decide. Class action lawsuits, class-wide arbitrations, private attorney-general actions, and any other proceeding where someone acts in a representative capacity are not allowed; nor is combining individual proceedings without the consent of all parties. The complete Arbitration Agreement contains more terms and is at <http://aka.ms/arb-agreement-1>. You and Microsoft agree to these terms.*
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 - c) *Germany and Austria.*
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3.6. *FreeBSD 1.0*

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