

PowerGadgets Licensing

PowerGadgets licensed on a per-seat basis. Per-seat licenses are licenses that are counted by all the machines on which any PowerGadgets portion will reside on.

Read Carefully Before Installing the Software

By installing PowerGadgets (hereinafter "the Software" or "Software"), you are accepting the following License Agreement.

LICENSE AGREEMENT. This is a legal agreement between you (either an individual or an entity) and Software FX, Inc. ("the Licensor" or "Licensor"). By installing the software you are agreeing to be bound by the terms of this agreement. If you do not agree to the terms of this agreement, promptly return the uninstalled software to the place you purchased it for a full refund.

1. GRANT OF LICENSE. Licensor grants you as an individual or entity a non-exclusive, non-transferable, worldwide license to make and use copies of the Software in the manner provided below. The rights granted under this Agreement are only effective upon payment of license fees and possession of the appropriate License Agreement (if applicable). The software is licensed, not sold.

- a) **Installation.** The product is licensed on a per seat basis. Per-seat licenses are licenses that are counted by all the machines on which any PowerGadgets portion will reside on. To use a per-seat license, every machine installing, running and/or using any portions of the software must have a licensed copy and its appropriate license.

2. RESTRICTED USE. You may not: (a) copy the Software by any mechanism for any purpose other than to create an archival copy to the extent permitted by federal copyright law (b) bundle or distribute the Software with any other software, plug-in or enhancement which uses or relies upon the Software without the express written consent of Licensor; (c) embed the Software as an OLE, ActiveX or any other component of an application, server, web server, browser or container; (d) sell or otherwise directly receive compensation for the Software unless you have express written permission from Licensor. Please contact licensor for additional OEM licensing information (d) modify or permit anyone else to modify the Software in any manner; (e) reverse

engineer, decompile, disassemble or otherwise attempt to discover the source code of the Software (f) rent, lease, sublicense, assign or transfer your rights under this Agreement, or authorize all or any portion of the Software to be copied except as may be expressly permitted herein; (g) use the Software or Documentation in connection with a service bureau or like activity whereby you, without purchasing a license from Licensor, operate or use the Software or Documentation for the benefit of a third party who has not purchased a copy of the Software; (h) release the results of any benchmark testing of the Software to any third party without the prior written consent of Licensor.

3. NETWORK, SERVER AND VIRTUALIZATION ENVIRONMENT INSTALLATION AND USAGE. The Software may be accessed through a network, provided that you have procure a license for each user that will access the Software through a network server or a virtualized server, even if users accessing the Software are not required to install copy of the Software locally. For instance, if 4 different users will access Software installed on a network server or a virtualized server, you must purchase 4 copies of the Software, regardless of whether the 4 workstations will access the Software at different times, or concurrently. If you have purchased multiple licenses, you are responsible for duplicating and distributing the Software for use in accordance with the terms of this License, and for monitoring the number of licenses of the Software used by your organization locally or remotely via a network server or a virtualized environment.

4. NO OPEN SOURCE. Your right to the Software does not include any license, right, power or authority to subject the Software in whole or in part to any of the terms of an Excluded License. An "Excluded License" means any "open source" or other license that require as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

5. HIGH RISK ACTIVITIES. The Software is not fault tolerant and is not intended for use in high-risk activities. You may not use the Software in the design, construction, operation or maintenance of any nuclear facility or weapon of mass destruction, or for the purpose of aircraft navigation or control or any other activity in which the failure of the Software could result in loss of human life, personal injury or property damage.

6. SERVICES. There are no services provided under this agreement. You are responsible for installing the Software on your computers as permitted under this agreement.

7. FEES. Prices are available upon request and are subject to change. Please consult Licensor or its authorized resellers as to current fees before placing an order. All license fees are non-refundable and non-cancelable except as expressly provided in this agreement and do not include shipping, sales or use tax, withholding tax, excise tax, VAT or custom duties, all of which you are responsible for paying above and beyond the license fees due to Licensor or its authorized resellers.

8. ACTIVATION. During installation, an Internet connection is required on the machine where the product is being installed. Only the serial number and a unique product ID provided by the installation program is sent to our servers. Alternatively, if necessary, this information could be submitted from another computer that is connected to the Internet. The information is encrypted using the standard RSA Public/Private key methodology. For security reasons, we do not copy the private key onto the client machine; instead it resides on our servers and thus the need for an Internet connection to obtain a code to complete the install of the software. Our installation does not scan your hard drive or gather any personal information from your computer; therefore, no privacy issues should be of concern to you. Customers are still encouraged to register the product using the traditional and voluntary web site registration form. The installation process should be simple and unobtrusive for all customers. Our goal is to prevent installation of serial numbers that have been obtained from fraudulent purchases, returned products, expired programs and other suspicious means.

9. MAINTENANCE/SUPPORT. You may acquire maintenance/technical support services ("Maintenance/Support") for the Software provided that you subscribe to Licensor's Maintenance/Support programs or to an authorized Licensor partner support program. Maintenance/Support shall be based on the in-country list price and then applicable Maintenance/Support policy in effect at the time such Maintenance/Support is ordered. Maintenance/Support fees are due annually in advance and are nonrefundable and non-cancelable.

10. LIMITED WARRANTIES; DISCLAIMER.

10.1 Software Performance Warranty; Media Warranty. Licensor warrants that the Software, as delivered by Licensor and when used in accordance with the Documentation, shall substantially conform with the Documentation for a period of ninety (90) days from delivery and that the media upon which the Software is furnished to You shall be free from defects in material and workmanship under normal use for a period of ninety (90) days from delivery.

10.2 Software Warranty Remedies. If the Software does not operate as warranted in Section 10.1 Licensor shall, at its sole discretion, either repair the Software, replace the Software with software of substantially the same functionality, or terminate the license and refund the relevant license fees paid for such non-compliant Software only when You return the Software to Licensor or its authorized reseller, from whom you obtained the Software, with the purchase receipt within the warranty period. The above warranties specifically exclude defects resulting from accident, abuse, unauthorized repair, modifications or enhancements, or misapplication.

10.3 Maintenance/Support Warranty. Licensor warrants, for a period of thirty (30) days from the date of performance of the Maintenance/Support covered by this warranty that the Maintenance/Support shall be performed in a manner consistent with generally accepted industry standards.

10.4 Maintenance/Support Remedies. For Maintenance/Support not performed as warranted in Section 9.3, and provided Licensor has received written notice of such non-conformance within thirty (30) days of performance of the Maintenance/Support, Licensor shall, at its discretion, either correct any nonconforming Maintenance/Support or refund the relevant fees paid for the specific nonconforming Maintenance/Support service.

10.5 DISCLAIMERS. THE WARRANTIES SET FORTH IN SECTIONS 10.1 AND 10.3 ARE YOUR EXCLUSIVE WARRANTIES AND ARE IN LIEU OF ALL OTHER WARRANTIES, WHETHER EXPRESS OR IMPLIED, AND LICENSOR EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, QUALITY, FITNESS FOR A PARTICULAR PURPOSE, AND WARRANTIES OF STATUTORY NON-INFRINGEMENT. NO THIRD PARTY, INCLUDING AGENTS, DISTRIBUTORS, OR AUTHORIZED LICENSOR RESELLERS IS AUTHORIZED TO MODIFY ANY OF THE ABOVE WARRANTIES OR MAKE ANY ADDITIONAL WARRANTIES ON BEHALF OF LICENSOR.. LICENSOR DOES NOT WARRANT THAT THE SOFTWARE SHALL MEET YOUR REQUIREMENTS OR THAT USE OF THE SOFTWARE SHALL BE UNINTERRUPTED OR ERROR FREE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSION MAY NOT APPLY TO YOU. ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO NINETY (90) DAYS FROM THE DATE OF DELIVERY OF THE SOFTWARE OR TO THE MINIMUM PRESCRIBED BY LAW. THIS WARRANTY GIVES YOU SPECIFIC LEGAL RIGHT. YOU MAY HAVE OTHER RIGHTS, WHICH VARY DEPENDING ON THE TERRITORY IN WHICH THE SOFTWARE WAS FURNISHED TO YOU. NOTHING IN THIS AGREEMENT SHALL EXCLUDE OR LIMIT ANY LIABILITY OF LICENSOR WHICH CANNOT BE EXCLUDED OR LIMITED BY ANY LAW OR REGULATION APPLICABLE TO THIS AGREEMENT. FOR WARRANTY ASSISTANCE CONTACT LICENSOR OR THE RESELLER FROM WHOM YOU OBTAINED THE SOFTWARE.

11. EVALUATION LICENSE. Notwithstanding any provision of this Agreement to the contrary, the following terms and conditions shall apply to any Software acquired by you for purposes of evaluation. Any evaluation license for the Software shall terminate sixty (60) days from the date of your initial installation of the Software. The Software may be used solely for internal noncommercial evaluation. You may not use an evaluation copy of the Software for any purpose, including production use, other than evaluation. The Software may not be transferred, is licensed to you without fee, and is provided "AS IS" without warranty of any kind. To the maximum extent permitted by applicable law, You agree to release, defend and indemnify and hold Licensor harmless from any claims and/or damages of any kind, by any party or entity, arising out of Your use of the Software for evaluation. All other terms and conditions of this Agreement shall otherwise apply to the Software.

12. TERMINATION. This Agreement is effective until terminated. This Agreement, including without limitation your right to use and copy the Software as specified in Section 1, terminates immediately and without notice from Licensor if You fail to comply with any of its provisions.

Upon termination you shall immediately discontinue use of and destroy the Software and all copies or portions thereof, including any master copy, and within ten (10) days certify in writing to Licensor that all copies have been destroyed. Your payment obligations incurred prior to termination shall survive termination of this Agreement.

13. LIMITATION OF LIABILITY. IN NO EVENT SHALL LICENSOR OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY PERSON FOR ANY COSTS OF PROCUREMENT OF SUBSTITUTE OR REPLACEMENT GOODS OR SERVICES, LOSS OF PROFITS, LOSS OF, OR CORRUPTION OF DATA, LOSS OF PRODUCTION, LOSS OF BUSINESS, LOSS OF REVENUES, LOSS OF CONTRACTS, LOSS OF GOODWILL OR ANTICIPATED SAVINGS OR WASTED MANAGEMENT AND STAFF TIME, OR ANY INCIDENTAL, INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES, OR ANY AND ALL OTHER SIMILAR DAMAGES OR LOSS EVEN IF LICENSOR, ITS RESELLERS, SUPPLIERS OR ITS AGENTS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT AS LIMITED BY APPLICABLE LAW, REGARDLESS OF THE LEGAL BASIS FOR YOUR CLAIM, LICENSOR'S AND ITS SUPPLIERS' TOTAL LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT DAMAGES WHICH SHALL NOT EXCEED THE AMOUNT OF FEES PAID FOR THE SOFTWARE GIVING RISE TO THE CLAIM. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

14. U.S. GOVERNMENT RIGHTS. The Software and Documentation are deemed to be "commercial computer software" and "commercial computer software documentation" as defined in FAR Section 12.212 and DFARS Section 227.7202, as applicable. Any use, modification, reproduction release, performance, display or disclosure of the Software and Documentation by the U.S. Government shall be solely in accordance with the terms of this Agreement.

15. COMPLIANCE WITH LAW. Each party agrees to comply with all applicable laws, rules, and regulations in connection with its activities under this Agreement. Without limiting the foregoing, You acknowledge that the Software, including documentation and other technical data, is subject to export controls imposed by the

U.S. Export Administration Act of 1979, as amended (the "Act"), and the regulations promulgated thereunder and other applicable foreign export control laws. You shall not export or re-export (directly or indirectly) the Software, Documentation or related technical data except in compliance with the Act and its implementing regulations or other applicable foreign export control laws.

16. GENERAL. You agree to pay any tax assessed on the Software, other than taxes based on Licensor's net income or corporate franchise tax. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida, exclusive of any provisions of the United Nations Convention on Contracts for Sale of Goods, including any amendments thereto, and without regard to principles of conflicts of law. Any suits concerning this Agreement shall be brought in the federal courts for the state of Florida or the state courts in Dade County, Florida, or if the matter is brought by Licensor, in a court of competent jurisdiction in Your domicile. This

Agreement is personal and may not be assigned or assumed (including by operation of law) without Licensor's prior written consent. A change of control shall constitute an assignment. During the period this Agreement remains in effect, and for three years thereafter, Licensor has the right to verify your compliance with this Agreement on Your premises during Your normal business hours and in a manner that minimizes disruption to Your business. Licensor may use an independent auditor for this purpose with Your prior approval which You will not unreasonably withhold. If any provision of this Agreement is held to be unenforceable, it shall be enforced to the maximum extent permissible, and the remaining provisions shall remain in full force. A waiver of any breach or default under this Agreement shall not constitute a waiver of any other subsequent breach or default. Unless You have entered into a separate, written and signed agreement with Licensor for the supply of the Software, this Agreement is the complete and exclusive statement of the agreement between us which supersedes any proposal, prior agreement, oral or written, purchase order or similar terms issued by You, or any other communications between us in relation to the subject matter of this Agreement. Any modifications to this Agreement shall be made in writing and must be duly signed by authorized representatives of both parties or they shall be void and of no effect.

If you have any questions regarding this Agreement or if you wish to request any information about PowerGadgets, please contact Software FX customer service at <mailto:info@softwarefx.com> or visit our web site at <http://www.softwarefx.com> for additional contact information.