

VelaClock 1.8 License Agreement
Between You and Vela Design Group

IMPORTANT - You must read this End-user License Agreement ("License") carefully before clicking on the "Agree" button. By clicking on the "Agree" button OR by using this software, you agree to be bound by the terms of this License Agreement.

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END USER LICENSE AGREEMENT

THIS IS A LEGAL AGREEMENT between you (either an individual or an entity) and Vela Design Group ("Vela"). Vela licenses, not sells, this VelaClock 1.8 version to you conditioned upon your acceptance, without modifications, of the terms and conditions contained in this Agreement. By clicking on the "Agree" button, OR by using and/or continuing to use VelaClock 1.8 you are agreeing to be bound by the terms and conditions of this License Agreement. If you DO NOT AGREE to the terms and conditions of this License Agreement, DO NOT click on the "Agree" button, immediately cease your use of the software, and destroy any copies in your possession.

NOW, THEREFORE, in consideration of the foregoing mutual representations, warranties, and covenants herein contained and other good and valuable consideration, the receipt of which is hereby acknowledged, you ("Licensee") and Vela hereby agree as follows:

1. Grant of Limited License.

a. License Grant. Subject to the terms and limitations provided in this Agreement, Vela Design Group grants to you a non-exclusive, non-sublicensable, non-transferable right and license in the United States of America, during the term of this Agreement and under Vela's Intellectual Property rights, to use the licensed technology solely to display and compare local times, daylight hours, and moon information for time zones and cities throughout the world in accordance with this Agreement. The License shall commence as of the effective date of this Agreement, providing that you are then in compliance with your obligations under this Agreement and under all the previous agreements entered into by the Parties to this Agreement. The License may be exercised only for your benefit, and only by you or by entities acting as your agent and/or subcontractor. This License gives you the limited right to install and use the Vela Design Group software program downloaded or contained on the CD-ROM or disk (the "Software"). The license permits either (a) multiple users to install and use the Software on a single machine; or (b) a single user to install and use the Software on multiple machines. However, a single license does not allow multiple users to ever use Software on multiple machines, regardless of whether such use is concurrent.

b. Restrictions. Other than the License expressly granted in this Agreement, no rights or licenses are granted or deemed granted to you hereunder or in connection herewith, including, but not limited to, any rights or licenses, express or implied, to any other technology or Intellectual Property Rights owned by Vela.

2. Ownership.

As between you and Vela and as of the Effective Date, Vela is and shall remain the sole and exclusive owner of all right, title and interest in and to its Intellectual Property, the licensed

technology, all Vela Products, all Improvements thereto developed by Vela before or following the Effective Date, to meet demands of any current or future licensees, and any Intellectual Property rights related thereto, subject only to the License.

In the event that you become aware of any infringement of any Intellectual Property right of Vela, or of any third party's rights, you agree to promptly provide notice thereof in writing to Vela. Vela shall control, in its sole discretion, the protection and enforcement of its Intellectual Property rights, and reserves the rights to use any means in its disposal to protect Vela's Intellectual Property rights or the Intellectual Property rights of any other third party.

The Software and any technical and customer support from Vela, are provided on an "AS IS" basis and without warranty, express and implied, including but not limited to any implied warranties of merchantability and fitness for a particular purpose. In no event will Vela be liable for any damages, including lost profits, lost savings, or other incidental or consequential damages, even if Vela is advised of the possibility of such damages, or for any claim by you or any third party.

3. Other Restrictions.

(a) You may modify, reverse-engineer, decompile, or disassemble the Software. However, you may not do so for the purpose of disabling the feature of the Software that provides intermittent reminders that you have not registered your copy of the Software (i.e. circumventing anti-piracy technology) or for the purpose of circumventing any of the terms of this License Agreement or any other provision of law.

(b) You may not claim that the Software is yours, and you may not use the name Vela Design Group or any other Vela Design Group intellectual properties including but not limited to Vela Design Group's registered marks or product names to endorse or promote or otherwise utilize for purposes affecting products derived from the Software without prior written permission.

(c) You must use the Software at all times in a manner that is consistent with the software licenses granted to you by other companies that have provided software for your computer.

(d) You may not distribute copies of the Software, in whole or in part, to any third party, nor may you use, rent, loan, sublicense, or lease the Software to third parties.

4. Representations and Warranties

(a) **DISCLAIMER OF WARRANTIES. YOU UNDERSTAND AND EXPRESSLY ACKNOWLEDGE THAT NEITHER VELA NOR ANY OF ITS EMPLOYEES, OFFICERS, DIRECTORS, AFFILIATES, AGENTS OR LICENSORS MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THAT ACCESS TO OR USE OF ANY SOFTWARE, PRODUCTS, OR SERVICES TO BE PROVIDED PURSUANT TO THIS AGREEMENT SHALL BE UNINTERRUPTED OR ERROR FREE, THAT SECURITY MEASURES SHALL PREVENT UNAUTHORIZED ACCESS TO THE VELACLOCK 1.8 PROGRAM, FEATURES OR SERVICES, OR UNAUTHORIZED INTERCEPTION OF INFORMATION TRANSMITTED.**

YOU FURTHER UNDERSTAND AND EXPRESSLY ACKNOWLEDGE THAT ALL USE OF VELA'S PRODUCTS IS DONE AT YOUR SOLE RISK. VELACLOCK 1.8 AND ALL RELATED SOFTWARE, PRODUCTS, MATERIALS, CONTENT, AND SERVICES ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS. VELA EXPRESSLY AND SPECIFICALLY DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY, OR OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT, AND NON-INFRINGEMENT.

VELA MAKES NO WARRANTY THAT (i) THE VELA PRODUCTS WILL MEET YOUR REQUIREMENTS, (ii) THE RESULTS OBTAINED USE OF THE VELACLOCK 1.8 PROGRAM, FEATURES AND/OR SERVICES WILL BE ACCURATE OR RELIABLE, (iii) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIALS OBTAINED BY YOU THROUGH THE VELACLOCK 1.8 PROGRAM, FEATURES AND/OR SERVICES WILL MEET YOUR EXPECTATIONS, AND (iv) ANY ERRORS IN THE SOFTWARE WILL BE CORRECTED.

ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE VELA PRODUCTS IS DONE AT YOUR OWN DISCRETION AND RISK AND YOU AGREE TO BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OF ANY SUCH MATERIAL.

5. LIMITATION OF LIABILITY

(a) GENERAL LIMITATION. BOTH PARTIES TO THIS AGREEMENT UNDERSTAND AND AGREE THAT NEITHER PARTY WILL BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, OR SPECIAL DAMAGES, ARISING OUT OF OR RELATED TO THIS AGREEMENT INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, AND THE LIKE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NEITHER PARTY SHALL BE LIABLE FOR ANY DELAY OR FAILURE TO PERFORM WHICH IS CAUSED BY MATTERS BEYOND ITS REASONABLE CONTROL, INCLUDING WITHOUT LIMITATION FAILURE OR UNAVAILABILITY OF, OR IMPAIRED ACCESS TO VARIOUS DATA SOURCES, LEGAL OR REGULATORY RESTRICTIONS, LABOR DISPUTES, MECHANICAL OR ELECTRONIC BREAKDOWNS OF EQUIPMENT, BREAKDOWNS IN TELECOMMUNICATIONS FACILITIES CONTROLLED BY THIRD PARTIES, ACTS OF TERRORISM, OR ACTS OF GOD.

(b) DAMAGES LIMITATION. THE MAXIMUM LIABILITY OF VELA TO YOU, YOUR AGENTS, AFFILIATES AND/OR CLIENTS, AND THE EXCLUSIVE REMEDY AVAILABLE TO YOU, YOUR AGENTS, AFFILIATES AND/OR CLIENTS, IN CONNECTION WITH THIS AGREEMENT SHALL BE TO RECOVER NO MORE THAN THE CUMULATIVE AMOUNTS THEN PAID BY YOU TO VELA DURING THE TERM OF THIS AGREEMENT, AND/OR TO RECEIVE EQUITABLE RELIEF, AND/OR TO TERMINATE THIS AGREEMENT IN ACCORDANCE WITH ARTICLE 10. THE FOREGOING LIMITATION OF MONEY DAMAGES SHALL BE CALCULATED UP TO THE DATE OF SUCH CALCULATION. THE EXISTENCE OF MULTIPLE CLAIMS OR SUITS UNDER OR RELATED TO THIS AGREEMENT WILL NOT ENLARGE OR EXTEND THE LIMITATION OF MONEY DAMAGES. EACH PARTY ACKNOWLEDGES THAT OTHER PARTS OF THIS AGREEMENT RELY UPON THE INCLUSION OF THIS SECTION 5.

(c) Mitigation. In the case of any breach or damages that occur under this Agreement, each affected party shall, at its own expense, promptly take whatever actions are reasonably necessary to limit and/or mitigate any damages that may occur as a result of such breach.

6. Indemnification

(a) Indemnification. Each party to this Agreement, shall, upon written request, indemnify and hold the other party, its affiliates, subsidiaries, directors, officers, employees, agents and licensors harmless from and against all claims, demands and actions of or by a any third party or Licensee's clients and/or affiliates, including all liabilities, damages, obligations, costs and expenses (such as reasonable attorneys' and experts' fees) ("Claims"), which arise from or relate to: (i) breach of such party's warranty set forth in this Agreement, (ii) such party's gross negligence or willful misconduct, or (iii) an allegation that the Licensee's use of products, services, content, or materials provided by Vela under this Agreement, as set forth in this Agreement, violates the intellectual property rights, including but not limited to copyright, trademark, trade secret, patent, or right of personality, publicity, or privacy, of any third party.

(b) Notice of Claim. The party receiving indemnification (the "Indemnified Party") agrees that the party providing indemnification (the "Indemnifying Party") may assume sole and exclusive control over the defense and settlement of any third party claim with respect to which the foregoing indemnity obligations apply, except that the Indemnifying Party will not, however, enter into any settlement that adversely affects the Indemnified Party's rights or interests without the prior written consent of the Indemnified Party. The Indemnified Party shall promptly notify the Indemnifying Party of any Claim against it of which it becomes aware. At the Indemnifying Party's expense, the Indemnified Party will provide reasonable cooperation to the Indemnifying Party in connection with the defense or settlement of any such claim. At the Indemnified Party's expense, the Indemnified Party will be entitled to participate in the defense of any such claim.

7. Fees.

By clicking on the "Agree" button you expressly acknowledge that you have paid Vela Design Group, or its designees and/or assignees any and all applicable license fees for the Software.

8. Your Warranty to Vela Design Group.

You warrant that all individuals having access to the Software will observe and perform all the terms and conditions of this License Agreement. You shall, at your own expense, promptly enforce the restrictions in this License Agreement against any person who gains access to your copy of the Software (i.e. the copy you obtain upon agreeing to this License Agreement or any other lawful copy you have made from this copy) with your permission or while your employee and who violates such restrictions, by instituting and diligently pursuing all legal and equitable remedies against him or her. You agree to immediately notify Vela Design Group in writing of any misuse, misappropriation or unauthorized disclosure, display or copying of the Software that may come to your attention.

9. Export Control Laws.

You agree to comply with all laws, rules and regulations applicable to the export of the Software. Specifically, you shall not export, re-export or transship the Software, or the direct product thereof, in violation of any United States laws and regulations which may from time to time be

applicable. None of the Software or underlying information or technology may be downloaded or otherwise exported or re-exported (i) into, or to a national or resident of, Cuba, Iran, Iraq, Libya, North Korea, Sudan, Syria or any other country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Denial Order. By downloading or using the Software, you are agreeing to the foregoing and you are representing and warranting that you are not located in, under the control of, or a national or resident of any such country or on any such list.

10. Injunctive Relief.

Because of the unique nature of the Software, you understand and agree that Vela Design Group will suffer irreparable injury in the event you fail to comply with any of the terms of paragraph 3 of this License Agreement and that monetary damages may be inadequate to compensate Vela Design Group for such breach. Accordingly, you agree that Vela Design Group will, in addition to any other remedies available to it at law or in equity, be entitled to injunctive relief, without posting a bond, to enforce the terms of this Agreement.

11. Termination.

This License is effective until it is terminated by will or by failure to comply with any of the terms contained in this Agreement. You may terminate this Agreement at any time. Vela Design Group may immediately, and without notice, terminate this License Agreement if you breach any representation, warranty, agreement or obligation contained or referred to in this License Agreement. Upon termination, you must dispose of the Software and all copies or versions of the Software by destroying the Software.

12. Miscellaneous.

(a) Assignment. You may not assign or transfer your rights or obligations under this Agreement unless the assignee also agrees to be fully bound by the terms and conditions of this Agreement. Subject to the foregoing, this Agreement shall inure to the benefit of and be binding upon the Parties and their respective permitted successors and assigns.

(b) Entire Agreement. This Agreement constitutes the entire agreement between the Parties as to the subject matter hereof, fully effective as of the Effective Date, and supersedes any prior or contemporaneous agreements or understandings relating to such subject matter.

(c) No Third Party Beneficiaries. This Agreement is for the sole and exclusive benefit of Licensee and Vela. It shall not be deemed to be for the direct or indirect benefit of clients, agents, subcontractors and/or affiliates of Licensee or Vela products or any other person, and clients of these products shall not be deemed to be third party beneficiaries of this Agreement or to have any other contractual relationship with Licensee or Vela by reason of this Agreement.

(d) Construction. In the event that any provision of this Agreement conflicts with governing law or if any provision is held to be null, void or otherwise ineffective or invalid by a court of competent jurisdiction, (i) such provision will be deemed to be restated to reflect as nearly as possible the original intentions of the parties in accordance with applicable law, and (ii) the remaining terms, provisions, covenants and restrictions of this Agreement will remain in full force and effect. This Agreement has been negotiated by the parties and their respective counsel and will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. The section headings used in this Agreement

are intended for convenience only and will not be deemed to affect in any manner the meaning or intent of this Agreement or any provision hereof.

(e) **Dispute Resolution.** The parties hereto agree to submit any unresolved disputes concerning the interpretation of this Agreement including claims for violation of federal, state, or local statutes or contractual and common law rights, to a mediation process to occur within Alameda County, California with each party to bear its own attorneys' fees and cost of the mediation to be borne equally by both parties. If mediation is unsuccessful, the parties agree to resolve the dispute through arbitration to occur within Alameda County, California following the rules and practices of the American Arbitration Association.

(f) **Independent Contractors.** Licensee and Vela are independent contractors, and nothing in this Agreement shall be construed as creating an employer-employee relationship, a partnership, or a joint venture between the parties.

(g) **Notices.** All notices and requests in connection with this Agreement shall be deemed given as of the day they are received either by messenger, delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed as set forth below or to such other address as a party may designate.

(h) **Support, Products, and Service Liabilities.** Each party shall be solely liable, under the terms in Section 5 to this Agreement, for the damages resulting from failure in performance of its products or services.

Vela cannot assume responsibility in the event that a data source is not available or cannot be fully accessed. The Parties agree to use best effort in promptly notifying each other if a potential problem is discovered in its own or the other Party's products or services.

(i) **Attorney's Fees:** If any legal action, including an action for declaratory relief, is brought to enforce or interpret the provisions of this agreement, the prevailing Party will be entitled to reasonable attorney's fees and costs, as well as other out of pocket legal expenses.

(j) **Agreement Governed By:** This Agreement and performance hereunder and all suits and special proceedings hereunder shall be construed in accordance with the laws of the State of California.

(k) **Validity:** In the event that any provision of this Agreement shall be held to be invalid, the same shall not affect in any respect whatsoever the validity of the remainder of this Agreement.

(l) **Other Instruments:** The parties hereto covenant and agree that they will execute such other instruments and documents as are or may become reasonably necessary to effectuate and carry out the purposes of this Agreement.

(m) **Waivers:** Waiver of one party hereto of breach of any provision of this Agreement by the other shall not operate or be construed as a continuing waiver.

(n) **Headings:** Section headings are not to be considered a part of this Agreement and are not intended to be a full and accurate description of the contents hereof.

13. U.S. Government Restricted Rights.

The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Software clause at 48 CFR § 252.227-7013 or subparagraphs (c) (1) and (2) of the Commercial Computer Software -- Restricted Rights 48 CFR § 52.227-19, as applicable. Manufacturer is Vela Design Group, 1442A Walnut Street #326, Berkeley, CA 94709.

If the Commercial Computer Software Restricted Rights clause at 48 CFR § 52.227-19 or its successors apply, the Software constitutes restricted computer software as defined in that clause and the Government shall not have the license for published software set forth in subparagraph (c)(3) of that clause.

The Software (i) was developed at private expense, and no part of it was developed with governmental funds; (ii) is a trade secret of Vela Design Group for all purposes of the Freedom of Information Act; (iii) is "restricted computer software" subject to limited utilization as provided in the contract between the vendor and the governmental entity; and (iv) in all respects is proprietary data belonging solely to Vela Design Group.

14. Third Party Acknowledgments.

Portions of the Vela Design Group software utilize or include third party software and other copyrighted material. Acknowledgments for such material are contained in the "online" electronic documentation for the Vela Design Group software, and include but are not limited to: Astronomy on the Personal Computer written by Oliver Montenbruck and Thomas Pfleger and published by Springer Verlag, source code from Klaus Strelau, and a photo of the moon from UC Regents/Lick Observatory.

When I click I Agree, I attach my electronic signature to and agree to the terms of this Agreement; I also understand that I am under no obligation to agree to this Agreement or any of Vela's policies, and that if I do not agree to the above without modification, I should click Disagree, discontinue the registration process, and refrain from using Vela's VelaClock 1.8 and any related features and/or services.

Thank you for purchasing VelaClock. For any questions or inquiries, please contact Vela Design Group at 1442A Walnut Street #326, Berkeley, CA 94709 or email us at info5@veladg.com.