

**CUSTOMER SUPPORT SERVICES AGREEMENT**

Between:

BLUEC 802 Inc. ("BLUEC"), a company incorporated under the laws of the Province of Ontario, having a principal place of business at Suite 7, 260 Deer Ridge Drive, Kitchener, Ontario, Canada, N2P 2M3

-and-

The customer who has submitted a purchase order to BLUEC, accepted by BLUEC for BLUEC Customer Support Services ("Customer").

**1. DEFINITIONS:**

In this Customer Support Services Agreement (the "Agreement"), the following terms shall have the meanings set out below.

- a. "Documentation" means manuals and other standard end-user technical documentation that BLUEC ordinarily makes available with the Software, including amendments and revisions thereto.
- b. "Error" means an error in the Software that i) causes a failure of the Software to operate in accordance with the Documentation and ii) can be reproduced by BLUEC's Customer Support Services Team.
- c. "Non-supported Releases" means any version of the Software that is not one of the Supported Releases.
- d. "Patch" means a release of Software consisting of bug fixes to an existing Release and which is generally denoted in the version number by a change of the numbers to the right of the second decimal point (e.g. a change from x.y.0 to x.y.1).
- e. "Release" means any release of Software, denoted in the version number by either i) a change of the numbers to the right of the first decimal point (e.g. a change from x.0.y to x.1.y), or ii) a change of the numbers to the left of first decimal point (e.g. a change from 2.x.y to 3.x.y). For clarity, a Patch is not considered a Release.
- f. "Software" means all components of BLUEC's computer software in object code format, including Updates, and Documentation.
- g. "Supported Releases" means the current Release and the two immediately preceding Releases of the Software.
- h. "Updates" means a release of the Software which consists of minor corrections, bug fixes and enhancements without substantial added functionality or features and which is generally denoted in the version number by a change of the numbers to the right of the first decimal point (e.g. a change from x.0.y to x.1.y).

**2. CUSTOMER SUPPORT SERVICES:**

Subject to the payment of all applicable fees and the terms and conditions of this Agreement, BLUEC hereby agrees to provide Customer with the following customer support services ("Customer Support Services"):

*Customer Support Services:*

- a. Telephone and e-mail support – eight (8) hours per day, five (5) days per week, from 9:00 a.m. prevailing Eastern time to 5:00p.m. prevailing Eastern time excluding Canadian holidays;
- b. Online submission of queries and Errors through the BLUEC customer support web site;
- c. Updates, and Patches; and
- d. Error resolution.

Customer Support Services do not include on-site assistance at the Customer's premises. Should Customer require on-site assistance with respect to the Software, BLUEC's standard daily professional services rates shall apply, in addition to reasonable travel and living expenses.

**3. TELEPHONE AND E-MAIL SUPPORT:**

BLUEC's Customer Support Services Team (the "CSS Team") shall provide Customer with technical assistance over the telephone and via e-mail.

BLUEC shall use reasonable commercial efforts to either answer all Customer telephone calls immediately or to acknowledge Customer call by return telephone call within two hours during Support Services Hours. Should Customer be unavailable to receive the telephone acknowledgement, a voice mail will be left, if possible. BLUEC will use reasonable commercial efforts to acknowledge all customer e-mails via return e-mail within two hours during Support Services Hours. In all cases, acknowledgement times are subject to the limitations on telephone and e-mail support for the hours Support Services Hours as provided in paragraph 2 hereof.

**4. ONLINE SUBMISSION OF QUERIES AND ERRORS:**

Customer shall receive unlimited access to BLUEC's customer support web site twenty-four (24) hours per day, seven (7) days per week.

Customer is entitled to three (3) unique user names to access the Online Support. Through the customer support web site, Customer may submit queries and Errors to the CSS Team. Reasonable commercial efforts shall be made to provide an e-mail acknowledgement of any queries within two (2) hours of BLUEC's receipt of the query, subject to the limitation on e-mail support for Customer Support Services as stated in paragraph 3 hereof.

**5. UPDATES, AND PATCHES:**

Customer is entitled to receive Updates, and Patches, which shall be provided to Customer either upon Customer's request or upon BLUEC's recommendation. Updates, and Patches shall be provided to Customer either electronically or via CD-ROM; BLUEC shall determine the appropriate transmission method for Updates, and Patches.

**6. RETURNED MATERIAL AUTHORIZATION SERVICE (RMA SERVICE):**

In the event that the CSS Team determines that the hardware component supplied by BLUEC is the source of an Error, BLUEC shall issue a Returned Material Authorization (RMA) to Customer, together with instructions to return Hardware component that is defective to BLUEC.

BLUEC shall use reasonable commercial efforts to replace the defective hardware within twenty-four (24) hours of receiving confirmation from a third-party shipping company that the defective hardware has been returned to BLUEC.

The determination of whether to issue an RMA shall be in BLUEC's sole discretion. BLUEC shall have no responsibility to recover Customer's data (if any) from the defective Hardware, nor to restore any such data onto any replacement server. This RMA Service shall be in effect for the one (1) year period from the date of shipment of the original hardware to Customer.

**7. ERROR RESOLUTION:**

BLUEC shall use reasonable commercial efforts to resolve Errors. An Error shall be deemed to be resolved when the Software is working in accordance with the Documentation. An Error may be resolved through a procedural work-around or other temporary solution, provision of an Update, or Patch, or an amendment to the Documentation. The method of resolution of an Error shall be determined by BLUEC in its sole discretion.

BLUEC shall provide Customer Support Services with respect to Supported Releases only. In the event that Customer identifies an Error in a Non-supported Release and that Error has been corrected in a Supported Release, said Error shall be resolved by BLUEC providing either an Update or move Customer to a Supported Release. BLUEC shall have no other responsibility to resolve an Error occurring in Non-supported Releases; without limiting the generality of the foregoing, BLUEC shall have no obligation to provide Updates or Patches for Non-supported Releases.

BLUEC does not represent or warrant that all Errors can be corrected. Notwithstanding the foregoing, BLUEC shall use reasonable commercial efforts to provide a resolution to Errors identified by Customer.

**8. RESOLUTION TIME FOR ERRORS:**

The level of severity of Errors and the resolution time objectives for each level of severity are set out below. Subject to the provisions of Paragraph 10 (Customer Responsibilities), BLUEC shall use reasonable commercial efforts to provide a resolution to Errors within the resolution time objectives:

**a. Critical Errors**

Definition: The Error is occurring in the production environment and the Software is not usable. No procedural workaround exists.  
Resolution time objective: Two (2) business days from BLUEC's duplication of the Error.

**b. Serious Errors**

Definition: The Software is only usable with severe limitation. No effective procedural workaround exists.  
Resolution time objective: Five (5) business days from BLUEC's duplication of the Error.

**c. Moderate Errors**

Definition: The Software is usable with moderate limitation with minor features are affected. A procedural workaround exists.  
Resolution time objective: Six (6) calendar months from BLUEC's duplication of the Error.

**d. Low Errors**

Definition: The Software is usable, but has some cosmetic Errors.  
Resolution time objective: Low Errors shall be resolved solely at BLUEC's discretion.

**9. ENHANCEMENT REQUESTS:**

Enhancement requests are Customer requests for modifications to the Software, that are not related to the resolution of an Error. BLUEC shall determine in its sole discretion whether or not to implement enhancement requests.

**10. CUSTOMER RESPONSIBILITIES:**

Customer shall ensure that a modem, designated by BLUEC, is installed on Customer's network, or secure Internet access is provided to BLUEC, to facilitate the CSS Team's diagnosis of Errors. Customer shall provide BLUEC with all necessary authorizations for remote access to Customer's network. Customer shall advise BLUEC in writing of any change of location of the Software to ensure proper delivery of Customer Support Services.

Customer shall ensure that BLUEC's designated point of contact for delivering Customer Support Services is a BLUEC Certified System Administrator.

Customer is responsible for ensuring that the Software is used and maintained in accordance with the Documentation. Customer shall ensure that the operating environment in which the Software is functioning is in proper working order. Customer is responsible for creating back-ups and conducting routine software maintenance of servers on which the Software resides.

Customer shall ensure that the Software is at the most current Patch level that BLUEC has provided to Customer. Customer shall maintain an unmodified copy of all Updates provided by BLUEC, including the latest Release of Software, and any additional documentation or archival files necessary to reinstall, reconfigure or reconstruct any lost, altered or damaged Software.

Customer shall promptly notify BLUEC of any Errors, shall provide BLUEC with sufficient information to duplicate the Error, and shall cooperate with BLUEC to resolve said Errors.

In the event that Customer does not fulfil the responsibilities described in this Paragraph 10, BLUEC shall have no obligation to meet the resolution time objectives set out in Paragraph 8 (Resolution Time for Errors); however, BLUEC's obligations under Paragraph 7 (Error Resolution) shall remain intact.

**11. CUSTOMER SUPPORT SERVICES RENEWAL:**

Customer Support Services fees shall be invoiced by BLUEC annually and are payable by Customer within thirty (30) days of BLUEC's invoice date.

BLUEC reserves the right to withhold Customer Support Services in the event of Customer's non-payment of invoiced amounts by the due date.

Customer acknowledges that Customer Support Services fees are subject to increase on written notice to Customer delivered prior to BLUEC submitting an invoice to Customer for Customer Support Services renewal.

**12. CUSTOMER SUPPORT SERVICES REINSTATEMENT:**

In the event that Customer Support Services have lapsed because of non-renewal by Customer and Customer subsequently wishes to reinstate Customer Support Services, a Customer Support Services Reinstatement fee shall apply. This one-time Customer Support Services Reinstatement fee is in addition to the annual Customer Support Services fees. The Customer Support Services Reinstatement fees are as follows:

- Up to a one (1) year lapse: twenty percent (20%) of the total list price of all Software purchased, pro-rated for the number of months lapsed.
- Up to a two (2) year lapse: thirty-five percent (35%) of the total list price of all Software purchased, pro-rated for the number of months lapsed.
- Up to a three (3) year lapse: eighty-five percent (85%) of the total list price of all Software purchased, pro-rated for the number of months lapsed.

**13. CONFIDENTIAL INFORMATION:**

Customer acknowledges that the Software, Updates, Patches, Documentation and all information provided by the CSS Team in the context of Customer Support Services, constitute information confidential and proprietary to BLUEC (the "Confidential Information"). Customer agrees that all Confidential Information shall be treated as the exclusive property of BLUEC and that all Confidential Information shall, subject to the exceptions set out below, be treated as trade secrets of BLUEC. Customer shall not disclose or otherwise transfer any of the Confidential Information to any third party and shall use the same degree of care to avoid disclosure as Customer employs with respect to its own confidential information.

Customer shall not make or have made, or permit to be made, any copies of the Confidential Information, in whole or in part, except as expressly permitted hereunder. All such copies, whether or not in the same format as the Confidential Information, shall contain BLUEC's proprietary notices and legends as such appear on the documents copied and shall be considered part of the Confidential Information.

Should Customer become aware that any Confidential Information has been wrongfully disclosed to a third party, Customer shall immediately inform BLUEC in writing about the circumstances leading to the disclosure and shall take all reasonable steps requested by BLUEC to remedy the disclosure and to prevent any further disclosures, with particular emphasis on preserving the proprietary and confidential nature of any patent, copyright, trade secret or any other intellectual property right of BLUEC and its licensors.

The obligations in this Paragraph 13 shall not apply to any information which (i) becomes available to the public from a source other than Customer, (ii) is lawfully obtained by Customer from a third party without breach of confidentiality obligations, (iii) is documented as being known to Customer prior to its disclosure by BLUEC or an authorized representative of BLUEC or (iv) is required to be disclosed by operation of law, including an order of a court of competent jurisdiction.

Customer agrees to indemnify and save BLUEC harmless from and against any liability, damages and expenses BLUEC may suffer as a result of any unauthorized disclosure of any of the Confidential Information by Customer to any third party.

#### 14. TERM:

The term of this Agreement shall be for a one (1) year period from the date indicated on BLUEC's invoice for Customer Support Services.

This Agreement shall be renewed automatically for additional successive one (1) year periods, unless notice of non-renewal is given to the other no later than sixty (60) days prior to the expiration of the initial term or the then-current renewal term. Notwithstanding the foregoing, this Agreement may be terminated earlier in accordance with the provisions of Paragraph 15.

#### 15. TERMINATION:

BLUEC may terminate this Agreement if Customer is in default of any of its material obligations hereunder and such default is not remedied within thirty (30) days written notice to Customer. Notwithstanding the foregoing, BLUEC may terminate this Agreement immediately upon written notice if (i) Customer fails to pay any amount validly invoiced by BLUEC, in respect of Software license fees or Customer Support Services fees, by the due date, (ii) Customer ceases to conduct business in the normal course or becomes insolvent, bankrupt, or makes any assignment for the benefit of creditors, (iii) proceedings are instituted by or against Customer seeking relief, reorganization or rearrangement under any laws relating to insolvency, (iv) a receiver, liquidator or trustee is appointed in respect of any property or assets of Customer, (v) an order is made for the liquidation, dissolution or winding up of Customer, (vi) Customer is in default of any of its obligations under this Agreement in respect of or Confidential Information (Paragraph 13).

#### 16. LIMITS ON CUSTOMER SUPPORT SERVICES:

BLUEC shall have no obligation to provide Customer Support Services under this Agreement if:

- a. The Software has been altered or modified by anyone other than BLUEC;
- b. The Software has been subjected to unusual mechanical stress or unusual electrical or environmental conditions;
- c. The Software has been subjected to misuse, accident or disaster including without limitation, fire, flood, water, wind, lightning or other acts of God.
- d. Errors arise as a result of Customer's negligence or fault;
- e. The Software was used in configurations other than BLUEC-sanctioned configurations; or
- f. Customer has terminated this Agreement.

#### 17. LIMITATION OF LIABILITY:

THE PARTIES ACKNOWLEDGE THAT THIS IS AN AGREEMENT FOR SERVICES AND NOT AN AGREEMENT FOR THE SUPPLY OF GOODS. EXCEPT AS SPECIFICALLY PROVIDED HEREIN, BLUEC MAKES NO OTHER REPRESENTATIONS AS TO THE SERVICES RENDERED, AND DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. BLUEC FURTHER DISCLAIMS ANY WARRANTY THAT THE CUSTOMER SUPPORT SERVICES WILL SUCCEED IN RESOLVING ANY ERROR, OR THAT ANY WORK PRODUCT OF THE CUSTOMER SUPPORT SERVICES WILL BE FREE FROM ERRORS. NOTWITHSTANDING ANYTHING ELSE IN THIS AGREEMENT OR OTHERWISE, BLUEC SHALL NOT BE LIABLE OR OBLIGATED WITH RESPECT TO THE SUBJECT-MATTER OF THIS AGREEMENT OR UNDER ANY CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHER LEGAL OR EQUITABLE THEORY: (i) FOR ANY AMOUNTS IN EXCESS OF THE FEES PAID TO IT UNDER THIS AGREEMENT WITH RESPECT TO THE APPLICABLE CUSTOMER SUPPORT SERVICES; (ii) FOR ANY COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY, SERVICES OR RIGHTS; OR (iii) FOR INTERRUPTION OF USE OR LOSS OR CORRUPTION OF DATA. IN NO EVENT SHALL BLUEC BE LIABLE TO CUSTOMER FOR ANY SPECIAL, INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, ANY DAMAGES FOR LOSS OF PROFITS OR REVENUE, LOSS OF GOODWILL, LOSS OF USE, INCREASED EXPENSES OF OPERATION, COST OF CAPITAL, INTERRUPTION OF BUSINESS, AND LEGAL COSTS, IN CONNECTION WITH THE SUPPLY OF CUSTOMER SUPPORT SERVICES OR ANY CLAIMS OF THIRD PARTIES, HOWEVER CAUSED.