

END-USER SOFTWARE LICENSE AGREEMENT

Between:

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

-and-

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

1. DEFINITIONS:

In this End User License Agreement, the following terms shall have the meanings set out below.

"Documentation" means manuals and other standard end-user and technical documentation that BLUEC ordinarily makes available with the Software, including amendments and revisions thereto.

"Software" means all components of BLUEC's computer software in object code format in respect of which Customer has purchased licenses, including all Updates, Upgrades and Documentation.

"Updates" means a release of the Software that consists of minor corrections, bug fixes and enhancements without substantial added functionality.

"Upgrades" means a release of the Software that consists of a new version with substantial enhancements, added functionality or new features.

"User" means an individual in respect of whom a license to use BLUEC Software has been purchased pursuant to a purchaser order or contract accepted by BLUEC and Customer.

2. LICENSE GRANT:

Subject to the payment of all applicable license fees and the terms and conditions of this Agreement, BLUEC hereby grants to Customer a perpetual, non-exclusive, non-transferable, non-sublicensable license to use the Software, solely as permitted in paragraph 3 and 4 below.

3. PERMITTED USES:

The License Grant in paragraph 2 above shall be limited to the right to install and execute the Software and to make a single copy of the Software for backup purposes. Any such copy shall contain BLUEC's proprietary notices and legends as they appear on the original Software.

Customer acknowledges that it shall have no right under this Agreement to use any source code version of the Software. Customer further agrees not to modify, reverse engineer, disassemble or decompile the Software.

4. NUMBER OF USERS:

The License grant in paragraph 2 above is limited to permitted use of the Software to number of Users specified in a purchase order or contract accepted BLUEC and Customer.

5. TITLE:

Customer acknowledges that title to the Software, including all intellectual property rights therein, shall remain the sole and exclusive property of BLUEC.


6. SOFTWARE SUPPORT:

Customer may purchase Customer support services from BLUEC at the then current standard prices, terms and conditions.

7. WARRANTY AND DISCLAIMER:

BLUEC represents and warrants that the Software, excluding Updates, shall for a period of ninety (90) days from the date of invoice in respect of the Software license fees, operate substantially in conformance with the specifications set out in the Documentation, provided that written notification of any defect is given to BLUEC within such period. BLUEC's sole obligation and Customer's sole remedy under this warranty shall be limited to BLUEC using its reasonable commercial efforts to correct such defect and to supply a conforming version of the Software as soon as reasonably practicable after such notification. Notwithstanding any other provisions of this paragraph 7, this warranty shall not apply to Software defects due to (i) misuse or modification of the Software by Customer, or (ii) hardware or operating system errors from hardware or software not provided by BLUEC, which impact the operation of the Software. BLUEC does not represent or warrant that operation of the Software shall be uninterrupted or error free or that functions in the Software shall operate in specific combinations which may be selected by Customer.

Any Updates to the Software are provided on an "AS IS" basis, and the entire risk as to the quality and performance of any of the Updates shall be with Customer.



EXCEPT FOR THE EXPRESS WARRANTY SET OUT IN THIS PARAGRAPH 7, BLUEC MAKES NO WARRANTY WHATSOEVER WITH RESPECT TO THE FUNCTION OR OPERATION OF THE SOFTWARE. ALL OTHER WARRANTIES AND CONDITIONS, IMPLIED OR EXPRESSED, STATUTORY OR OTHERWISE, INCLUDING THOSE RELATED TO MERCHANTABILITY AND FITNESS FOR PURPOSE, ARE HEREBY DISCLAIMED.

8. LIMITATION OF LIABILITY:

SUBJECT TO THE PROVISIONS OF PARAGRAPH 10, BLUEC'S ENTIRE LIABILITY TO CUSTOMER UNDER THIS AGREEMENT FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF ACTION OR THE CAUSE OF ACTION, WHETHER IN CONTRACT OR IN TORT, AND WHETHER IN THE NATURE OF A FUNDAMENTAL BREACH OR A BREACH OF A FUNDAMENTAL TERM, SHALL NOT EXCEED THE LICENSE FEE ACTUALLY PAID BY CUSTOMER IN RESPECT OF THE SOFTWARE.

IN NO EVENT SHALL BLUEC BE LIABLE TO CUSTOMER FOR 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, USE OR PERFORMANCE OF THE SOFTWARE, THE UPDATES, UPGRADES OR THE DOCUMENTATION, OR ANY WORK OR SERVICE PERFORMED OR ADVICE PROVIDED BY BLUEC OR ITS EMPLOYEES OR AUTHORIZED AGENTS OR RESELLERS, OR ANY CLAIMS OF THIRD PARTIES, HOWSOEVER CAUSED.

9. CONFIDENTIAL INFORMATION:

Customer acknowledges that the Software constitutes information that is 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.

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.

The obligations in this paragraph 9 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.

10. BLUEC INDEMNITY:


BLUEC agrees to indemnify and save Customer harmless from and against any liability, damages and expenses resulting from any claim by a third party that the Software infringes any Canadian or United States copyright or patent, provided that (i) Customer promptly notifies BLUEC in writing of such claim and furnishes BLUEC a copy thereof, (ii) BLUEC has sole control over the investigation, litigation, and negotiation of such claim and (iii) Customer cooperates fully in BLUEC's defense of such claim.

In the event of such claim of infringement, BLUEC may, at its option and expense, either (i) procure for Customer the right to continue using the Software or (ii) replace or modify the Software to make its use non-infringing, failing which, either party may terminate this Agreement and BLUEC shall refund to Customer a prorata portion of the license fee in respect of the infringing Software, which pro-rata portion shall be based on a deemed five (5) year life of such software with straight-line depreciation.

Notwithstanding the indemnification given in this paragraph 10, BLUEC shall have no responsibility to indemnify Customer and Customer shall indemnify BLUEC, for any losses, judgments, demands, actions and suits, arising from: (i) the use of the Software in combination with other software or hardware, if said infringement of third party rights arises solely by virtue of the combination of the Software with such other unauthorized software or hardware or (ii) modification of the Software, where said infringement of third party rights would not have arisen but for such modifications.

11. 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 ceases to conduct business in the normal course or becomes insolvent, bankrupt, or makes any assignment for the benefit of creditors, (ii) proceedings are instituted by or against Customer seeking relief, reorganization or rearrangement under any laws relating to insolvency, (iii) a receiver, liquidator or trustee is appointed in respect of any property or assets of Customer, (iv) an order is made for the liquidation, dissolution or winding up of Customer, (v) Customer is in default of any of its obligations under this Agreement in respect of the permitted uses or confidentiality/non-disclosure of the Software or (v) Customer fails to pay the Software license fees or support services fees by the due date.



Upon termination of this Agreement for any reason, Customer shall immediately (i) return the Software to BLUEC, (ii) remove all copies of the Software from its computer systems and destroy all copies of the Software in its possession and (iii) certify to BLUEC that it has complied with conditions (i) and (ii).

12. AUDIT:

BLUEC and its licensors shall have the right to conduct an audit of (and to copy) Customer records on reasonable notice and not more than once each twelve (12) month period to verify that Customer is complying with the terms hereof. In the event that an underpayment is revealed as the result of such audit, Customer shall immediately upon being so requested by BLUEC, pay such underpayment together with the costs of any such audit.

13. GENERAL:

If any term of this Agreement is found to be invalid, illegal or unenforceable, in whole or in part, by a body of competent jurisdiction, that term shall be deemed severed from this Agreement to the extent of such invalidity, illegality or unenforceability, and such invalidity, illegality or unenforceability shall not affect the validity, legality or enforceability of any other term of the Agreement. This Agreement shall be binding upon and shall inure to the benefit of BLUEC and Customer and their respective successors and assigns. Customer may not assign this Agreement without the prior written consent of BLUEC. The failure of a party to insist upon strict adherence to any term of this Agreement on any occasion shall not be considered a waiver or deprive that party of the right hereafter to insist upon strict adherence to that term or any other term of this Agreement.

Paragraphs 7, 8 and 9 shall survive the termination or rescission of this Agreement.

This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario, Canada and the laws of Canada applicable therein, other than rules governing conflict of law. The parties hereby attorn to the jurisdiction of the courts of the Province of Ontario providing that nothing herein contained shall prevent BLUEC from proceeding, at its election, against Customer in the courts of any other province, state or country. The parties agree that the UN Convention on Contracts for the International Sale of Goods (Vienna, 1980) shall not apply to this Agreement nor to any dispute or transaction arising out of this Agreement.

This Agreement sets forth the entire agreement of the parties with respect to the subject matter contained herein, and no oral or written statement or representations not contained herein shall have any force or effect. This Agreement may be amended only upon the prior written consent of both parties. All purchase orders received by BLUEC or any of authorized representatives from Customer in respect of the Software and any related support services shall be governed by the terms of this Agreement, and in the event there exists any conflict between the terms of this Agreement and the terms of any such purchase order, the terms of this Agreement shall prevail.

The use of monitoring, recording, or listening devices to eavesdrop, monitor, retrieve, or record telephone conversation or other sound activities, whether or not contemporaneous with transmission, may be illegal in certain circumstances under federal or state laws. Legal advice should be sought prior to implementing any practice that monitors or records any telephone conversation.