

BLUE MOON INDUSTRIES, INC.

## LICENSE AGREEMENT

**IMPORTANT-READ CAREFULLY:** This License Agreement ("AGREEMENT") is a legal agreement between you (either an individual or a single business entity) ("You") and Blue Moon Industries ("We") for the software delivered by us which includes computer software and may include associated media, printed materials, and "online" or electronic documentation, all referred to as "Software". An amendment or addendum to this AGREEMENT may accompany the Software.

**YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT BY CLICKING YOUR ACCEPTANCE BELOW, INSTALLING, COPYING, OR OTHERWISE USING THE SOFTWARE. IF YOU DO NOT AGREE, DO NOT CLICK BELOW, INSTALL OR USE THE SOFTWARE.**

1. **LICENSE.** We grant you the following non-exclusive and non-transferable rights to use the enclosed Software:

a. **Copies.** You may make a reasonable number of backup copies of the Software. All copies are subject to the provisions of this AGREEMENT. You must maintain an accurate record of the location of the copies of the Software that we may inspect at any time. You must include our copyright notice on all copies. Otherwise, you may copy the server portion of the Software on a single server computer (the "designated server computer") or in a "Cluster" which includes the designated server computer. A "Cluster" means two or more server computers which are interconnected. Use in a Cluster is only permitted if no module of the Software is active on more than one server computer at any given time. You will notify us in advance in the event you intend to relocate or change the designated server computer. You may also maintain a separate non-productive backup, disaster recovery and testing server. You may not have more than one active installation of the Software on the designated server computer (or a Cluster) unless you purchase additional Software licenses.

b. **User Restrictions.** You may copy the client portion of the Software onto an unlimited number of computers provided that (1) all software so installed references a single database on the designated server computer; and (2) the number of users accessing the designated server computer is limited to the number of users you have licensed and paid for.

c. **Company Restrictions.** You may use the Software only to process your data or data of your "Affiliates." An "Affiliate" is an entity which is Controlled By you and which has its own set of accounting records. "Controlled By" means ownership of at least 50% of the voting shares. The Software may not be used to process the data of any other entity or to operate a service bureau.

2. **OWNERSHIP.** We retain ownership of the Software and accompanying documentation and all rights not specifically granted to you. You may not modify, adapt, translate, reverse engineer, decompile, disassemble or create derivative works based on the Software, except and only to the extent that it is expressly permitted by applicable law notwithstanding this limitation.

3. **ENHANCEMENT PROGRAM.** You have also purchased a subscription to the Software Enhancement Program. We will provide you with all refinements and added features to the software, including current generation products successive to the products licensed, which are commercially released during the agreed subscription period beginning with the date of the license. Enhancement plans for any future subscription periods are subject to a separate agreement, based upon the list price at the time of the initial license. By subscribing to a Software Enhancement Program, you agree to be listed (by business name only) in our public customer list.

4. **TERMINATION.** You may terminate this AGREEMENT by destroying or returning the Software and all copies thereof. We may terminate this AGREEMENT if you breach any material representation, warranty, obligation or provision of this AGREEMENT and fail to cure such breach within thirty (30) days of notice from us. In the event you have licensed the software on a subscription basis, you agree to pay the applicable license fees for the entire subscription period agreed between the parties. You may not terminate the AGREEMENT prior to the end of term unless you pay the fees for the remaining term of the subscription license. We may terminate this AGREEMENT if you fail to make the required subscription payments. Upon termination, you will promptly return all copies of the Software. Termination of this AGREEMENT does not affect or terminate any agreement or commitments you may have with other entities, including, but not limited to, application service providers or leasing companies.

5. **LIMITED WARRANTY.** For software licensed in the US and Canada, we warrant that the Software will perform substantially in accordance with its documentation provided by us with the software for a period of NINETY (90) DAYS from the date of receipt. If an implied warranty or condition is created by your state/jurisdiction and federal or state/provincial law prohibits disclaimer of it, you also have an implied warranty or condition, BUT ONLY AS TO DEFECTS AS DESCRIBED ABOVE DISCOVERED DURING THE PERIOD OF THIS LIMITED 90-DAY WARRANTY. AS TO ANY DEFECTS DISCOVERED AFTER THE 90-DAY PERIOD, THERE IS NO WARRANTY OF ANY KIND. Some states/jurisdictions do not allow limitations on how long an implied warranty or condition lasts, so the above limitation may not apply to you. Any supplements or updates to the Software, including without limitation, any (if any) service packs or hot fixes provided to you after the expiration of the 90-day Limited Warranty period are not covered by any warranty or condition, express, implied or statutory. For software licensed outside the US and Canada, please contact us.

6. **LIMITATION ON REMEDIES; NO CONSEQUENTIAL OR OTHER DAMAGES.** Your exclusive remedy for any breach of this Limited Warranty is as set forth below. Except for any refund we elect, YOU ARE NOT ENTITLED TO ANY DAMAGES, INCLUDING BUT NOT LIMITED TO CONSEQUENTIAL DAMAGES, if the Software does not meet our Limited Warranty, and, to the maximum extent allowed by applicable law, even if any remedy fails of its essential purpose. The terms of Section 10 below ("Exclusion of Incidental, Consequential and Certain Other Damages") are also incorporated into this Limited Warranty. Some states/jurisdictions do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you. This Limited Warranty

gives you specific legal rights. You may have others which vary from state/jurisdiction to state/jurisdiction.

7. **YOUR EXCLUSIVE REMEDY.** Our entire liability and your exclusive remedy will be, at our option from time to time exercised subject to applicable law, (a) return of the price paid (if any) for the Software, or (b) repair or replacement of the Software, that does not meet this Limited Warranty and that is returned to us with a copy of your receipt. You will receive the remedy we elect without charge, except that you are responsible for any expenses you may incur, e.g. cost of shipping the Software to us. This Limited Warranty is void if failure of the Software has resulted from accident, abuse, misapplication, abnormal use or a virus. Any replacement Software will be warranted for the remainder of the original warranty period or ninety (90) days, whichever is longer. To exercise your remedy, contact us at: Blue Moon Industries, 235 Promenade Street Suite 400, Providence, RI 02908 USA Tel: 401.276.9000, Fax: 401.276.9009.

8. **DISCLAIMER OF WARRANTIES.** The Limited Warranty that appears above is the only express warranty made to you and is provided in lieu of any other express warranties created by any documentation or packaging. Except for the Limited Warranty and to the maximum extent permitted by applicable law, we provide the Software and any support services **AS IS AND WITH ALL FAULTS**, and hereby disclaim all other warranties and conditions, either express, implied or statutory, including, but not limited to, any implied warranties, duties or conditions of merchantability, of fitness for a particular purpose, of accuracy or completeness of responses, of results, of workmanlike effort, of lack of viruses, and of lack of negligence, all with regard to the Software, and the provision of or failure to provide support services.

9. **INDEMNITY.** Licensee shall indemnify and hold harmless Blue Moon and authorized representatives against any claims, suits or proceedings asserted or commenced by any third party and arising out of, or relating to, your exercise of the rights granted to you pursuant to this Agreement. This obligation shall include indemnifying against all damages, losses, costs and expenses (including attorneys' fees) incurred by Blue Moon and its authorized representatives as a result of any such claims, suits or proceedings, including any costs or expenses incurred in defending against any such claims, suits, or proceedings.

10. **EXCLUSION OF INCIDENTAL, CONSEQUENTIAL AND CERTAIN OTHER DAMAGES.** To the maximum extent permitted by applicable law, in no event will we be liable for any special, incidental, indirect, or consequential damages whatsoever (including, but not limited to, damages for loss of profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence, and for any other pecuniary or other loss whatsoever) arising out of or in any way related to the use of or inability to use the **SOFTWARE**, the provision of or failure to provide Support Services, or otherwise under or in connection with any provision of this **AGREEMENT**, even in the event of our fault, tort (including negligence), strict liability, breach of contract or breach of warranty, even if we have been advised of the possibility of such damages.

11. **LIMITATION OF LIABILITY AND REMEDIES.** Notwithstanding any damages that you might incur for any reason whatsoever (including, without limitation, all damages referenced above and all direct or general damages), our entire liability under any provision of this

AGREEMENT and your exclusive remedy for all of the foregoing (except for any remedy of repair or replacement we elect with respect to any breach of the Limited Warranty) will be limited to the amount actually paid by you for the Software. The foregoing limitations, exclusions and disclaimers (including Sections 7, 8 and 9 above) will apply to the maximum extent permitted by applicable law, even if the remedy fails its essential purpose.

12. **ARBITRATION.** Any dispute arising out of or relating to this Agreement or the breach, termination or validity thereof shall be settled by arbitration in accordance with the rules of the American Arbitration Association in effect on the date of this agreement, by a single independent and impartial arbitrator learned in the law and knowledgeable regarding software development and implementation. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§ 1-16 to the exclusion of state laws inconsistent therewith, and judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof. The arbitration proceedings shall be conducted in Providence, RI, U.S.A. or via telecommunication as agreed to by the parties. The arbitrator is not empowered to award damages in excess of compensatory damages and each party hereby irrevocably waives any right to recover such damages with respect to any dispute resolved by arbitration.

13. **APPLICABLE LAW.** If you license this Software in the United States this AGREEMENT is governed by the laws of the State of Rhode Island and, in respect of any dispute which may arise hereunder, you consent to the jurisdiction of the Rhode Island Court of Common Pleas or the U.S. District Court for the District of Rhode Island. The United Nations Convention on Contracts for the International Sale of Goods will not apply to this AGREEMENT.

14. **ENTIRE AGREEMENT.** This AGREEMENT (including any addendum or amendment there to) is the entire agreement relating to the Software and the support services (if any) and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Software or any other subject matter covered by this AGREEMENT. To the extent the terms of our policies or programs for support services conflict with the terms of this AGREEMENT, the terms of this AGREEMENT will control. In the event that any of the terms of this AGREEMENT are in conflict with any rule of law or statutory provision or otherwise unenforceable under the laws or regulations of any government or subdivision thereof, such terms will be deemed stricken from this AGREEMENT. The parties will replace a severed provision by a provision which is closest to the original intent of the parties.

**THE SOFTWARE IS LICENSED, NOT SOLD.**