

# BACPro EULA

## Software License Agreement

This Software License Agreement (the “Agreement”) is made and effective on the date of purchase, download, or installation of the Software,

Between **BACPro LLC** (the “Licensor”) and the **End User** (the “Licensee”).

Whereas, Licensor has developed the **BACPro** software (the “Software”) and desires to grant Licensee a license to use the Software.

Whereas, Licensee wishes to use the Software under the conditions set forth in this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, Licensee and Licensor hereby agree as follows:

### 1. Definitions

When used in this Agreement, the following terms shall have the respective meanings indicated, such meanings to be applicable to both the singular and plural forms of the terms defined:

“**Acceptance**” of Software means completion of the acceptance testing process set forth in Section 3 of this Agreement.

“**Agreement**” includes this agreement.

“**Delivery Date**” is the date the Licensor makes the Software license available to Licensee.

“**Documentation**” means the user, system, and installation documentation for the Software.

“**End of Life**” means the date after which the Software will no longer be sold or renewed. However, it might still receive some form of support.

“**End of Support**” means the complete cessation of all support services for the Software. After this date, no new updates or fixes will be released, even for critical vulnerabilities.

“**Error**” means a material failure of the Software to function in conformity with the Specifications.

“**License**” means the license granted by Licensor to Licensee to use the Software and Documentation in accordance with the terms and conditions of this Agreement.

“**Licensed Copies**” means the number of copies of the Software and Documentation being licensed to the Licensee.

“**Maintenance Agreement**” means the Software Maintenance Agreement between the parties effective as of the date of this Agreement.

“**Price**” means the License Fees Licensee shall pay as specified on Licensor’s web site.

“**Software**” means the computer program, **BACPro**, in a machine-readable, object code form delivered to Licensee in machine-readable, object code form as Maintenance Releases and Product Releases (as these terms are defined in the Maintenance Agreement).

“**Software Subscription**” means a payment model that allows a user to access software for a set period of time by paying a recurring fee.

“**Specifications**” means Licensor’s current published Product Release Definitions.

“**Trial License**” means the trial license granted by Licensor to Licensee to use the Software and Documentation in accordance with the terms and conditions of this Agreement.

“**User Account**” means the unique identity created for an individual to access the Software and the License.

## **2. Subscription**

### **2.1 License**

Licensor grants Licensee a non-exclusive, non-transferable license to use a single instance of the Software and Documentation in accordance with the terms and conditions of this Agreement.

### **2.2 Trial License**

Licensor grants Licensee a non-exclusive, non-transferable license to use a single instance of the Software and Documentation in accordance with the terms and conditions of this Agreement.

Licensee acknowledges and agrees to allow the Software to collect and monitor diagnostic and usage data. For additional details, refer to the BACPro LLC Privacy Notice.

### **2.3 Restrictions**

Except as explicitly provided herein, Licensee shall not (1) adapt, reverse engineer, decompile, disassemble, or modify, in whole or in part, any of the Software or Documentation; (2) use the Software to operate in or as a time-sharing, outsourcing, renting, hosting, or service bureau environment to any persons or entities outside its immediate organization; (3) remove, alter or obscure any patent, trademark, copyright, trade secret, or other proprietary notices or labels on the Software or its Documentation; (4) copy (except for backup purposes), reverse engineer, or modify a License or the Software or underlying code; or (5) violate any laws, ordinances or regulations or rights of third parties.

### **2.4 End of Life and End of Support**

Support for each revision of BACPro to end users with an active software subscription will be provided for 2 years after initial release. At the end of 2 years, the revision will reach End of Life and End of Support, and the end user will need to install the latest revision to continue support. Fixes for any issues found during support will be available in the next released revision through a software update. Software patches will not be provided.

## **3. Installation and Acceptance**

Software and Trial License shall be delivered (made available for download) once a BACPro User Account has been created. Licensee shall perform all acceptance testing during the 14-day trial period. Licensor shall deliver (make available for download) the License to the Licensee once the Licensee has paid for the Software subscription in full, or a purchase agreement has been agreed upon. Licensee's Acceptance of the Software shall occur at the time of purchase of the Software Subscription. If Licensee provides notice to Licensor of any Error(s) and Licensor verifies the alleged Error(s), the Software shall be accepted upon Licensor's correction of such Error(s).

## **4. Price and Payment**

### **4.1 Price**

Licensee shall pay the Price in accordance with the payment plan set forth on the Licensor web site. Licensor shall invoice any additional costs reasonably incurred by Licensor in the delivery of the software as they are incurred. Payment shall be made by Licensee to Licensor in full without any right of set-off or deduction, and Licensee shall pay the Price and such costs within agreed upon number of days from the date of invoice. In the event that the website updates pricing, the updated price shall apply from the date of the new published pricing forward.

### **4.2 Tax**

Licensee shall be held responsible for any applicable sales or use taxes or any value added or similar taxes payable with respect to the licensing of the Software, or arising out of or in connection with this Agreement, other than taxes levied or imposed based upon Licensor's income. If Licensor pays any such taxes on behalf of Licensee, Licensor shall invoice Licensee for such taxes, and Licensee agrees to pay such taxes in accordance with this Agreement.

### **4.3 Interest**

Failure by Licensee to pay any amounts invoiced under this Agreement in full in accordance with this Agreement shall make Licensee liable to pay Licensor interest at the rate of 5% per month on the remaining amount due, or at the highest amount permitted by applicable law, such interest to accrue on a daily basis after as well as before any judgment relating to collection of the amount due.

### **5. Proprietary Rights**

Licensee acknowledges and agrees that the copyright, patent, trade secret, and all other intellectual property rights of whatever nature in the Software, Documentation, and Specifications are and shall remain the property of Licensor, and nothing in this Agreement should be construed as transferring any aspects of such rights to Licensee or any third party, and Licensee waives all claims of any ownership interest in such copyrights and intellectual property of Licensor.

### **6. Confidentiality**

#### **6.1 Confidential Information**

“Confidential Information”, shall mean the Software, Documentation, Specifications, and terms and conditions of this Agreement. Licensee acknowledges the confidential and proprietary nature of the Confidential Information and agrees that it shall not reveal or disclose any Confidential Information for any purpose to any other person, firm, corporation, or other entity, other than Licensee’s employees with a need to know such Confidential Information to perform employment responsibilities consistent with Licensee’s rights under this Agreement. Licensee shall safeguard and protect the Confidential Information from theft, piracy, or unauthorized access in a manner at least consistent with the protections Licensee uses to protect its own most confidential information or if it has no such policy in a commercially reasonable manner. Licensee shall inform its employees of their obligations under this Agreement and shall take such steps as may be reasonable in the circumstances, or as may be reasonably requested by Licensor, to prevent any unauthorized disclosure, copying or use of the Confidential Information. Licensee acknowledges and agrees that in the event of the Licensee’s breach of this Agreement, Licensor will suffer irreparable injuries not compensated by money damages and therefore shall not have an adequate remedy at law. Accordingly, Licensor shall be entitled to a preliminary and final injunction without the necessity of posting any bond or undertaking in connection therewith to prevent any further breach of these confidentiality obligations or further unauthorized use of Confidential Information. This remedy is separate and apart from any other remedy Licensor may have.

#### **6.2 Unauthorized Disclosure**

Licensee shall notify Licensor immediately upon discovery of any prohibited use or disclosure of the Confidential Information, or any other breach of these confidentiality obligations by Licensee, and shall fully cooperate with Licensor to help Licensee regain possession of the Confidential Information and prevent the further prohibited use or disclosure of the Confidential Information.

### **7. Warranty**

The properly licensed Software will perform substantially as described in any BACPro materials that accompany the Software. However, BACPro LLC gives no contractual guarantee in relation to the licensed Software. Licensor makes no other representation or warranty, express or implied, and all other warranties of merchantability or fitness or of any other type are expressly disclaimed by Licensee except as stated above.

### **8. Indemnity**

#### **8.1 Indemnification**

Licensor hereby indemnifies Licensee against any claim that the Software, furnished and used within the scope of this Agreement, infringes any United States registered copyright or patent, provided that: (1) Licensor is given prompt notice of the claim; (2) Licensor is given immediate and complete control over the defense and/or settlement of the claim, and Licensee fully cooperates with Licensor in such defense and/or settlement; (3) Licensee does not prejudice in any manner Licensor’s conduct of such claim; and (4) the alleged infringement is not

based upon the use of the Software in a manner prohibited under this Agreement, in a manner for which the Software was not designed, or in a manner not in accordance with the Specifications.

## **8.2 Altered Version**

Licensor shall have no liability for any claim of infringement based on (a) the use of a superseded or altered version of the Software if infringement would have been avoided by the use of a current or unaltered version of the Software which Licensor made available to Licensee; or (b) the combination, operation or use of the Software with software, hardware, or other materials not furnished by Licensor.

## **8.3 Injunction**

If a final injunction is obtained against the use of any part of the Software by reason of infringement United States registered copyright or patent, Licensor will, at its option and expense, either (1) procure for Licensee the right to continue to use the Software; (2) modify the Software so that it becomes non-infringing; or (3) repurchase the Software and Documentation less depreciation at the rate of 10% per year, or pro rata for part of the year, from the date of Acceptance to the date of removal of the Software. If Licensor selects this third option, Licensee shall, immediately upon receipt from Licensor of the payment set forth above, at Licensor's option destroy or return all copies of the Software and Documentation in its possession or under its control.

## **8.4 Liability**

The foregoing wording in section 8.3 states Licensor's entire obligation and liability with respect to the infringement of any property right.

## **8.5 Infringement**

Licensee hereby indemnifies Licensor against any claim for (1) alleged infringement of any United States registered copyright or patent, arising out of the use of the Software by Licensee or any action(s) of Licensee or its agents in any manner prohibited by this Agreement and (2) any claim related to or arising out of a financial transaction brought by any third party based on the use of the Software.

## **9. Limitation of Liability**

### **9.1 Limitation**

Licensor shall have no liability with respect to its obligations under this agreement or otherwise for consequential, exemplary, special, incidental, or punitive damages even if it has been advised of the possibility of such damages. In any event, the liability of Licensor to Licensee for any reason and upon any cause of action shall be limited to the amount paid to Licensor by Licensee, less depreciation, under this agreement.

This limitation applies to all causes of action in the aggregate, including without limitation to breach of contract, breach of warranty, negligence, strict liability, misrepresentations, and other torts. Both parties understand and agree that the remedies and limitations herein allocate the risks of product and service nonconformity between the parties as authorized by applicable laws. The fees herein reflect, and are set in reliance upon, this allocation of risk and the exclusion of consequential damages set forth in this Agreement.

### **9.1 Force Majeure**

Neither party shall be under any liability for any loss or for any failure to perform any obligation hereunder due to causes beyond its control including without limitation industrial disputes of whatever nature, power loss, telecommunications failure, acts of God, or any other cause beyond its reasonable control.

## **10. Term and Termination**

### **10.1. Termination**

The License granted herein shall remain in effect unless terminated as provided for in Sections 10.2 or 10.3 herein or the subscription time frame has ended.

## **10.2 Breach**

Licensor may terminate this Agreement and the License without prejudice to any other remedy Licensor may have, immediately without further obligation to Licensee, in the event of (1) any breach by Licensee of Sections 2, 5, or 6 of this Agreement which cannot be remedied within twenty-four (24) hours of Licensor's notice to Licensee of the breach and Licensor's intent to terminate the License; (2) any material breach of Sections other than those set forth above which cannot be remedied within 60 days of Licensor's notice to Licensee of the breach and Licensor's intent to terminate the License; or (3) Licensee's making an assignment for the benefit of its creditors, the filing under any voluntary bankruptcy or insolvency law, under the reorganization or arrangement provisions of the United States Bankruptcy Code, or under the provisions of any law of like import in connection with Licensee, or the appointment of a trustee or receiver for Licensee or its property. Licensor's remedies are not exclusive, and Licensor reserves all rights and remedies Licensor has under the law or under equity. In the event of the need to avail itself of equitable remedies Licensor shall not be required to post a bond.

## **10.3 Remedy**

Licensee may terminate the License without prejudice to any other remedy Licensee may have, in the event of any material breach of this Agreement by Licensor which is not remedied within 60 days of Licensee's notice of breach to Licensor. Any breach by Licensor shall in no way eliminate Licensee's obligation to pay all amounts which are due and payable or which Licensee has agreed to pay under this agreement and no set off right shall exist. The duty to pay Licensor is an independent covenant not conditioned on any other term of this Agreement.

## **10.4 Cessation of Use**

Upon termination of this Agreement, Licensee shall cease using the Software and Documentation and promptly return all copies of the Software, Documentation, and all other Confidential Information in its possession or control. Licensee shall delete all copies of such materials residing in- on- or off-line computer memory and destroy all copies of such materials which also incorporate Licensee's Confidential Information. The licensor shall be entitled to enter the Location(s) to repossess and remove the software, Documentation, and any other Confidential Information. The licensee shall, within 30 days from the effective date of the termination, certify in writing by an officer or director of the party that all copies of the Software and Documentation have been returned, deleted, and destroyed.

## **11. Headings**

The headings used in the Agreement are for convenience only and are not intended to be used as an aid to interpretation.

## **12. Validity**

If any part of this Agreement is held to be illegal or unenforceable, the validity or enforceability of the remainder of this Agreement shall not be affected.

## **13. Binding Agreement**

This Agreement will be binding upon and inure to the benefit of the parties hereto, their respective successors and assigns. Licensee may not assign its rights or obligations under this Agreement without the prior written consent of Licensor.

## **14. No Waiver**

Failure by either party to exercise any right or remedy under this Agreement does not signify acceptance of the event giving rise to such right or remedy.

## **15. Solicitation**

Licensee shall not solicit the employment of nor employ any Licensor personnel who has been directly involved in the development, sale, installation, or support of the Software for a period of one year from the later of the termination of such individual's employment at Licensor or the last date of Acceptance of any Software.

## **16. Governing Law**

This Agreement shall be deemed to have been executed in the State of Illinois and will be governed by and construed in accordance with the laws of the State of Illinois. The parties hereby consent to the jurisdiction of the courts of the State of Illinois for the purpose of any actions or proceeding brought by either of them in connection with this Agreement.

## **17. Notice**

Unless otherwise agreed to by the parties, any notice required or permitted to be given or delivered under this Agreement shall be delivered to the address set forth in this Agreement. Notice shall be deemed to have been received by any party, and shall be effective, (1) on the day given, if personally delivered or if sent by confirmed facsimile transmission, receipt verified, or (2) on the third day after which such notice is deposited, if mailed by certified, first class, postage prepaid, return receipt requested mail.

## **18. Attorneys' Fees**

Licensee shall be responsible for Licensor's reasonable attorneys' fees associated with the enforcement by Licensor of the terms of this Agreement or the collection of any amounts due under this Agreement.

## **19. Survival**

Sections 5, 6, 8, 9, and 11 shall survive the termination of this Agreement for any reason.

## **20. Entire Agreement**

This Agreement and its Riders comprise the entire agreement between the parties regarding the subject matter hereof and supersedes and merges all prior proposals, understandings, and all other agreements, oral and written, between the parties relating to the Agreement.

In witness whereof, the parties have executed this Agreement on the dates set forth first above, with full knowledge of its content and significance and intending to be legally bound by the terms hereof.