

Terms of Use and App License Agreement

BY DOWNLOADING, INSTALLING, ACCESSING, USING OR COPYING THIS SOFTWARE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS APP LICENSE AGREEMENT. IF YOU ARE ACTING ON BEHALF OF ANOTHER PERSON OR COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT AND WARRANT THAT YOU HAVE THE FULL AUTHORITY TO BIND THAT PERSON, COMPANY OR LEGAL ENTITY TO THESE TERMS. IF YOU ARE UNWILLING TO ACCEPT THIS AGREEMENT, YOU ARE INSTRUCTED TO CANCEL THIS CLICK-THRU AND DO NOT INSTALL, ACCESS, USE OR MAKE ANY USE OF THIS SOFTWARE.

This Agreement is between You, BlueFinity and the App Supplier and is effective as of the date you accept this agreement by clicking on the Accept button or using this App.

Definitions

Agreement means this App License Agreement, incorporating, if included, the App Supplier License Agreement.

App(s) means the application software created through the use of Evoke. Each App will internally contain components, design framework or other elements of Evoke, owned and protected by BlueFinity ("Evoke Components"), that are used by You when using the App. The term App specifically excludes the database and associated data utilised by the App.

App Supplier means the company that a) has supplied this App to You and b) has an established agreement with BlueFinity, to supply You with this App

App Supplier License Agreement means the Agreement (specifically between App Supplier and You) that you also accept by accepting this agreement.

Authorised Login Protocol means the user identification and password, provided to or generated by You, which will give You access to certain security protected parts of the App.

BlueFinity means (i) BlueFinity International Inc with offices located at 10260 SW Greenburg Road, Suite 400, Portland, OR 97223, USA if the software licence is purchased in the United States (ii) BlueFinity International Ltd. with offices located at 575-599 Maxted Road, Hemel Hempstead, Hertfordshire HP2 7DX, United Kingdom if the software license is purchased anywhere outside of the United States.

Evoke means the rapid App development software, which is normally licensed by the App Supplier, from BlueFinity, in order to create the App that has been provided to You.

You or Your means the person or company that is being licensed to use the App.

Licensor means BlueFinity and/or the App Supplier.

1 OWNERSHIP.

The App is licensed. It is not sold, even if for convenience we make reference to words such as "sale" or "purchase". The App, specifically including the Evoke Components, is protected by copyrights and other intellectual property rights. You agree that all worldwide copyright and other intellectual property rights in the App, however made are the exclusive property of Licensor. All rights in the App, not expressly granted to You in this Agreement, are reserved by Licensor and their suppliers. There are no implied licenses under this Agreement. You agree to follow all reasonable instructions given by Licensor from time to time with regard to the use of trademarks owned by Licensor and other indications of property and rights of Licensor.

2 Acceptance of Terms

Licensor is only willing to provide access to, and use of the App to You on the condition that You accept all of the terms contained in this agreement and any additional terms that are set out and agreed by You.

3 License and Sublicense

Subject to the terms and conditions of this Agreement and, if included, the conditions of the App Supplier License, Licensor hereby grants to You, and You hereby accepts, a non-exclusive, non-transferable, limited license to download, install, and use on Your computers/mobile device a single copy of the App, together with the associated documentation (if available).

4 Restrictions

You will use the App only for purposes set forth herein, and, further, You expressly agree that You undertake:

- i. not to copy the App, except where such copying is incidental to normal use or where it is necessary for the purpose of back-up or operational security;
- ii. not to rent, lease, sub-license, loan, translate, merge, adapt, vary, alter or modify, the whole or any part of the App nor permit any part of it to be combined with, or become incorporated in, any other programs;
- iii. not to disassemble, de-compile or reverse engineer, nor create derivative works based on the whole or any part of the App
- iv. to keep all copies of the software secure and to maintain accurate and up-to-date records of the number and locations of all copies of the software;
- v. to install updates or updated software versions as may be required by Licensor from time to time;
- vi. not to provide, or otherwise make available, the App in any form, in whole or in part (including, but not limited to, program listings, object and source program listings, object code and source code) to any person without prior written consent from Licensor, and not to distribute or sublicense any rights in relation to the App to any third party;
- vii. to comply with all applicable technology control or export laws and regulations.
- viii. Not to encumber the App in any way, to any third party;
- ix. Not to use the App to rent, lease or otherwise provide services to Your customers, including, without limitation, hosting, outsourcing, service bureau or online application services (ASP) offerings;
- x. Not use the App for the pursuit of any illegal purposes.

5 Services.

Other than as specifically provided for in writing by Licensor, there are no services provided under this Agreement. You are responsible for installing the App on your computer/mobile device as permitted under this Agreement.

6 Run-time Licenses

All Apps which have been produced by Evoke will automatically generate a component which will assist the invoicing process, ensuring that the correct number of Apps are accounted for and providing accurate and timely information on the use of Apps in respect of run-time usage (to be paid by the App Supplier). You accept that these components and this information is important to the invoicing process and is related directly to the usage of the App. In the event of any interference or omission in respect of the components, then in addition to any other remedies that may be available to it, Licensor may withdraw your licenses to use the App, without any recompense or recourse on Your part.

7 Copyright and Intellectual Property

- 7.1 The App contains confidential information of Licensor and other third parties. All copyright, trademarks and other intellectual property rights in the App are the exclusive property of Licensor or their owner. No rights to use Licensor's logos or other trademarks are granted under this Agreement
- 7.2 All Intellectual Property Rights in the App and the software, design, text, logos, graphics and other material on or used in conjunction with App and the selection and arrangement thereof is the property of BlueFinity. Any and all Intellectual Property Rights created, developed or arising directly or indirectly out of the performance of the App including without limitation those created as a result of any amendment or upgrade to the App or otherwise, or subsisting in any materials provided by us in the performance of the App shall vest in BlueFinity and remain at all times BlueFinity property. You do not own, nor will You acquire, any interest in the Intellectual Property Rights in the App, whether under these terms and conditions or otherwise.

8 Additional Restrictions and Conditions.

- 8.1 Prohibited Uses of App.

You may not do (or permit others to do) any of the following: (a) modify, adapt, alter, translate, or create derivative works of the App; (b) merge or otherwise integrate the App with any external components or other software (c) reverse engineer, decompile, or disassemble The App, or otherwise attempt to derive the source code of the App except and only to the extent that such activity is expressly permitted by applicable law notwithstanding this limitation; (d) remove, alter, or obscure any confidentiality or proprietary notices (including copyright and trademark notices) of Licensor or its suppliers on the App, including any copies of the App that You are permitted to make under this Agreement; (e) make the App available to others on a hosted, time-sharing, ASP or other basis, (f) circumvent, or provide or use a program intended to circumvent, technological measures (such as License Keys or Authorised Login Protocol) that control installation or use of the App; (g) use the Authorised Login Protocol on more than three computers/mobile devices simultaneously or (h) otherwise reproduce or use the App except as expressly permitted under this Agreement.

8.2 Upgrades

The licenses granted under this Agreement cover future maintenance releases and upgrades that Licensor may make available from time to time. The provision of upgrades or other new versions or releases does not expand Your license rights under this Agreement.

8.3 Source Code.

This license right to the App does not include any license, right, power or authority to subject the App in whole or in part to any of the terms of an Excluded License. An "Excluded License" means any "open source" or other license that requires as a condition of use, modification and/or distribution of software subject to the Excluded License, that such software or other software combined and/or distributed with such software be (a) disclosed or distributed in source code form; (b) licensed for the purpose of making derivative works; or (c) redistributable at no charge.

8.4 No Trademark License.

No rights to use Licensor's logos or other trademarks are granted under this Agreement. If You would like to use Licensor's logos or other trademarks, please contact Licensor.

8.5 High Risk Activities.

The App is not fault tolerant and is not intended for use in high-risk activities. You may not use the App in the design, construction, operation or maintenance of any nuclear facility or weapon of mass destruction, or for the purpose of aircraft navigation or control or any other activity in which the failure of the App could result in loss of human life, personal injury or property damage.

9 Breach of Sublicense.

If breach of this Agreement should occur, then You shall take prompt, corrective action to remedy the breach and shall, in addition, notify Licensor of the breach and the corrective action taken. You shall assign to Licensor, at Licensor's sole option, any rights that You have regarding breach of this Agreement. You agree to co-operate with Licensor in any proceeding against any third party alleging breach of these terms. You will not be liable to Licensor for any breach of the terms of any license by a third party unless You have willfully or negligently contributed to or co-operated in the breach or had not taken reasonable precautions to prevent such a breach or has not notified Licensor within a reasonable time after becoming aware of such breach.

10 PERFORMANCE & WARRANTY

10.1 End user representations. Licensor do not accept responsibility for any use of or reliance on the App or for any disruptions to or delay as a result of using the App. As the end user You acknowledge that the App is provided in "as is condition", without an express or implied guarantee of any type and to the maximum extent permitted by applicable laws, Licensor does not provide any express or implied representations or guarantees, in particular no sales guarantees or suitability for a specific purpose. No guarantee from Licensor or any other party exists that the functions contained in the App will comply with your requirements or that software operation will be smooth and free of errors. You assume full liability and risk for selection of the App to achieve results intended by You and for the installation, use and results that You will achieve with the App. You assume total responsibility for establishing such procedures for data back up and virus checking as you consider necessary

10.2 Limitation. To the maximum extent permitted by applicable laws, in no event shall Licensor, its employees or license providers be held liable for any lost profit, revenue, or sales, or for any loss of data, or for costs expended to procure goods or services, for property damage, personal damage, business interruption, loss of business information or for any special, direct, indirect, accidental, economic,

covering, criminal, special or subsequent damage, caused in any manner whatsoever, whether arising from:

- (i) this Agreement (including but not limited to, the use of the App,
- (ii) wilful misconduct,
- (iii) the misuse of the App by other users, including but not limited to the infringement of obligations set out in this Agreement
- (iv) negligence or other fact establishing the occurrence of liability,

incurred due to the use of or impossibility to use the App, even in the event that Licensor have been notified of the possibility of such damage. No action or claim, whether in tort or contract arising out of this Agreement, may be brought by You more than two years after the cause of action or claim has arisen.

Under no circumstances will Licensor be liable to You for consequential loss resulting from the use of the App, or any defect in its performance or this Agreement.

Except for claims arising from death or personal injury caused by negligence and to claims arising from fraud, gross negligence or wilful misconduct, a breach of a party's intellectual property rights or confidentiality or any other liability which may not be excluded by law; a) neither party shall be liable for any indirect, incidental, special, punitive, or consequential damages, or any loss of profits arising out of, or in connection with, this agreement b) in no event shall either party's liability to the other party arising out of this agreement (or otherwise) exceed an amount equal to the money paid by the You under this Agreement or any other agreement during the one (1) year period preceding the incident giving rise to the claim.

10.3 Under no circumstances will BlueFinity or App Supplier be liable for any failure, non compliance with this Agreement or liability of the other.

10.4 No further obligations. This Agreement imposes no other obligations on the part of Licensor except for the obligations specifically listed in this Agreement.

11 Relationship.

You and Licensor are independent contractors and neither party is the agent, partner, employee, fiduciary or joint venturer of the other party under this Agreement. You may not act for, bind, or otherwise create or assume any obligation on behalf of Licensor.

BlueFinity and App Supplier are independent contractors and neither party is the agent, partner, employee, fiduciary, or a joint venture partner, of the other party. In this Agreement BlueFinity and App Supplier are referred to jointly or separately purely for convenience and readability of the document.

Each of BlueFinity and App Supplier independently reserves the right to take action to ensure compliance with any part of this agreement

12 Assignments.

You may not assign or transfer, by operation of law or otherwise, any of Your rights under this Agreement to any third party without Licensor's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. Licensor may freely assign its rights or delegate its obligations under this Agreement.

13 Language.

This Agreement is in the English language, and its English language version will be controlling over any other translation except as otherwise required by applicable law.

14 Warranty and Limitation of Warranty

Licensor warrants to You that it is free to enter into this agreement.. The warranties contained herein are in lieu of all other warranties, express and implied, as to the App or it's use or performance including but not limited to all warranties of merchantability, fitness for use and fitness for a particular purpose. You hereby waive any claim You may have against Licensor for any loss, damage, or expense of any kind whatsoever caused by the App (or the loss of use of, or accessibility to, the App or the data contained therein) or by any defect therein, the use or maintenance thereof, or any servicing or adjustment thereto, not expressly covered by the warranties contained herein.

15 CONSEQUENTIAL LOSS

Licensor shall not be liable to You for consequential loss or damage including loss of use, or of profit, or of contracts.

16 Termination.

This Agreement will remain in effect until terminated as provided below. This license is granted to You assuming that all terms and conditions are continued to be met between You and the Licensor, and between the App Supplier and BlueFinity. If any part of this should cease to be the case, then the Licensor reserves the right to terminate the agreement and/or withdraw the License from You. IN THAT CASE, YOU WILL NO LONGER BE ABLE TO ACCESS ANY DATA OR HAVE THE RIGHTS TO CONTINUE TO USE THE APP. To continue using the App, You will need to contact your App Supplier so that the parties may renew terms and conditions or purchase a new licenses or subscriptions as necessary.

Licensor may terminate this Agreement, effective immediately upon written notice to You if You breach any provision of this Agreement. Upon expiration or termination of this Agreement, You must erase or otherwise destroy all copies of the Apps and Your rights hereunder will immediately end. Termination of this Agreement will not relieve You from obligations undertaken by You in this Agreement.

Notwithstanding the foregoing, Sections 1, 4 and 7 through 23 will survive expiration or termination of this Agreement for any reason.

17 CONFIDENTIALITY

Licensor and You shall keep confidential the Agreement and all other information of the other party designated as 'confidential' obtained under or in connection with the license and shall not divulge the same to any third party without prior written consent of the other party.

The provisions of this Clause shall not apply to:

- (i) any information in the public domain otherwise than by breach of this License.
- (ii) information in the possession of the receiving party thereof before divulgence as aforesaid.
- (iii) information obtained from a third party who is free to divulge the same.

Licensor and You shall divulge confidential information only to those employees who are directly involved in the License and ensure that such employees are aware of and comply with these obligations as to confidentiality.

The obligations of both parties as to disclosure and confidentiality shall come into effect at the beginning of the term of this agreement and shall continue in force notwithstanding the termination of the License.

18 FORCE MAJEURE

Neither party shall be liable for failure to perform its obligations under this Agreement if such failure results from circumstances beyond the party's reasonable control but this shall not apply to making a monetary payment.

19 Entire Agreement.

This Agreement constitutes the final and entire agreement between the parties regarding the subject of this Agreement (the terms and conditions for the use of the App) and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties.

20 Intention of the Agreement

This Agreement is intended to set out the terms and conditions of the use of the App, and to establish the basis upon which the usage of the App may be charged for. In the event of any attempt to circumvent the intent of this Agreement, and in particular the charging process, then in addition to any other remedies that may be available to it, BlueFinity may withdraw your licenses to use the App, without any recompense or recourse on Your part.

21 Changed Conditions

Licensor reserves the right at any time without notice to revise these conditions. Any changes to these conditions will be notified to You in a manner determined by Licensor and by continuing to use the App following any such notification You will signify that You agree to be bound by the revised terms and conditions of use.

22 WAIVER

No delay, neglect or forbearance on the part of either party in enforcing against the other party any term or condition of the Agreement shall either be or be deemed to be a waiver or in any way prejudice any right of that party under the Agreement. All waivers must be in writing.

23 LAW

- 23.1 Unless otherwise agreed in writing between the parties, the Agreement shall be subject to and construed and interpreted in accordance with English Law and shall be subject to the jurisdiction of the Courts of England and Wales.
- 23.2 If Your company has its main offices in North America then, at your discretion, You may choose that this Agreement shall be subject to and construed and interpreted in accordance with Laws of the State of New York, USA and shall be subject to the jurisdiction of the Courts of New York.