

BlueFinity International

Terms of Use and End User License Agreement

BY DOWNLOADING, INSTALLING, ACCESSING, USING OR COPYING THIS SOFTWARE, YOU AGREE TO THE TERMS AND CONDITIONS OF THIS END USER 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.

Definitions

Agreement means this End User License Agreement

App(s) means the application software created through the use of Evoke.

App Click-thru means the click-thru license agreement that is included as a compulsory click-thru at the time of each user first signing on to an App.

App Supplier Click-thru means the additional terms and conditions, specific to your company, that You might want to include in the App Click-thru.

Authorised Login Protocol means the user identification and password, provided to You following payment of the relevant Fees, which will give You access to certain security protected parts of Evoke.

Authorised Distributor means a distributor, officially appointed, by BlueFinity to provide supplemental administration, marketing, sales and/or support of Evoke in a specific region.

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 North America (ii) BlueFinity International Ltd. with offices located at Hamilton House, 111 Marlowes, Hemel Hempstead, Herts. HP1 1BB, United Kingdom if the software license is purchased anywhere outside of North America.

End User(s) means any person or entity which enters into an App Click-thru for the use of an App created using Evoke.

Evoke means the software installed and marketed by BlueFinity known as Evoke. Including, but not limited to all BlueFinity software, files, instruction files, printed materials, electronic documentation and/or the Evoke software (source code and object code) which together provides an application designer that allows You to design User Interface (“UI”) menus, pages and data models and an application generator to create Visual Studio and/or Xamarin solutions. As well as incorporating the client-side UI oriented code, these solutions also include the code required to provide read/write interaction with your back-end database as well as RESTful service-based data access points for an applications UI.

Fees means Subscriptions and other fees payable for the use of Evoke or the Apps as set out in the Price List or as specifically varied in a purchase order and agreed in writing by BlueFinity.

Price List means the price list and additional terms for using Evoke, issued by BlueFinity or an Authorised Distributor, prevailing at the time of usage. The price list will be updated from time to time.

Purchase Order means the agreement to license Evoke, which may contain dates, specific pricing and other conditions as would have been agreed between You and BlueFinity or an Authorised Distributor prior to purchase of a license.

Subscription means the regular payments due as a result of the use of Evoke or the Apps

U2 Data Client Dynamic Link Library (“DDL”) means a body of code owned by and supplied by Rocket Software Inc. (“Rocket”) which may provide you with access to specific software from Rocket, to be used only in conjunction with Evoke.

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

1 OWNERSHIP.

Evoke is licensed. It is not sold, even if for convenience we make reference to words such as “sale” or “purchase.” Evoke and the Apps are protected by copyrights and other intellectual property rights. You agree that all worldwide copyright and other intellectual property rights in Evoke and the Apps (save as specifically provided

for in section 9 – Copywrite and Intellectual Property) and all copies of Evoke and the Apps, however made are the exclusive property of BlueFinity. All rights in Evoke and the Apps, not expressly granted to You in this Agreement, are reserved by BlueFinity and, where third party software is used, its suppliers. There are no implied licenses under this Agreement. You agree to follow all reasonable instructions given by BlueFinity from time to time with regard to the use of trademarks owned by BlueFinity and other indications of property and rights of BlueFinity.

2 Acceptance of Terms

BlueFinity is only willing to provide access to, and use of Evoke and the Apps to You on the condition that You accept all of the terms contained in this agreement and any additional terms that are set out in the Price List, and other special terms or pricing prepared by BlueFinity and defined in a Purchase Order.

3 License

Subject to the terms and conditions of this Agreement, BlueFinity hereby grants to You, and You hereby accept, a non-exclusive, non-transferable, limited license to;

- download, install, and use at Your facility a single copy of Evoke, together with the associated documentation, tutorials, samples, tools and access to associated Evoke ‘cloud-based’ facilities (collectively, the “Program”).
- License the Apps, that are developed by You as a product of using Evoke, to End Users
- Receive and use any free supplementary software code or updates, incorporating corrections of errors as may be provided by BlueFinity from time to time.

4 Restrictions

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

- i. not to copy the Evoke, except where such copying is incidental to normal use of Evoke 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 Evoke 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 (other than provided for in the creation of the Apps), based on the whole or any part of Evoke
- iv. to keep all copies of the Program 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 BlueFinity from time to time;
- vi. not to provide, or otherwise make available, Evoke 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 BlueFinity, and not to distribute or sublicense any rights in relation to Evoke to any third party;
- vii. to comply with all applicable technology control or export laws and regulations.
- viii. Not to encumber Evoke in any way, to any third party;
- ix. Not to use Evoke 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 to create and/or deploy Apps for the pursuit of any illegal purposes.

5 Services.

Other than as specifically set out in the Price List and included in the Fees, there are no services provided under this Agreement. You are responsible for installing Evoke on your computer(s) as permitted under this Agreement. Online and telephone support as may be made available by BlueFinity from time to time will form part of this Agreement. All other services do not form part of this agreement and must be purchased separately.

6 Fees.

In order for You to use/continue to use any part of Evoke, you agree to pay the Fees. Prices and additional terms are in strict accordance with the prevailing Price List (which will be updated from time to time) or as may be specifically provided to You in a Purchase Order. We will advise You of changes to the Price List and You should check the Price List periodically in order to be familiar with current pricing. All Fees are non-refundable except as expressly provided for in the Agreement. All prices are exclusive of sales or use tax, withholding tax, excise tax, VAT or customs duties, all of which You are responsible for paying above and beyond the Fees due to BlueFinity.

7 TERMS OF PAYMENT

You shall be responsible for the payment of all Fees incurred as a result of:

- Your use of Evoke and the Apps
- Your deployment of the Apps to End Users

BlueFinity or its Authorized Distributor shall invoice You for the total amount due for the current month for all Fees, and You are responsible for paying that invoice, within 21 Days of the date of the invoice. Invoices will contain:

- First Subscriptions for an Evoke developer license
- Subscriptions for Evoke developer licenses for each license that is due for renewal within 30 days of the date of renewal and
- Subscriptions for the Apps deployed and registered for all End Users during the previous month

If the payment of any Fees due shall be delayed by You, BlueFinity shall be entitled to charge interest at the rate of three percent (3%) above LIBOR per month on the amount of the delayed payment for the period of the delay. If You become delinquent in the payment of any valid sum due to BlueFinity then fifteen (15) days after giving written notice to You (and assuming You have not made payment in full during that period), then in addition to any other remedies at its disposal, BlueFinity may at its discretion, terminate or suspend App Click-thru and Evoke licenses and/or accounts previously issued to the You or End Users and may remove access by You to Evoke and the Apps, until such a time that all overdue amounts are paid. In such circumstances, BlueFinity may at its discretion, withdraw your licenses and prevent your access to Evoke and the Apps indefinitely, despite the repayment of any overdue fees. Any such action by BlueFinity shall not give rise to any cause or claim of breach of contract or other liability on behalf of BlueFinity.

8 Run-time Licenses

Each App 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, You are responsible for ensuring that these components are maintained within the App as they are, free of any changes alteration or omissions of any kind. This applies to Apps that are installed and used by You and those that You deploy to End Users. You accept that these components and this information is important to the invoicing process and is related directly to the usage of Evoke and the Apps. 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, BlueFinity may withdraw your licenses to use Evoke and the Apps, without any recompense or recourse on Your part.

9 U2 Data Client Dynamic Link Library

Through Your regular use of Evoke, You have the option to access the DLL. Should You choose to access this DLL then You agree to be bound by the obligations and restrictions as set out in the Rocket Software License Agreement found at <https://www.rocketsoftware.com/masterterms>. Access to this DLL is provided "AS IS" with no warranties of any kind and neither BlueFinity nor Rocket shall be liable to You or indemnify You for any claims of any kind related to this Program.

10 Copyright and Intellectual Property

- 10.1 Evoke and the Apps contains confidential information of BlueFinity and other third parties. All copyright, trademarks and other intellectual property rights in Evoke and the Apps are the exclusive property of BlueFinity (or their owner where third party components have been utilized). No rights to use BlueFinity's logos or other trademarks are granted under this Agreement
- 10.2 All Intellectual Property Rights in Evoke and the software, design, text, logos, graphics and other material on or used in conjunction with Evoke 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 Evoke including without limitation those created as a result of any amendment or upgrade to Evoke or otherwise, or subsisting in any materials provided by us in the performance of Evoke shall vest in us and remain at all times our property. You do not own, nor will You acquire, any interest in the Intellectual Property Rights in Evoke, whether under these terms and conditions or otherwise.
- 10.3 You warrant that You will include the App Click-thru in any App that you deploy, including those that are sub-licensed to a third party company, End User or individual. You can include your own terms and conditions in the App Supplier Click-thru, but these must not conflict with or compromise the terms and conditions contained in the App Click-thru. In the event of any conflict between the terms of the App Click-thru and the App Supplier Click-thru, the terms of the App Click-thru shall control. For the purposes of clarity, customer code specifically written by You, completely independent of Evoke and the Apps, but for inclusion in the Apps, does not become the copyright of BlueFinity.
- 10.4 You retain the ownership to the specific design of the App(s) created by You using Evoke ("Your App"). The unique "look, feel and function" of Your App, together with the combined choice of options/selections/actions/etc. that make up Your App (prior to it being generated within Evoke to produce a Visual Studio solution) is owned by You. Subject to the terms of this Agreement, You retain the rights to use and deploy Your App. Your App cannot be re-used by BlueFinity or anyone other than You, as the designer of the App. For clarification, this clause will in no way restrict BlueFinity or its customers and partners from designing their own Apps, regardless of any similarity they may have, in purpose or design, to Your App.
- 10.5 The Apps generated by Evoke will be made up of Evoke code, routines, proprietary component libraries and technology. Therefore, the final copyright and Intellectual Property Rights are retained solely by BlueFinity.
- 10.6 The copyright/ownership of custom code specifically written by You and included into the Visual Studio solution, completely independently of BlueFinity and Evoke, is retained by You. The copyright of third party components, component libraries or third party web services that may be accessed or included in the Visual Studio projects by You, using Evoke code hooks or other coding techniques, will be retained by the owner of the components, libraries or web services.

11 Additional Restrictions and Conditions.

11.1 Prohibited Uses of Evoke.

You may not do (or permit others to do) any of the following: (a) modify, adapt, alter, translate, or create derivative works of Evoke; (b) merge or otherwise integrate Evoke with any external components or other software (c) reverse engineer, decompile, or disassemble Evoke, or otherwise attempt to derive the source code of Evoke 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 BlueFinity or its suppliers on Evoke, including any copies of Evoke that You are permitted to make under this Agreement; (e) make Evoke 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 Authorised Login Protocol) that control installation or use of Evoke; (g) use the Authorised Login Protocol in any manner that exceeds the scope of the license under which the Authorised Login Protocol is provided to You; (h) use the Authorised Login Protocol on more than one computer simultaneously or (i) otherwise reproduce or use Evoke except as expressly permitted under this Agreement.

11.2 Upgrades

The licenses granted under this Agreement cover future maintenance releases and upgrades that BlueFinity 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.

11.3 Source Code.

This license right to Evoke does not include any license, right, power or authority to subject Evoke (including components of Evoke incorporated into Your 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.

11.4 No Trademark License.

No rights to use BlueFinity's logos or other trademarks are granted under this Agreement.

11.5 High Risk Activities.

Evoke is not fault tolerant and is not intended for use in high-risk activities. You may not use Evoke and the Apps 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 Evoke could result in loss of human life, personal injury or property damage.

12 Breach of App Click Thru.

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

13 Distributors

If appointed in your region, Authorized Distributors will accept purchase orders, provide on-going support and optional services to you, on behalf of BlueFinity. Notwithstanding anything herein to the contrary, Authorized Distributors may not enter into any contracts on behalf of BlueFinity. No Authorized Distributor has the authority to modify the terms of this agreement. BlueFinity may at its discretion subcontract some or all of its obligations under this agreement to an Authorised Distributor.

14 Integrated Development Environment

This Agreement does not grant You a license or any rights to any Integrated Development Environment ("IDE"), including but not limited to "Visual Studio", that may be employed with Evoke, and You must contact the IDE supplier directly to obtain such a license.

15 PERFORMANCE & WARRANTY

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

15.2 Limitation. To the maximum extent permitted by applicable laws, in no event shall BlueFinity, 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 spare goods or services, for property damage, personal damage, business interruption, loss of business information or for any other loss (including special, direct, indirect, consequential, accidental, economic) or subsequent damage; incurred in relation to or as a result of this Agreement, or the use of Evoke or the Apps, or for any claim by a third party, or for wilful misconduct or negligence, even in the event that BlueFinity have been notified of the possibility of such damage (caused in any manner whatsoever).

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.

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

16 Relationship.

You and BlueFinity 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 BlueFinity.

17 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 BlueFinity's prior written consent. Any attempted assignment or transfer in violation of the foregoing will be void. BlueFinity may freely assign its rights or delegate its obligations under this Agreement.

18 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.

19 CONSEQUENTIAL LOSS

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

20 Termination.

This Agreement may be terminated by either party upon giving ninety (90) Days written notice to the other party if the other party becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency, receivership, liquidation, or composition for the benefit of creditors, if that petition or proceeding is not dismissed with prejudice within forty five (45) Days after filing.

This Agreement may be terminated by either party upon giving forty five (45) Days written notice to the other party of the other party's material breach of this Agreement, provided such breach is not cured within the forty five (45) day notice period.

You shall have no claim against BlueFinity for loss of prospective profits or expenditures in connection with Your loss of Your rights herein in the event of any termination made pursuant to this Agreement.

For the purposes of clarity, it is possible to terminate the use of Evoke and yet continue the use of the Apps (on condition that the Fees for the use of the Apps are current and up-to-date)

Upon termination of this Agreement, You must erase or otherwise destroy all copies of Evoke (and/or the Apps, as applicable) and Your rights hereunder will immediately end. Termination of this Agreement will not relieve You from the obligation to pay any Fees outstanding at the time of termination nor from obligations undertaken by You in this Agreement.

Notwithstanding the foregoing, Sections 1 and 4 through 27 will survive expiration or termination of this Agreement for any reason.

21 CONFIDENTIALITY

You shall keep confidential Evoke and all documentation provided to you by BlueFinity, or any part thereof and shall not disclose the same to any third party without the prior written consent of BlueFinity.

BlueFinity 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.

You will ensure that employees and contractors 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.

22 INTENTION OF THE AGREEMENT

This Agreement is intended to set out the terms and conditions of the use of Evoke and the Apps, and to establish the basis upon which the usage of Evoke and the Apps 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 Evoke, and the Apps that have been deployed by You, without any recompense or recourse on Your part or on the part of the End Users.

23 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.

24 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 Evoke and the Apps) 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. The terms of any purchase order or similar document submitted by You to BlueFinity, and not specifically agreed by BlueFinity, will have no effect.

25 Changed Conditions

BlueFinity reserve the right at any time without notice, to revise these terms and conditions, and the terms and conditions of the App Click-thru. New terms and conditions will be notified to You in a manner determined by BlueFinity and will be included in the necessary click-thru agreements. By continuing to use Evoke following any such notification You will signify that You agree to be bound by the revised terms and conditions of use.

26 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.

27 LAW

- 27.1 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.
- 27.2 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.