

## CLICKWRAP AGREEMENT

### IMPORTANT - READ CAREFULLY

This Clickwrap Agreement (“Agreement”) is a legal document between you (“You” or “Your”) and Bluenog Corp. (“Bluenog”). It is important that You read this document before using the Bluenog-provided software and any accompanying Documentation (collectively, “Product”). By clicking the “I ACCEPT” and “NEXT” buttons below, or by installing, or otherwise using the Product, You agree to be bound by the terms of this Agreement, including, without limitation, the warranty disclaimers, limitation of liability and termination provisions below, whether or not You have purchased the Product. You agree that this Agreement is enforceable like any written agreement negotiated and signed by You. If You do not agree with the terms and conditions of this Agreement, You are not licensed to use the Product, and You must destroy any downloaded copies of the Product in Your possession or control. Capitalized terms have the meanings set forth in Section 21. Please go to the Bluenog website at <http://www.bluenog.com/clickwrapsla> to download and print a copy of this Agreement for Your files. This Agreement will not apply if You have a signed license agreement for the Product.

#### 1. LICENSE.

a. Evaluation Use. The terms of this Section 1(a) are applicable to You if You have registered as an Evaluation Use customer. Subject to the terms of this Agreement, Bluenog grants to You a non-exclusive, non-transferable, license to use the Product solely for Evaluation Use; and in no event may You use the Product for Development and Production Use. This Product is not free. You may use the Product for Evaluation Use, without charge for one (1) year, after which You must either register it for Development and Production Use or remove it from Your computer. All evaluation users are subject to the terms and conditions of this Agreement. If You do not purchase a Development and Production Use license, Your use of the Product after the evaluation period has expired is a violation of U.S. and International copyright laws. To pay a fee and register Your copy for Development and Production Use, You should contact Bluenog at [sales@bluenog.com](mailto:sales@bluenog.com). Third party software products or modules supplied by Bluenog, if any, may be used solely with the Product, and may be subject to Your acceptance of terms and conditions provided by such third parties. This license begins upon the installation of the Product and ends if and when terminated by Bluenog in accordance with this Agreement. When the evaluation license terminates at the first anniversary of Your registration You must stop using the Product. All rights not specifically granted to You herein are retained by Bluenog.

b. Development and Production Use. The terms of this Section 1(b) are applicable to You if You have registered as a Development and Production Use customer. Subject to the terms of this Agreement, Bluenog grants to You a non-exclusive, perpetual, non-sublicenseable, non-transferable license to use the Product solely for Development and Production Use, as specified in Bluenog’s Order Form, and as set forth in this Agreement. Any and all third party components that are supplied with the Product will be governed by the terms and conditions set forth by the respective license agreements and will be subject to Your acceptance before being used. Third party software products supplied by Bluenog, if any, may be used solely with the Product. All rights not specifically granted to You herein are retained by Bluenog. The license provided for in this Section 1(b) does not include access to Support Services (including but not limited to updates upgrades, support and access to new source code) which are only available by separate agreement as provided in Section 7 of this Agreement.

c. Restrictions on Use. You agree: (i) not to remove any Bluenog identification or notices of any proprietary, patent or copyright restrictions from the Product, Documentation, Source Code or any support material; (ii) not to provide use of the Product in a computer service business, rental or commercial timesharing arrangement; (iii) not to develop methods to enable unauthorized parties to use the Product; (iv) not to reverse engineer, decompile or disassemble the Product; (v) not to rent, lend or lease the Product or Documentation in any form to anyone, and (vi) as an Evaluation Use license user, You are forbidden from using an Evaluation Use license for Development and Production Use. You will not disclose the results of any performance benchmarks to any third party, without the prior written consent of Bluenog.

d. Product Changes. Bluenog reserves the right at any time not to release or to discontinue release of any Product updates and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Product.

e. Copies. With respect to the Development and Production Use license only, You may make a reasonable number of copies of the Product (provided that all copyright and other proprietary notices of Bluenog and its licensors are reproduced), solely for archival purposes. If You do copy for this purpose, You must preserve any proprietary rights notices on the Product and place such notices on any and all copies You made or make. As an Evaluation Use customer, You may not make any copies of the Product.

2. **PERMITTED CUSTOMIZATIONS.** With respect to the Development and Production Use license only, Bluenog grants to You a non-exclusive, non-transferable right for You to create Permitted Customizations. Permitted Customizations may be utilized internally by You. Core Customizations may not be distributed, resold, transferred or made available to any third party without the prior written consent of Bluenog. Bluenog does not provide Support for the Product if it contains Permitted Customizations, unless the Permitted Customizations have been submitted to and accepted by Bluenog, in accordance with Bluenog's acceptance procedures set forth at [www.Bluenog.com/PermittedCustomizations](http://www.Bluenog.com/PermittedCustomizations).

3. **SUBMISSIONS.** If You submit to Bluenog any materials, including Permitted Customizations, feedback, data, questions, comments, ideas, concepts, techniques, suggestions, for assistance with Support Services or the like, You agree that such submissions are unrestricted and will be deemed non-confidential upon submission. You grant to Bluenog a non-exclusive, royalty-free, worldwide, perpetual, irrevocable license, with the right to sublicense, to use, copy, transmit, distribute, create derivative works of, commercialize, display and perform such submissions, which include any Permitted Customizations.

#### 4. **SERVICES.**

a. You may purchase Services from Bluenog by entering into an Order Form or Statement of Work that will be governed by the terms of this Agreement. All Services are accepted upon delivery. You agree to provide Bluenog with such cooperation, information, access and support which Bluenog deems to be reasonably required to allow Bluenog to successfully provide the Services. You will also be responsible for promptly obtaining and providing to Bluenog all any consents or approvals required to give Bluenog the right to access and use the software, hardware and other products to enable Bluenog to perform the Services.

b. All rates will be on a time and materials basis as specified in the Order Form. Bluenog will prepare and submit weekly time reports, as appropriate, showing the total number of hours worked. You will review each time report, sign it and return it to Bluenog's designated representative within ten

(10) business days of receipt. Your signature will signify that You approve the accuracy of the itemization of hours and of the Bluenog's efforts to date.

c. You will reimburse Bluenog for all reasonable ordinary and necessary out-of-pocket expenses, including all travel expenses, which are incurred in the performance of Services under this Agreement. Bluenog will obtain Your prior approval for any single expense in excess of five hundred dollars (US \$500).

**5. OWNERSHIP.** Bluenog retains all right, title and interest in the Products, software or other works of authorship created as part of the Services performed by Bluenog under this Agreement (“Work Product”) and Permitted Customizations (by whomever produced), including, but not limited to, all copies, versions, customizations, compilations and derivative works thereof; all related documentation; Bluenog trademarks, service marks, trade names, icons and logos; any and all copyright rights, patent rights, trade secret rights and other intellectual property and proprietary rights throughout the world; and all Confidential Information (as defined below). Furthermore, the Product is protected by United States and international copyright laws and international treaty provisions, and patent and trade secrets laws. You acknowledge that the possession, installation, or use of the Product, Work Product or the creation of any Permitted Customizations does not transfer to You any ownership, title, or registrable interest of any kind to the intellectual property in the Product, Work Product or Permitted Customizations and that You will not acquire any rights to the Product, Work Product or Permitted Customizations except as expressly set forth in this Agreement. If any Work Product is delivered to You pursuant to or in connection with the performance of Services (a “Deliverable”), Bluenog hereby grants to You a license to such Deliverable under the same terms and conditions as the Development and Production Use license to the Product set forth in Section 1 above. In addition, Bluenog is continually innovating and improving the Product to meet the needs of its customers and partners. You agree that Bluenog and its designees will not be prevented from continuing to develop and enhance its products and its services in any respect, even if such modifications may be similar to the Work Product or Permitted Customizations. If Bluenog or its designees develop any modifications or customizations which may be similar to any Work Product or Permitted Customization, You agree that You will not, directly or indirectly, make any claim against Bluenog or any of its designees for infringement of any of rights in or to any Work Product or Permitted Customization.

## **6. RESTRICTIONS.**

a. Forking. You will not, directly or indirectly, distribute, resell, transfer or make available to any third party, a forked version of the Product, a version of the Product that is maintained in a separate source code repository or a version of the Product that replaces, diminishes or eliminates the need for licensing the Product from Bluenog.

b. Competition. You will not develop any product or software similar to a Product for commercial or non-commercial resale or distribution.

## **7. SUPPORT SERVICES.**

a. Support Services. Support Services ordered by You will be provided under Bluenog's Support Contract Terms and Conditions posted on Bluenog's website at <http://www.Bluenog.com/SupportTerms>, in effect on the date the Support Services are ordered. By accepting the terms of this Agreement, You are accepting the Support Contract Terms and Conditions, which may be amended by Bluenog from time to time (“Support Services”). Support Services fees paid are nonrefundable. The Support Services do not cover the Product if Permitted Customizations have been made to the Product, unless the Permitted Customizations are submitted to and accepted by Bluenog, pursuant to Bluenog's acceptance procedures set forth at

[www.Bluenog.com/PermittedCustomizations](http://www.Bluenog.com/PermittedCustomizations). Any submission of Your Permitted Customizations to Bluenog to be covered for Support Services purposes will be governed by Section 3, and may be used by Bluenog in accordance thereof.

b. Renewal of Support Services. At the expiration of each Support Services term, You may continue to receive Support Services in one (1) year increments under Bluenog's then current fees and policies. Bluenog will provide You with reasonable notice of Support Services fees due. If You elect not to renew the Support Services, You must notify Bluenog of Your intent not to renew at least thirty (30) days prior to the end of the applicable Support Services term. If You do not pay for Support Services prior to the renewal date, Support Services will terminate. If You wish to reinstate Support Services for a Product, You must pay one hundred and twenty five percent (125%) of the fees for license and Support Services that would have applied during the period of Support Service suspension and bring the Product up to the most current version.

## 8. INDEMNIFICATION.

a. Your Indemnification. You agrees to defend, indemnify and hold Bluenog harmless from and against damages assessed against Bluenog, by a court of competent jurisdiction, in favor of any third party as a result of such party's claim with respect to any modification and customization of the Product performed by You or on Your behalf constitutes an infringement of an intellectual property right, provided: (i) Bluenog notifies You promptly in writing of any such claim and gives full and complete authority, information, and assistance to You in the defense of such claim; (ii) Bluenog does not make any admissions or otherwise respond to any such claim without Your written consent; and (iii) You will have sole control of the defense of any such claim and of all negotiations for its settlement or compromise.

b. Bluenog Indemnification.

(i) Bluenog agrees to defend, indemnify and hold You harmless from and against damages assessed against You, by a court of competent jurisdiction, in favor of any third party as a result of such party's claim that Your use of a Product constitutes an infringement of an intellectual property right, provided: (i) You notify Bluenog promptly in writing of any such claim and gives full and complete authority, information, and assistance to Bluenog in the defense of such claim; (ii) You do not make any admissions or otherwise respond to any such claim without Bluenog's written consent; and (iii) Bluenog will have sole control of the defense of any such claim and of all negotiations for its settlement or compromise. Bluenog's obligations under this Subsection do not apply to the extent that (i) such claim or action would have been avoided but for modifications or Permitted Customizations of the Product, or portions thereof, other than modifications made by Bluenog after delivery to You; (ii) such claim or action would have been avoided but for the combination or use of the Product, or portions thereof, with other products, processes or materials not supplied or specified in writing by Bluenog; (iii) Your use of the Product with any third party product; (iv) You continue the allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; (v) Your use of the Product is not strictly in accordance with the terms and conditions of this Agreement; or (vi) You are using a version of the Product other than the then current, unaltered version of the applicable Product, unless the infringing portion is also in the then current, unaltered version. You will be liable for all damages, costs, expenses, settlements and attorneys' fees related to any claim of infringement arising as a result of subsections (i)-(vi) above.

(ii) If the Product becomes or, in the reasonable opinion of Bluenog, is likely to become, the subject of an infringement claim or action, Bluenog may, at Bluenog's option and at no charge to You, (a) obtain a license so You may continue use of the Product; (b) modify the Product to

avoid the infringement; (c) replace the Product with a compatible, functionally equivalent, and non-infringing product; or (d) refund to You the prepaid but unused fees paid to Bluenog under the most recent Order Form.

(iii) THE FOREGOING PROVISIONS OF THIS SECTION STATE THE ENTIRE AND SOLE LIABILITY AND OBLIGATIONS OF BLUENOG, AND THE EXCLUSIVE REMEDY OF CUSTOMER, WITH RESPECT TO ANY ACTUAL OR ALLEGED INFRINGEMENT OF ANY INTELLECTUAL PROPERTY RIGHTS BY THE PRODUCTS.

## **9. CONFIDENTIALITY.**

a. Confidential Information. You agree and acknowledge that the Product, including, but not limited to, all Source Code and object code components, screen shots and displays, graphical user interfaces, algorithms, formulae, data structures, scripts, application programming interfaces and protocols, the Documentation and any other information concerning the Product disclosed to You which is disclosed in confidence or identified as confidential information (collectively, the “Confidential Information”) are trade secrets and proprietary information of Bluenog and are owned by Bluenog. You agree to retain all Confidential Information in strict confidence at least with the same amount of diligence that You exercise in preserving the secrecy of Your most valuable information, but in no event less than reasonable diligence. You agree to: (a) only disclose Confidential Information to Your employees, subcontractors and agents to the extent required to use the Product under the terms of this Agreement, including as set forth in Section 9, and not to disclose or disseminate the Confidential Information to any third party without the prior written consent of Bluenog, (b) use the Confidential Information solely for Your benefit as provided for herein and not to allow any third party to benefit from the Confidential Information, and (c) bind Your employees and agents, by terms no less restrictive than those set forth herein, to maintain the confidentiality of the Confidential Information. Confidential Information will not include information that: (i) is or becomes a part of the public domain through no act or omission of You; (ii) was in the Your lawful possession prior to the disclosure and had not been obtained by You either directly or indirectly from Bluenog; (iii) is lawfully disclosed to You by a third party without restriction on disclosure; or (iv) is independently developed by You. Notwithstanding the disclosure of any Confidential Information for any reason, such Confidential Information will continue to be owned by Bluenog. In addition to the methods You employ to preserve confidential information, You will also strictly comply with Section 9 to maintain the confidentiality of the Confidential Information.

b. Injunctive Relief. You acknowledge that the unauthorized use, transfer or disclosure of the Product or any Confidential Information will (i) substantially diminish the value to Bluenog of the trade secrets and other proprietary interests that are the subject of this Agreement; (ii) render Bluenog’s remedy at law for such unauthorized use, disclosure or transfer inadequate; and (iii) cause irreparable injury in a short period of time. If You breach any obligations with respect to the use or confidentiality of the Confidential Information or Product, Bluenog will be entitled to seek to enforce the provisions of this Agreement by any means allowed by law or equity, including without limitation, injunctive relief, temporary restraining order and/or specific performance as may be applicable to protect its interests therein, without the need to post a bond or prove actual damages.

**10. WARRANTIES AND DISCLAIMER.** Bluenog warrants that the Services will be performed in a workmanlike manner by competent personnel exercising a reasonable level of skill appropriate to their grade and according to industry standards; this warranty will remain in effect for a period of thirty (30) days after delivery. Although Bluenog will use reasonable endeavours to prevent any damage or alteration of Your data, Your data may be altered or damaged and it is Your responsibility to take appropriate measures to isolate and back up Your computer system, including computer programs, data and files, and to take other actions necessary to protect Your system and data. EXCEPT AS SET FORTH HEREIN, THE PRODUCTS, DOCUMENTATION, SERVICES

AND SUPPORT SERVICES THAT CUSTOMER RECEIVES FROM BLUENOG ARE PROVIDED “AS IS”, WITHOUT A WARRANTY OF ANY KIND. BLUENOG AND ITS SUPPLIERS HEREBY DISCLAIM ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**11. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER FOR TORT, CONTRACT, STRICT LIABILITY, OR OTHERWISE, WILL BLUENOG OR ITS SUPPLIERS BE LIABLE TO YOU OR ANY OTHER PERSON FOR ANY INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY CHARACTER INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOSS OF GOODWILL, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR ANY AND ALL OTHER COMMERCIAL DAMAGES OR LOSSES. IN ANY CASE, IN NO EVENT WILL BLUENOG OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES IN EXCESS OF THE AMOUNT ACTUALLY PAID UNDER THIS AGREEMENT FOR THE PREVIOUS TWELVE (12) MONTH PERIOD, OR FOR ANY CLAIM BY ANY OTHER PARTY. THE ALLOCATIONS OF LIABILITY IN THIS SECTION REPRESENT THE AGREED AND BARGAINED FOR UNDERSTANDING OF THE PARTIES, AND THE COMPENSATION OF BLUENOG UNDER THIS AGREEMENT REFLECTS SUCH ALLOCATIONS. THE FOREGOING LIMITATIONS, EXCLUSIONS AND DISCLAIMERS ARE AN ALLOCATION OF THE RISK BETWEEN THE PARTIES AND WILL APPLY TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EVEN IF ANY REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

**12. SPECIAL PROTECTIONS FOR SOURCE CODE.**

a. Responsible Manager. You will designate a management-level employee (the “Responsible Manager”) who will have responsibility for preserving the security of the Source Code at all times.

b. Access. No unauthorized person will have access to the Source Code unless and until: (i) they have been apprised of and acknowledges the confidential and proprietary nature of the Source Code; (ii) they have been trained with respect to the procedures designed to preserve its confidentiality; and (iii) they are subject to a binding and enforceable obligation neither to use such Source Code (other than for purposes expressly permitted by this Agreement) nor to disclose such Source Code to any person or entity other than a person similarly authorized to access the Source Code.

c. Records and Investigations. The Responsible Manager will maintain a record of all persons who have access to the Source Code. You will record and investigate all unauthorized attempts to gain access to the Source Code and will promptly notify Bluenog of any loss, theft, or unauthorized use or disclosure of the Source Code. You will make such records available to Bluenog, at Bluenog’s reasonable request.

d. Security Reviews. You will conduct periodic reviews to ensure compliance with the foregoing security requirements. Bluenog will have the right to conduct a review to ensure compliance with the foregoing security restrictions, including an interview of the Responsible Manager and an inspection of the records maintained by You, pursuant to Section 12(c) above, on two (2) days written notice.

e. Activity Restrictions. You will cause each of its employees who have access to the Source Code to agree in writing: (i) not to engage in the development of any software which is in

direct competition with the Product at any time during the five (5) years following the last such access, and (ii) to execute, prior to any such access, a confidentiality agreement with each employee protecting Bluenog's intellectual property rights, with terms no less stringent than the terms and conditions of this Agreement and Bluenog will be a third party beneficiary of all such agreements.

f. Consultant Use of Source Code. You may permit any third party consultants to access and use the Source Code solely for Your internal business operations, as permitted hereunder, provided that (i) such consultants have signed an agreement with You protecting Bluenog's intellectual property rights, with terms no less stringent than the terms and conditions of this Agreement and Bluenog will be a third party beneficiary of all such agreements, (ii) that You ensure that any such consultant's use or access of the Source Code complies with the terms of this Agreement, and (iii) that prior to any third party consultant's use of or access to the Source Code, You agree to provide the name of the consultant(s) and the company that said consultant works for to Bluenog, and Bluenog may, in its sole discretion, deny such third party consultant the right to use and access the Source Code in any manner.

**13. PAYMENT OF FEES.** Unless set forth on the Order Form, license fees and fees for Support Services will be invoiced on the date of the Order Form and fees for Services and expenses will be invoiced biweekly in arrears. The total nonrefundable license fees, fees for Support Services, fees for Services and expenses for each invoice will be due and payable within thirty (30) days from the date of the Order Form. At its option, Bluenog will only deliver the Product electronically. The terms and conditions of this Agreement will prevail regardless of any preprinted or conflicting terms on a purchase order, other correspondence, and any and all verbal communication. You will pay all sales, use, VAT, and other consumption taxes, personal property taxes and other taxes (other than those based on Bluenog's net income) unless You furnish satisfactory proof of exemption. . All payments will be made without right of set-off or chargeback. If any payment is overdue, Bluenog may charge one percent (1%) per month on the unpaid balance and Bluenog may suspend the performance of Services and Support Services upon written notice to You.

**14. TERM.** This Agreement will commence on the date You accept this Agreement ("Effective Date") and will, unless earlier terminated under this Section, continue in force for a period of one (1) year. Thereafter, the term of this Agreement will automatically renew for additional one (1) year periods unless either party gives written notice to the other of its intention not to renew the Agreement at least thirty (30) days prior to the expiration of the then-current term. Either party may, upon written notice to the other party, terminate this Agreement for material breach by the other party if such party has failed to cure such material breach within thirty (30) days of receiving written notice of such material breach from the non-breaching party. Notwithstanding the foregoing, any breach of Sections 9 or 12 will be grounds for immediate termination upon written notice.

a. Evaluation Use licenses, the license will commence on the Effective Date and will terminate at the end of the one (1) year term unless You purchase a Development and Production Use License. If You do not purchase a Development and Production Use License, You must de-install the Product, and cease all use of the Product, destroy or return the Product to Bluenog and certify the foregoing to Bluenog. Sections 3, 5, 6, 8(a) and 9 –21 will survive the expiration of the Evaluation Use License.

b. For Development and Production Use Licenses, the license will commence on the Effective Date and will continue until this Agreement is terminated. In the event of a termination of this Agreement for breach, You must de-install the Product, cease all use of the Products, destroy or return the Product to Bluenog and certify the foregoing to Bluenog. Sections 3, 5, 6, 8(a) and 9 –21 will survive the termination of this Agreement .

c. Services may be terminated, in whole or in part, by either party at any time, unless otherwise stated in the Order Form or Statement of Work. Bluenog will turn over to You all programs, reports and other materials and work in process generated during the performance of the Services and You will pay for the Services performed prior to termination and related expenses.

**15. NONRAIDING OF EMPLOYEES.** During the term of this Agreement and for a period of one (1) year after the termination of this Agreement, You will not, on Your behalf or on behalf of any third party, directly or indirectly, solicit or hire any employee or consultant of Bluenog for a period of one (1) year after the employee's termination of employment or contractor's termination of services, as applicable, without the prior written consent of Bluenog. In addition, during the terms of this Agreement and for a period of one (1) year after the termination of this Agreement, You will not (a) disclose to any third party the names, backgrounds or qualifications of any Bluenog employees or consultants or otherwise identify them as potential candidates for employment or contracting; (b) personally or through any other person approach, recruit or otherwise solicit employees or consultants of Bluenog to work for any other employer; or (c) participate in any pre-employment interviews with any person who was employed by or consulted for Bluenog.

**16. HIGH RISK ACTIVITIES.** The Product is not fault-tolerant and is not designed or intended for use in hazardous environments requiring fail-safe performance, including without limitation, in the operation of nuclear facilities, aircraft navigation or communication systems, air traffic control, weapons systems, direct life-support machines, or any other application in which the failure of the Product could lead directly to death, personal injury, or severe physical or property damage (collectively, "High Risk Activities"). Bluenog expressly disclaims any express or implied warranty of fitness for High Risk Activities.

**17. EXPORT RULES.** You agree not to export, or allow the export or re-export, shipment or transfer of the Product into any country or use the Product in any manner prohibited by the United States Export Administration Act or any other export laws of the United States or any foreign agency (collectively the "Export Laws"). In addition, You represent and warrant that You are not located within or under the control of or are a citizen or resident of an embargoed nation (including without limitation, Iran, Syria, Sudan, Libya, Cuba and North Korea) or under the Export Laws and that You are not otherwise prohibited under the Export Laws from receiving or using the Product. All rights to use the Product are granted on condition that such rights are forfeited if You fail to comply with the terms of this Agreement.

**18. U.S. GOVERNMENT END USER PURCHASERS.** The Product and Documentation qualify as "commercial items," as that term is defined in Federal Acquisition Regulation ("FAR") (48 C.F.R.) 2.101, consisting of "commercial computer software" and "commercial computer software documentation" as such terms are used in FAR 12.212. Consistent with FAR (48 C.F.R.) 12.212 and FAR (48 C.F.R.) Supp. 227.7202-1 through 227.7202-4. All U.S. Government end users will acquire the Product and Documentation with only those rights set forth in this Agreement. Use of either the Product or Documentation or both constitutes agreement by the U.S. Government that the Product and Documentation are "commercial computer software" and "commercial computer software documentation," and constitutes acceptance of the rights and restrictions set forth herein.

**19. ENTIRE AGREEMENT.** This Agreement (including any addendum or amendment hereto) is the entire agreement relating to the Product, Documentation and Source Code, and it supersedes all prior or contemporaneous oral or written communications, proposals and representations with respect to the Product or any other subject matter covered by this Agreement. To the extent the terms of Bluenog's policies or programs for Support Services conflict with the terms of this Agreement, the terms of this Agreement will control. Any third party product license terms will govern such third party products. In the event that any of the terms of this Agreement are in conflict with any rule of law

or statutory provision or is 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.

## **20. GENERAL.**

a. Audit Rights. Upon Bluenog's written request, You will certify in a signed writing that Your use of the Product is in full compliance with the terms of this Agreement. With prior reasonable notice of at least two (2) days, Bluenog may gain access to Your premises for the limited purpose of conducting an audit of Your premises to determine and verify compliance with the terms and conditions of this Agreement, provided such audit is conducted during regular business hours. You are responsible for such audit costs only in the event the audit reveals a discrepancy on Your part. Furthermore, You will be responsible for immediately remedying any discrepancies revealed during the audit.

b. Publicity. You agree that Bluenog may (a) reference You as a Bluenog customer to other existing or potential Bluenog customers, (b) reference You in printed marketing materials, and (c) use Your name and logo for the limited purpose of identifying You as a current or former Bluenog customer, including, without limitation, placing such information on Bluenog's website, brochures, press releases, and other marketing materials.

c. Headings. Headings under this Agreement are intended for convenience purposes only and will not affect the interpretation of this Agreement.

d. Waiver and Modification. No failure of either party to exercise or enforce any of its rights under this Agreement will act as a waiver of those rights. This Agreement may only be modified, or any rights under it waived, by a written document executed by both parties.

e. Severability. If any provision of this Agreement is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the other provisions of this Agreement will not be affected.

f. Governing Law. This Agreement will be governed by the laws of New Jersey, without regard to its conflicts of law principles. The United Nations Convention for the International Sale of Goods will not apply to this Agreement. Any dispute, controversy or claim arising out of, or in connection with, this Agreement, or the breach, termination, validity of the Agreement, which cannot be resolved by negotiations between the parties, must be submitted to the exclusive jurisdiction of the courts located in Middlesex County, New Jersey, and each party irrevocably consents to such jurisdiction and waives all objections to this venue.

g. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed an original and all of which will constitute one and the same instrument.

h. Force Majeure. Neither party will be liable from any delay or failure in performance due to causes beyond its control, except for the payment of fees.

i. Assignment. You may not transfer the Product or assign this Agreement, by operation of law or otherwise without the prior written consent of Bluenog.

j. Waiver of Jury Trial. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY WAIVES THE RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED UNDER THIS AGREEMENT.

k. Notices. All notices permitted or required under this Agreement will be in writing and will be delivered in person, by facsimile, reputable overnight courier service or certified mail, postage prepaid, return receipt requested, to the address of the party specified above or such other address as either party may specify in writing, Attention: Office of the General Counsel. Such notice will be deemed to have been given upon receipt.

## 21. DEFINITIONS.

**“Core Customization”** means a modification made by anyone other than Bluenog to any source code of a Product that is made available from the Bluenog source repository.

**“Development and Production Use”** means using the Product with Your applications for internal business purposes only. Development and Production Use does not include the right to use the Product for sublicensing, resale, or distribution, including without limitation, operation on a time sharing, software as a service or service bureau basis or distributing the Product as part of an ASP, VAR, OEM, distributor or reseller arrangement.

**“Documentation”** means any user manuals, API guides, how-to guides made available by Bluenog with the Product.

**“Evaluation Use”** means using the Product with your applications solely for evaluation use to determine the suitability of the Product for Your business purposes. Evaluation Use does not include the right to use the Product for development or production use, sublicensing, resale, or distribution, including without limitation, operation on a time sharing, software as a service or service bureau basis or distributing the Product as part of an ASP, VAR, OEM, distributor or reseller arrangement.

**“Order Form”** means a physical document that determines the license rights granted and support services purchased, if any, for the stated fee identified by Bluenog. The Order Form will be solely governed by this Agreement.

**“Permitted Customizations”** are customizations made directly to the Product or custom software developed that accesses or interacts with the Product.

**“Product”** means the Bluenog product(s) specifically identified on an Order Form, including any related Documentation provided by Bluenog.

**“Services”** mean consulting and training services.

**“Support Services”** mean the support services provided by Bluenog for the Product as described in Section 7 hereto.

**“Source Code”** will mean a computer program that is represented in a programming language form used by humans to write and read computer programs.