

## **“EVOLUTION SUITE” SUBSCRIPTION LICENSE & SUPPORT AGREEMENT**

**Dated: 05/10/2011**

READ THIS SOFTWARE & LICENSE & SUPPORT AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING SOFTWARE SUPPLIED BY BIZPRAC OCTAL 8 PTY LTD. THIS DOCUMENT CONSTITUTES A LICENSE TO USE THE SOFTWARE ON THE TERMS AND CONDITIONS APPEARING BELOW AND INCORPORATED BY REFERENCE. BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE YOU ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY AND ITS AFFILIATES TO THESE TERMS AND CONDITIONS. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS LICENSE, THEN DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

This Agreement is entered into between Bizprac Octal8 Pty Ltd, (herein referred to as "**Bizprac**") of the one part and you, the licensee (herein referred to as "You") on the other part.

Bizprac is willing to license the Software to You only upon the condition that You accept all of the terms and conditions contained in this Agreement.

PLEASE NOTE! By selecting the 'I Agree' button you are indicating that You understand this Agreement and that You agree to use the Software under the terms and conditions contained in this Agreement.

### **1. INTERPRETATION**

1.1 Headings and any explanatory text in this Agreement are for convenience only and do not affect how this Agreement is interpreted.

1.2 In this Agreement:

- 1.2.1 the singular includes the plural, and the plural includes the singular;
- 1.2.2 If a word or phrase is defined, its other grammatical forms have a corresponding meaning;
- 1.2.3 a reference to a party includes its successors, permitted substitutes and permitted assigns (and where applicable its legal personal representatives);
- 1.2.4 a reference to law or to a provision of a law includes a change to it or a reenactment of it, a provision substituted for it and a regulation or statutory instrument issued under it;
- 1.2.5 a reference in this Agreement to Bizprac's URL includes any substitute URL utilized by Bizprac.

## 2. **DEFINITIONS.**

**Data Back-up**" means making a copy of critical data created on a Licensed version of Bizprac software and retaining that data on a suitable storage device.

**"Data Back-up Recommendation"** means Bizprac recommend that You perform daily back-ups of Your critical Bizprac data.

**"Evolution Suite Support Services"** means the technical support services provided under the Agreement.

**"Intellectual Property Rights"** means all intellectual property rights, including but not limited to:

- (a) patents, copyright, rights in circuit layouts, registered designs, trademarks and the right to have confidential information kept confidential; and
- (b) any application or right to apply for registration of any rights referred to in paragraph (a).

**"Limited Warranty"** means the warranty described in this Agreement.

**“Non-Subscriber”** means a person who has not paid the Subscription Fee.

**“Site License”** means a license to run the Software concurrently on one additional machine on a Local Area Network (LAN), or to permit one concurrent user on a Terminal Server.

**“Site License Fee”** means the fee you must pay Bizprac to obtain a Site Licence.

**"Software"** means:

- (a) the software supplied by Bizprac under this Agreement; and
- (b) any modifications or developments of the software (including any new releases or new versions) that Bizprac supplies to the Subscriber under this Agreement;
- (c) and any information, data, content and proprietary information and technology used by Bizprac or provided or supplied to You in connection with the software.

**“Subscriber”** means a person who has paid the Subscription Fee.

**“Subscription”** means the right as a Subscriber to use the Software and obtain the Support Services for the Subscription Period.

**“Subscription Fee”** means the fee you must pay Bizprac to use the Software and obtain the Support Services for the Subscription Period.

**“Subscription Invoice”** means the invoice issued by Bizprac to You:

- (a) nominating the billing basis in accordance with clause 6 of this Agreement; and
- (b) nominating the commencement date of the Subscription Period in accordance with clause 11.2 of this Agreement.

**“Subscription Period”** means:

- (a) the period of 12 months commencing on the date nominated in the Subscription Invoice; and

(b) any renewal 12-month period.

**“Trial period”** means the period described in clause 5 of this Agreement.

**“Training”** means educational sessions conducted by a Bizprac Head Office team member or a Bizprac Licensed Agent to increase Your knowledge with the order of processes or functionality of a version of Bizprac software. Bizprac or a Bizprac Licensed Agent reserve the right to invoice You for any services provided deemed to be training.

### 3. **OWNERSHIP**

You acknowledge and agree that Bizprac retains all right, title and interest in and to the Software and that the Software is protected by intellectual property rights owned by or licensed to Bizprac. Other than as expressly set forth in this Agreement, no license or other rights in the Software are granted to You and all such rights are hereby expressly reserved by Bizprac. The Software is subject to copyright and as such is protected by the copyright laws of Australia and international copyright treaties. Unauthorised copying of this software, including that which has been modified, merged or included with other software or materials is expressly forbidden. Any backup copies must include the copyright notice. You may not modify, adapt, disassemble, or make derivative works based on the parts of the Software.

### 4. **GRANT**

4.1 Subject to the terms of this Agreement, Bizprac hereby grants to You, during the Trial Period or the Subscription Period, as applicable, a non-exclusive, non-transferable license to use the Software.

4.2 You hereby acknowledge and agree that:

- 4.2.1 The License does not constitute a transfer or sale of Bizprac's rights in or to the Software;
- 4.2.2 Save where You have purchased from Bizprac an additional Site License the Licensee's use of the Software shall be limited to use on a single hardware chassis at any one time;
- 4.2.3 Concurrent use of the Software at multiple workstations requires additional Site Licenses. Where You have purchased an additional Site License from Bizprac You shall be entitled to use and display the Software concurrently on one additional machine on a Local Area Network ("LAN"), or to permit one concurrent user of the Software on a Terminal Server. One (1) additional Site License is required for every additional concurrent user of the Software on a LAN or Terminal Server set up;
- 4.2.4 You agree that Bizprac has the right to audit your use of the Software and shall have access to your computer system and applicable electronic and written records to confirm that your use is within the scope of Your license rights. If you have exceeded the permissible scope of Your license, you will be responsible to pay for Bizprac's costs of the audit;
- 4.2.5 Notwithstanding, clause 10.3, during the Trial Period the Software is provided "as is" without the "Limited Warranty".
- 4.2.6 You may not:
  - 4.2.6.1 permit other individuals to use the Software except under the terms listed above;
  - 4.2.6.2 translate, reverse engineer, decompile, decrypt, disassemble (except to the extent applicable laws specifically prohibit such restriction), or create derivative works based on the Software;
  - 4.2.6.3 copy the Software (except for back-up purposes);

4.2.6.4 rent, lease, transfer, assign, sub-license or otherwise transfer rights to the Software; or remove any proprietary notices or labels on the Software;

4.2.6.5 As a Subscriber, transfer your Subscription to another person; or

4.2.6.6 install the Software on any computer or system outside Your place of business as registered with Bizprac without prior written approval by Bizprac.

## 5. **TRIAL PERIOD**

In the case where You are a Non-Subscriber You have the right to use this product on a single computer at one time FOR A LIMITED TRIAL PERIOD ONLY. The length of this limited trial period is set forth at <http://bizprac.com/trialperiod.pdf> and is incorporated into this Agreement by this reference. Bizprac reserves the right to at any time change the trial period in its absolute discretion, which modifications shall become effective upon posting to the above URL.

## 6. **FEES, PAYMENT AND SUSPENSION OF SERVICES**

6.1 You agree to pay Bizprac all fees specified in any invoice issued to you in respect of the Agreement. The fees shall comprise the Subscription Fee for the Subscription and, as applicable, any Site License Fee. All fees will be billed in advance on an annual, quarterly or monthly basis, as agreed to by You nominating the respective basis to Bizprac and Bizprac confirming the nominated basis by means of the Subscription Invoice, and are due within seven (7) days after receipt of invoice, unless otherwise agreed to writing by Bizprac. There is no charge for the use of the Software during the Trial Period. If you continue to use the Software after expiration of the Trial Period, You will be deemed to have (a) agreed to obtain the Software for the Subscription Period; (b) reaffirmed your

agreement to this Agreement as it relates to a Subscription and (c) agreed to pay Bizprac the then- current Subscription Fee for the Software as invoiced by Bizprac for such Subscription Period. At Bizprac's discretion overdue amounts shall accrue interest at the lesser of [1½% flat per month, or at the maximum interest rate permitted by law,] whichever is the lower, from the date due is until paid. You shall reimburse Bizprac for all expenses (including reasonable legal fees on a solicitor and own client basis) incurred by Bizprac to collect any amount that is not paid when due. If any fees are more than seven (7) days overdue, Bizprac may (in addition to any other rights or remedies it may have) discontinue and suspend all access to the Software until such amounts are paid in full. You shall maintain complete, accurate and up-to-date billing and contact information at all times.

- 6.2 You hereby agree and acknowledge that the Software will revert to READ ONLY functionality on the 5th business day after the expiry of Your Subscription.
- 6.3 Upon written request by You to cancel the Subscription prior to the expiry of the first Subscription Period You hereby agree to pay to Bizprac the balance of the Subscription Fee then unpaid for the completion of the minimum term of 12 months.
- 6.4 You hereby agree that upon renewal of Your Subscription the fees for the renewal period will be Bizprac's then-current Subscription Fee and, as applicable, Site License Fee for each Site License as set forth at <http://bizprac.com/>.

## 7. **UPDATES AND UPGRADES**

- 7.1 Bizprac hereby agrees to provide to You the latest version of the Software at time of purchase, and from time to time make available to the You access to downloadable updates and upgrades of the version of the Software purchased by You.

7.2 A condition of being a Subscriber is that You MUST upgrade the Software as soon as practicable, but in any case within 60 Days of updates and upgrades being available from <http://bizprac.com/>.

## 8. **SUPPORT SERVICES**

The Support Services provided by Bizprac in connection the use of software under this Agreement are set forth at <http://bizprac.com/SupportServices.pdf> and are incorporated into this Agreement by this reference. Bizprac reserves the right to modify the support services in its reasonable discretion from time to time, which modifications shall become effective upon posting to the above URL.

## 9. **CONFIDENTIALITY**

9.1 In this Agreement "**Confidential Information**" means all confidential information disclosed by a party to the other party, whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Bizprac's Confidential Information shall include the Software.

9.2 Save as required by law, each party agrees (a) to hold the other party's Confidential Information in strict confidence, (b) to limit access to the other party's Confidential Information to those of its employees or agents having a need to know and who are bound by confidentiality obligations at least as restrictive as those contained herein, and (c) not to use such Confidential Information for any purpose except as expressly permitted hereunder.

## 10. **WARRANTIES/DISCLAIMER/LIABILITY/INDEMNITY**

10.1 THE SOFTWARE IS PROVIDED 'AS IS', WITHOUT WARRANTY OF ANY KIND, EITHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY AND/OR FITNESS FOR A PARTICULAR PURPOSE

AND EACH PARTY SPECIFICALLY DISCLAIMS SUCH WARRANTIES TO THE MAXIMUM AMOUNT PERMITTED BY LAW. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE IS WITH YOU. SHOULD THE SOFTWARE PROVE DEFECTIVE, YOU (EXPRESSLY NOT TOOLBOX HOLDINGS P/L OR BIZPRAC) ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION.

- 10.2 You assume responsibility for the selection of the Software to achieve Your intended results and for the use and results obtained from the Software.
- 10.3 Bizprac warrants that the media which the Software is furnished to be free of defects in materials and workmanship under normal use for a period of ninety (90) days from the date of installation by You (“**Limited Warranty**”).
- 10.4 Bizprac does NOT warrant that the functions in the Software will meet your requirements or that the operation of the Software will be uninterrupted or error-free.
- 10.5 Your sole and exclusive remedy against Bizprac for any matters arising out of connected with this Agreement shall be, at Bizprac’s sole and unfettered discretion:
  - 10.5.1 the replacement of any media not meeting Bizprac’s "Limited Warranty" provided in all cases that within ninety (90) days You notify Bizprac of the defects AND return the Software to Bizprac, or
  - 10.5.2 if Bizprac is unable to deliver replacement media which is free of defects in materials or workmanship, You may terminate this Agreement by returning this Software and your Money will be refunded.
  - 10.5.3 IN NO EVENT WILL BIZPRAC BE LIABLE FOR DIRECT, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES THAT MIGHT OCCUR THROUGH THE USE, MISUSE, OR THE INABILITY TO USE THE SOFTWARE.

10.5.4 IN NO EVENT WILL BIZPRAC BE LIABLE FOR THE LOSS OF ANY DATA DUE TO THE INABILITY TO USE THE SOFTWARE OR YOU FAIL TO COMPLETE CRITICAL DATA BACK-UPS ON A DAILY BASIS AND RETAIN A COPY OF THAT DATA ON A SUITABLE STORAGE DEVICE.

10.6 You shall defend Bizprac against any claim, demand, suit or proceeding made or brought against it by a third party alleging that Your use of the Software in breach of this Agreement, infringes or misappropriates the intellectual property rights of a third party or violates applicable law and shall indemnify Bizprac for any damages, legal fees and costs finally awarded against Bizprac as a result of, or for any amounts paid by Bizprac under a settlement of, a claim against Bizprac; provided that Bizprac (a) promptly gives You written notice of the claim against it; (b) gives You sole control of the defence and settlement of the claim against it (provided that You may not settle any claim against Bizprac unless the settlement unconditionally releases Bizprac of all liability); and (c) provide to You all reasonable assistance, at Your expense.

## 11. **TERM, RENEWAL AND TERMINATION**

11.1 This Agreement commences on the date You accept it and continues until all Subscriptions granted in accordance with this Agreement have expired or been terminated. If You elect to use the software for a free trial period and do not purchase a Subscription before the end of that period, this Agreement will terminate at the end of the free trial period.

11.2 Subject to the terms of this Agreement, the initial Subscription will commence on the date stipulated in the Subscription Invoice and continue until the expiration of the Subscription Period.

11.3 Thereafter, the Subscription will automatically renew for successive additional Subscription Periods unless either party gives the other party prior written notice

of non-renewal within sixty (60) days prior to the expiration of the then-current Subscription Period.

- 11.4 Your rights under this Agreement will terminate automatically without notice from Bizprac if: (a) You fail to comply with any term(s) of this Agreement and fail to rectify the breach within seven (7) days of receiving notice requiring You to do so; or (b) You terminate your business activities or become insolvent, admit in writing to Your inability to pay Your debts as they mature, make an assignment for the benefit of creditors, or become subject to direct control of a trustee, receiver or similar authority.
- 11.5 You may terminate this Agreement at any time by giving thirty (30) days written notice to Bizprac. However, in the event of such termination You shall not be entitled to a refund of any prepaid or other fees.
- 11.6 Upon termination:
- 11.6.1 The Software will be de-activated and will revert to READ ONLY functionality solely on one computer chassis;
- 11.6.2 You agree to (i) immediately cease using the Software; (ii) return to Bizprac or destroy all copies, full or partial, of the Software; (iii) save as hereinbefore provided, ensure that all Software has been deleted or permanently removed from the equipment on which it has been stored and (iv) provide Bizprac with certification in writing that that You have complied with the requirements of this clause;
- 11.6.3 any amounts owed to Bizprac under this Agreement before such termination will become immediately due and payable by You.
- 11.7 The end of this Agreement does not affect any accrued rights or remedies a party may have.

11.8 Without limiting the generality of the foregoing, the rights and duties of the parties under clauses 3, 4, 6, 8, 9, 10 and 11, as well as any payment obligations, will survive the termination or expiration of this Agreement for any reason.

## 12. **ENTIRE AGREEMENT**

This Agreement represents the complete agreement concerning this licence between the parties and supersedes all prior agreements and representations between them. It may be amended only by a writing executed by both parties. This Agreement supersedes all prior agreements and understandings (whether written or oral) between Bizprac and You with respect to the subject matter hereof. If any provision of this Agreement is held to be unenforceable for any reason, such provision shall be reformed only to the extent necessary to make it enforceable and the remaining provisions of this Agreement shall be enforced to the maximum extent permissible. This Agreement shall be governed by and construed under the laws of the State of Queensland, Australia. Any action or proceeding arising from or relating to this Agreement must be brought in a federal or state court sitting in Brisbane, Queensland and each party irrevocably submits to the jurisdiction and venue of any such court in any such action or proceeding. The application the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded.

## 13. **MODIFICATION TO TERMS**

Bizprac reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Software at any time, effective upon posting of an updated version of this Agreement on <http://bizprac.com/TermsAndConditions.pdf> You are responsible for regularly reviewing this Agreement. Continued use of the Software after any such changes shall constitute Your consent to such changes.

## 14. **FORCE MAJEURE**

Any failure to perform or delay in the performance of any duties or obligations of Bizprac set forth in this Agreement (including any downtime) will not be considered a breach of this Agreement if such failure or delay is caused by circumstances beyond

Bizprac's reasonable control, including without limitation, acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems, telecommunications or network failures or delays, computer failures involving hardware or software not within Bizprac 's possession or reasonable control and acts of vandalism (including network intrusions and denial of service attacks) ("Force Majeure Events"). Bizprac will exercise reasonable care and diligence to avoid and/or mitigate in anticipation of or in response to such Force Majeure Events.

15. **NOTICES**

Any notice or other communication required or permitted under this Agreement and intended to have legal effect must be given in writing to the other party at the address set forth above (each party may change its address from time to time upon written notice to the other party of the new address). Notices will be deemed to have been given upon receipt (or when delivery is refused) and may be (a) delivered personally, (b) sent via certified mail (return receipt requested) (c) sent via cable, telegram, telex, telecopier, fax (all with confirmation of receipt), or (d) sent by recognized air courier service.

16. **ASSIGNMENT**

You may not assign any rights or obligations arising under this Agreement, whether by operation or law or otherwise, without the prior written consent of Bizprac. Any attempted assignment or transfer in violation of the foregoing will be void. You agree that Bizprac may subcontract certain aspects of the Support Services to third parties, provided that any such subcontracting arrangement will not relieve Bizprac of any of its obligations hereunder. Subject to the foregoing limitation, this Agreement shall inure to the benefit of and shall be binding on the parties' permitted successors and assignees.