

# DIAMOND MUNICIPAL SOLUTIONS



## END USER LICENSE AGREEMENT

### **THIS AGREEMENT**

made this \_\_\_\_\_ day of \_\_\_\_\_, 2016.  
(herein after referred to as the "Agreement")

### **BY & BETWEEN:**

DIAMOND SOFTWARE INC.,  
a corporation incorporated under the laws of Alberta,  
having an office at  
400 – 1632 Dickson Avenue  
Kelowna, BC V1Y 7T2  
(hereinafter referred to as "**Diamond**")

Town of Fort Frances  
a corporation incorporated under the laws of Ontario having  
an office at:  
320 Portage Avenue  
Fort Frances, ON P9A 3P9  
(hereinafter referred to as "**Customer**")

Whereas, Diamond will grant a license to use versions of computer software applications programs developed by Diamond (excluding any Microsoft Dynamics GP software components);

And Whereas Customer is a corporation desirous of obtaining rights to use these programs;

Now therefore in consideration of the mutual covenant contained in this Agreement, Diamond and Customer agree as follows:

#### **1. License**

1.1 Diamond hereby grants, and Customer accepts, a non-exclusive, nontransferable (subject to paragraph 7) perpetual license (hereinafter referred to as the "License") to use, or execute, each of the registered software application programs (hereinafter referred to as the "Programs" and each individually being a "Program") for the Customer's business purposes and to make no other use whatsoever of the Programs, all on the terms, and subject to the conditions, set forth in this Agreement.

#### **2. Proprietary Rights**

2.1 The License granted herein does not constitute a sale of the Programs or any copy thereof.

2.2 The Customer acknowledges the claim and proprietary interest of Diamond in any and all information contained in the Programs and information about the Programs (hereinafter collectively referred to as the "Information") contained in materials (hereinafter referred to as the "Materials") furnished from time to time by Diamond, including but not limited to any magnetic tapes, diskettes or other computer media. User documentation is proprietary to, and embodies trade secrets of Diamond and the Customer acknowledges that Diamond owns all copyrights in the Materials as unpublished works of authorship.

2.3 Unauthorized copying of:

- (a) the Programs or any part thereof, or
- (b) modified versions of the Programs, or
- (c) any form of the Programs whether alone or in conjunction with other software, or
- (d) the Information, or
- (e) the Materials,

is expressly forbidden.

2.4 The Customer will use reasonable measures to protect the Information from disclosure or transfer to, or use by, a third party, except

for agents and employees of the Customer wherein Diamond's proprietary rights as outlined in paragraph 2.2 above would be acknowledged and Information disclosure would be disallowed, except as permitted in the paragraph herein.

2.5 Notwithstanding section 2.3, upon payment of the license fees by the Customer to Diamond in accordance with section 3 of this agreement, Diamond shall furnish the Customer with one (1) electronic copy of the software and supporting documentation. The Customer has the right to print documentation for its own use

2.6 The Programs are licensed only to the Customer and, subject to paragraph 7 herein, the Customer may not transfer the License without the written consent of Diamond.

2.7 The Customer shall indemnify and save harmless Diamond from any and all liabilities or damages of every nature and kind with respect to any and all third party claims or actions against Diamond or any claims or actions by Diamond against third parties which arise out of the Customer's use of the Programs, including Diamond's costs of defending or advancing claims, on a solicitor and own client basis.

2.8 The Customer shall not:

- (a) use the Programs or the Information in the operation of a service bureau; or
- (b) allow any third party to use the Programs, the Information or the Materials; or
- (c) reverse engineer or de-compile the Programs.

2.9 In addition to adhering to the provisions of this Agreement, the Customer must adhere to all licensing agreements (the "Licensing Agreements") for all software products installed within the scope of this Agreement. This includes, but is not limited to:

- (a) **Microsoft**. The Customer must adhere to all licensing agreements set forth by Microsoft for use of any and all Dynamics GP software products.

If the Customer fails to adhere to any of the Licensing Agreements, the Customer will be responsible for and does hereby indemnify and save harmless Diamond from any and all liabilities of every nature and kind with respect to any breach or non-observance by the Customer, or any persons claiming through or under the Customer of the Customer's obligation to adhere to the Licensing Agreements. The indemnity provided in this section shall survive the termination of this Agreement.

### **3. Payment**

3.1 The Customer will pay Diamond a fee for the License. The License shall not transfer to the Customer until license fees have been paid in full. The License shall transfer to the Customer in relation to both current and future versions of application software.

3.2 The License fee shall not be refundable, in whole or in part, either before or after termination of this Agreement.

3.3 In addition, each calendar year, in consideration of a fee as set from time to time by Diamond, the Customer may purchase an "Annual Enhancement Plan", provided that if the Customer opts not to purchase an Annual Enhancement Plan in a given calendar year, future purchases of such a plan shall be in the sole discretion of Diamond. For purposes of this Agreement, an "Annual Enhancement Plan" entitles the Customer to current updates of and enhancements to the application software in consideration for the payment of an annual fee by the Customer to Diamond.

### **4. Copying of Material**

4.1 While each License is in effect, Customer may make copies or counterparts of Material covered by it for its use under this Agreement, including, for example, to replace Material that is wearing or to provide copies for emergency backup, or to create modifications desired by Customer, as long as copyright notices and labels used by Diamond are included on all copies or counterparts so made, all of which are deemed to be Material for purposes of this Agreement. However, Customer may have no more than three (3) copies or counterparts of any particular Material at any time and may not have any Material away from its premises except one (1) archival copy of each particular item of Material.

### **5. Term and Termination**

5.1 Subject to paragraphs 5.2, 5.3 and 5.4 each License shall be a perpetual License and shall begin on the date the Customer receives a magnetic tape, diskette or other medium for the Programs which can be introduced into, and used or executed on hardware approved by Diamond.

5.2 The Customer may, without cause, terminate this Agreement at any time upon 90 days written notice.

5.3 The Customer may terminate this Agreement immediately, by written notice to Diamond if:

- (i) Diamond becomes bankrupt or insolvent; or
- (ii) Diamond disposes of all or substantially all of its assets.

5.4 Diamond may terminate this Agreement immediately, by written notice to the Customer if:

- (i) the Customer, or any of its agents or employees, makes unauthorized disclosure of any Information or Material; or
- (ii) the Customer commits a Material breach of this Agreement and fails to remedy that breach fully within fifteen (15) calendar days after notice to that effect from Diamond.

5.5 Upon termination of this Agreement, assuming the software is fully paid for (subject to paragraph 3), the Customer shall retain the right to continue to use the software version in circulation at the time of the termination. These actions by Customer will not eliminate its obligations to ensure confidential treatment of the Information and Materials, which obligations shall survive the termination of this Agreement.

### **6. Warranties and Liabilities**

6.1 If it is determined at any time following the period of software installation and for a period of twelve consecutive months thereafter, or in any given calendar year during which the Customer has a current Annual Enhancement Plan in effect with Diamond, that any Program fails to perform in accordance with its published specifications, Diamond will use commercially reasonable efforts to correct significant deviations in the Program coding, and that shall be the sole obligation of Diamond with respect thereto.

6.2 Neither Diamond, its directors, officers, employees, servants, agents, distributors, nor any one else involved in the creation, production, delivery, installation, maintenance, or support of the Programs warrant, guarantee or make any representations regarding the use of the Programs, the Information or the Material, or the results of such use, in terms of correctness, accuracy, reliability, currentness, or otherwise, nor shall such parties be liable to the Customer for any loss or damage, howsoever caused claimed to have resulted from the use or inability to use the Programs, the Information or the Material or from the licensing of the Programs. Without limiting the generality of the foregoing, in no event will Diamond, its directors, officers, employees, servants, agents, distributors, or any one else involved in the creation, production, delivery, installation, maintenance, or support of the Programs be responsible for any indirect, special, incidental, or consequential damages, including loss of profits.

6.3 Subject to section 6.1, the Programs, the Information and the Materials are provided "as is" without condition or warranty of any kind.

6.4 THE WARRANTIES CONTAINED IN THIS SECTION 6 ARE THE ONLY WARRANTIES OF ANY KIND THAT ARE MADE BY DIAMOND WITH RESPECT TO ANY AND ALL SERVICES OR PRODUCTS PROVIDED PURSUANT TO THE TERMS OF THIS AGREEMENT. DIAMOND DOES NOT MAKE ANY OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. **ALL WARRANTIES AND CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THOSE IMPLIED PURSUANT TO STATUTE, ARE EXCLUDED.**

6.5 This Agreement sets forth the entire agreements and understandings of the parties hereto in respect of the subject matters hereof and supersedes all prior agreements, arrangements, discussions, information, advice and understandings, verbal or written, related to the subject matters hereof as of the date of execution and delivery of this Agreement. No representation, promise, inducement or statement of intention, verbal or written, has been made by any party which is not embodied in this Agreement, and no party shall be bound by or liable for any alleged representation, promise, inducement or statement of intention not so set forth. Specifically, without limiting the foregoing, no information or advice, oral or written, provided to the Customer by, or on behalf of, Diamond shall create a warranty or any way increase the scope of the warranties provided hereunder, and the Customer may not rely on any such information or advice.

### **7. Assignment**

7.1 In the event that the Customer changes either legal status and/or legal name, this contract will be automatically assigned to the Customer under the new name and/or legal status and the obligations of the Customer hereunder shall thereafter become the obligations of the Customer under the new legal status and/or new legal name. If the Customer is amalgamated with another company, legal entity or government body, this contract will be assigned to the company, legal entity or government body created by the amalgamation, and the obligations of the Customer hereunder shall thereafter become the obligations of the company, legal entity or government body created by the amalgamation, subject to approval by Diamond.

7.2 Excepting transfers or assignments pursuant to section 7.1, the Customer may not transfer, assign, rent, lease, sell or otherwise dispose of the Programs, the Information or the Material, whether temporarily or permanently, without the written consent of Diamond.

7.3 This Agreement will ensure to the benefit of and be binding upon the respective successors and permitted assigns of the parties.

### **8. Modifications and Waiver**

8.1 No modifications or amendments to this Agreement shall be binding upon the parties unless in writing signed by both parties.

8.2 A failure of either party to enforce its rights under this Agreement shall in no way be construed to be a waiver of such rights or a modification of the terms of the Agreement or to be a continuing waiver.

**9. Notices**

Any and all notices or other information to be given by one of the parties to the other shall be deemed sufficiently given when forwarded by prepaid registered or certified first class airmail or by cable, telegram, telex, telefax, or hand delivery to the other party at their respective addresses first set out above. Such notices shall be deemed to have been received five (5) business days after mailing if forwarded by mail, and the following business day if forwarded by courier, facsimile, or by hand. The aforementioned address of either party may be changed at a time upon giving seven (7) days prior notice to the other party in accordance with the foregoing. In the event of a generally prevailing labour dispute or other situation which will delay or impede the giving of notice by any such means, in either the place of origin or of destination, the notice shall be given by such specified mode as will be most reliable and expeditious and least affected by such dispute or situation.

**10. Ownership of Data**

The Customer has sole ownership of all data contained within the system. Upon termination of this agreement, Diamond will not in any event erase or destroy the data in any manner and shall return all data to the Customer and will not make copies of the data or otherwise use the data for any other purpose other than fulfilling its obligations under this Agreement.

**11. General Provisions**

11.1 This Agreement shall be construed and enforced in accordance with and the rights of the parties shall be governed by the laws of the Province of Ontario. Any court of competent jurisdiction in [Province] shall have non-exclusive jurisdiction over this Agreement and its enforcement by Diamond as against the Customer but any court of competent jurisdiction in Ontario shall have exclusive jurisdiction over this Agreement and its enforcement by the Customer as against Diamond only.

11.2 Every provision of this Agreement shall be construed as being severable and if any term or provision hereof in whole or in part, provided the same is not a fundamental term or provision going to the root of this Agreement, shall be determined to be invalid or unenforceable for any reason whatsoever, such invalidity or unenforceability shall not affect the validity or enforceability of any other provision hereof and this Agreement shall be construed as if such invalid or unenforceable provision or part thereof were omitted.

11.3 The Recitals to this Agreement are incorporated in and form a part of this Agreement.

**IN WITNESS WHEREOF** the Parties have hereunto affixed their names by their proper signing officers duly authorized in that behalf, on the day and year first above written.

**DIAMOND SOFTWARE INC.**

Signature: \_\_\_\_\_

I/We have the authority to bind the corporation

Name: Mike D'Arcy

Title: General Manager

**TOWN OF FORT FRANCES**

Signature: \_\_\_\_\_

I/We have the authority to bind the corporation

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**TOWN OF FORT FRANCES**

Signature: \_\_\_\_\_

I/We have the authority to bind the corporation

Name: \_\_\_\_\_

Title: \_\_\_\_\_