

BLACK ICE SOFTWARE, LLC

Corporate End User License Agreement for ColorPlus X1 Printer Driver WINDOWS 10/8/7

THIS AGREEMENT (“*Agreement*”) is effective as of _____, 20____ (the “*Effective Date*”) between Black Ice Software, LLC, a Florida limited liability company, hereinafter referred to as “*Licensor*” or “*Black Ice,*” and _____, a _____, hereinafter referred to as “*Licensee.*”

1. Grant of Non-Exclusive License

- 1.1 In accordance with the terms of this Agreement, Licensor hereby grants to Licensee a limited, non-exclusive license, without the right to sublicense others, to use, and to allow the “**Permitted Divisions**” (defined below) specified in **Schedule A** to use the computer program(s) listed in the attached **Schedule A** as the same exist as of the Effective Date (collectively, the “**Software**”) and related Documentation (defined below), upon the terms and conditions stated herein. “**Software**” includes object code, know-how or technology embodied in or relating to such programs, or which may be described in the Documentation. “**Documentation**” means any documentation, models, descriptions, forms, drawings, user manuals and materials, schematics, flow-charts, and related data provided to Licensee by Licensor in connection with this Agreement. The Licensee (including its Permitted Divisions) may make copies of the Documentation solely in connection with their use of the Software pursuant to this Agreement only and for no other purpose. Licensor agrees that it shall have sole responsibility and liability for: (i) acquiring any and all authorization(s) necessary for use of the Software and the Documentation as contemplated by this Agreement; (ii) the completeness and accuracy of the Software and Documentation and other materials provided by Licensor to Licensee pursuant to this Agreement; and (iii) ensuring that Software and Documentation do not infringe, violate or misappropriate any patents, copyrights, trademarks, trade secrets, or any other intellectual property rights or proprietary rights of any third party.
- 1.2 The license granted hereunder shall be limited to the use of the Software solely at the Licensee location(s) or by the Licensee division(s) (each a “**Permitted Division**”) as set forth in the attached **Schedule A**, which is incorporated into and made a part of this Agreement, and solely on the Licensee’s Computers and Networks (which terms are defined below). Notwithstanding that the Software may be installed on a central server operated by or for Licensee, only users located at or working for Permitted Divisions shall have the right to access or use the Software pursuant to this Agreement **Schedule A**; and such access and use shall only be by means of Computers and Networks of Licensee (including the relevant Permitted Division). The license fee set forth on **Schedule A** (the “**License Fee**”) is based, in part, on the number of Permitted Divisions designated on such Schedule. The Licensor shall have the right to audit the Licensee’s use of the Software and Licensee shall provide reasonable access to Licensor upon request and during normal business hours to enable Licensor to verify Licensee’s compliance with the use restrictions contained in this Agreement, including the copying and access limitations in relation to Permitted Divisions. If, after such audit, Licensee is found to be in breach of the provisions of his Agreement, in addition to any other remedy available to Licensor, Licensee shall pay to Licensor the costs of the audit and, if divisions, locations, or users, other than Permitted Divisions have access to and are using the Software in violation of this Agreement, additional License Fees (if relevant) based on such unpermitted usage.
- 1.3 Upon receipt of the Software, the Licensee shall pay the License Fee and complete, initial, execute and deliver to Licensor the form of Acknowledgement and Receipt attached hereto as **Schedule B**. Licensee **may make one copy of the Software for each Permitted Division and one additional copy solely for backup or archival purposes**. Licensee may install the Software on only those the Computers and Network servers owned and controlled by Licensee and its Permitted Divisions and to which only Licensee and users located at and working for its Permitted Divisions have access.
- 1.4 “**Computer**” means a computing device, including a personal computer, laptop computer, note pad, smart phone, personal digital assistant, or similar device.
- 1.5 “**Network**” means an aggregation of devices, including Computers, any of which may perform the functions of computation, data storage, and/or data communications, and which are interconnected by cable or wireless communications means so as to permit the passage of machine-readable information among two or more such devices. “**Network**” shall include without limitation any publicly accessible communications systems capable of data and/or voice communications, which systems may be generally known as the Internet, the World Wide Web, or other designation.

2. Term

2.1 Subject to payment of the License Fee contemplated hereby and compliance by Licensee of with the terms and conditions of this Agreement, the Software shall be licensed to Licensee from and after the Effective Date, subject to the early termination provisions of this Agreement. The period during which this Agreement is effective is referred to as the “**Term**”.

2.2 Upon breach of this Agreement by Licensee, including by any Permitted Division or other user through Licensee or a Permitted Division, Licensor shall have the right to terminate this Agreement effective immediately upon delivery of a written termination notice to Licensee. Licensee may terminate this Agreement effective 30 days after the delivery of written notice to Licensor. Upon termination of this Agreement for any reason, Licensee (including all Permitted Divisions and all users acquiring access through a Permitted Division consistent with the terms hereof) shall cease all use of the Software and the Documentation, and shall return to Licensor all copies of the Software or Documentation then in the possession or under the control of the Licensee or any Permitted Division. Licensee shall certify compliance with the provisions of this Section 2.2 upon request by Licensor.

3. License Fee; Maintenance Subscription and Fee

3.1 As of the Effective Date, in consideration of the license of the Software and provision of the Documentation pursuant to this Agreement, the Licensee is tendering and paying to Licensor the “License Fee” set forth on **Schedule A**. The License Fee shall be non-refundable and shall be subject to adjustment as provided on **Schedule A**.

3.2 During the Term, the Licensee shall have the option to purchase a yearly subscription plan upon payment on the Effective Date and on or before each anniversary of the Effective Date an annual subscription fee equal to 20% of the License Fee or \$125.00, if greater (the “**Subscription Fee**”). The applicable Subscription Fee shall be set forth on **Schedule A**, and shall be subject to adjustment as set forth on **Schedule A**. During the 12-month period following each payment of a Subscription Fee, Licensor shall provide to Licensee (for use by each Permitted Division only) quarterly Product Upgrades (defined below) and free standard email technical support. If Licensee fails to pay a Subscription Fee on the Effective Date or on or before any anniversary of the Effective Date, then the Licensee shall not have any right to Product Upgrades or technical support for the Software, even if Licensee tenders to Licensor a Subscription Fee after such Effective Date or anniversary thereof. Each 12-month period following timely payment by Licensee of a Subscription Fee is referred to as a “**Maintenance Period**”. Once paid, each Subscription Fee shall be non-refundable.

3.3 “**Product Upgrade**” shall mean a successor version of the Software that is made generally available to Licensee during a Maintenance Period. Subject to the terms and conditions hereof, Product Upgrades shall include, for example, the following:

- (a) changes in the one's, tenth's, hundredth's, or after hundredth's digit of the Software version number;
- (b) successor version(s) of the Software that incorporates corrections, upgrades and/or enhancements to the Software, whether or not such corrections, upgrades and/or enhancements are marketed separately by Black Ice;
- (c) new releases containing increased Software functionality derived from the Software (whether marketed separately or as part of a more comprehensive release).

Upon provision of a Product Upgrade to Licensee during the Maintenance Period or otherwise, such Product Upgrade shall become part of the “**Software**” and shall be subject to the terms and provisions hereof applicable to the Software.

4. Proprietary Rights in Software and Confidentiality

4.1 The Software, Documentation and all material and information related in any way thereto, which has, or will, come into possession or knowledge of the Licensee in connection with, or related to, this Agreement, (collectively, the “**Proprietary Information**”), remains the sole and exclusive property of Licensor. By executing this document, the Licensee agrees:

- (a) to hold all Licensor Proprietary Information it has received or to which it has been exposed in the strictest confidence such that only those individuals, be they employees or agents of the Licensee or employees of the Permitted Divisions (collectively, “**Authorized Users**”), who, by their jobs are licensed to utilize the Proprietary Information are permitted to become familiar and utilize it;
- (b) not release, disclose, or distribute the whole or any part of the Proprietary Information to a non-Authorized User; and
- (c) to ensure that each Authorized User who does use the Proprietary Information is made aware of the terms of this Agreement and is bound to protect such Proprietary Information against disclosure or any other use, and, upon reasonable request of Licensor, to enforce such binding commitment by any Authorized User to protect Licensor Proprietary Information; and
- (d) not to release, disclose or distribute any Licensor Proprietary Information to any person for purpose, other than as expressly permitted by this Agreement.

5. Restrictions

5.1 The Software shall be used solely in connection with the usual business purposes of the Licensee and its Permitted Divisions. In this Section 5.1, the expression “business purposes” shall in no circumstances include the sale or marketing, in any way whatsoever, of any of the Proprietary Information, including but not limited to the Software.

- 5.2 Any use of the Software by a subsidiary, affiliate, or other related entity of Licensee, other than a Permitted Division, is prohibited.
- 5.3 Licensee agrees that it will use the Software only for lawful purposes.
- 5.4 Neither Licensee nor any Permitted Division (including any person accessing the Software or the Documentation through the Licensee or Permitted Division consistent with the terms of this Agreement) shall reverse engineer, decompile, disassemble, extract or otherwise derive, the source code and any other ideas, algorithms or procedures from the Software or Documentation for any reason (except to the extent that Licensor is not permitted by such applicable law to exclude or limit such rights).
- 5.5 Except to the extent expressly authorized herein or in the Documentation, neither Licensee nor any Permitted Division, or any user that has access through Licensee or a Permitted Division shall modify or create a derivative work of any part of the Software or Documentation.
- 5.6 All title and copyrights in and to the Software and Documentation (including any Product Upgrades), are owned exclusively by Licensor, and neither Licensee nor any Permitted Division nor any other person shall acquire or hold any right, title, or interest therein or thereto, except pursuant and subject to the terms and provisions of this Agreement.

6. Warranties; Limitations

- 6.1 The Software is licensed for use "AS-IS", and the Documentation is provided "AS-IS", without a warranty of any kind. THERE ARE NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, OR THE SOFTWARE OR DOCUMENTATION, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, WHICH ARE EXPRESSLY DISCLAIMED. LICENSEE ASSUMES ALL RISKS AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE SOFTWARE. LICENSOR DOES NOT WARRANT THE RESULTS OF ANY PROGRAM OR SERVICE, OR THAT ALL OR ANY DEFECTS, ERRORS OR BUGS WILL BE CORRECTED, OR THAT THE FUNCTIONALITY CONTAINED IN THE SOFTWARE WILL MEET LICENSEE'S REQUIREMENTS OR EXPECTATIONS.
- 6.2 **LIMITATION OF LIABILITY.** IN NO EVENT WILL LICENSOR'S LIABILITY TO LICENSEE, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE FEES PAID BY LICENSEE TO LICENSOR PURSUANT TO THIS AGREEMENT. UNDER NO CIRCUMSTANCES WILL LICENSOR BE LIABLE TO LICENSEE, OR ANY PERMITTED USER OF LICENSEE OR ANY PERSON CLAIMING BY OR THROUGH LICENSEE, FOR ANY LOST OR DEGRADED DATA, LOST REVENUE, LOST PROFITS, INABILITY TO USE THE SOFTWARE, COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND REGARDLESS OF THEORY OF LIABILITY, ARISING IN ANY WAY OUT OF THIS LICENSE AGREEMENT. THIS LIMITATION SHALL APPLY EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF THE THEORY OR THE NATURE OF THE CAUSE OF ACTION OR CLAIM. THE FOREGOING LIMITATION OF LIABILITY AND EXCLUSION OF CERTAIN DAMAGES SHALL APPLY REGARDLESS OF THE SUCCESS OR EFFECTIVENESS OF OTHER REMEDIES.

Without limitation, Black Ice is not in any way responsible for any damages caused by the use or misuse of the Software or the Documentation.

- 6.3 **US GOVERNMENT RESTRICTED RIGHTS:** The Software is provided with RESTRICTED RIGHTS. Use, duplication, or disclosure by the Government is subject to restrictions as set forth in subparagraph (C) (1) (ii) of The Rights in Technical Data and Computer Software clause at DFARS 252.227-7013 or subparagraphs (C) (1) and (2) of the Commercial Computer Software Restricted Rights at 48 CFR 52.227-19, as applicable. Manufacturer is Black Ice Software, LLC, 950 Peninsula Corporate Circle Suite 2017 Boca Raton FL 33487.

7. Miscellaneous

- 7.1 **Assignment.** This Agreement and all rights and obligations related hereto shall be freely assignable by Licensor to the successor in interest to all or substantially all of the business of Licensor or to an affiliate of Licensor without the prior written consent of the Licensee. This Agreement and all rights and obligations related thereto may not be assigned in whole or in part by the Licensee without the prior written consent of Licensor. Any attempted assignment in violation of this Section 7.1 shall be void. This Agreement is binding upon and shall inure to the benefit of the parties hereto and their permitted transferees, successors and assigns as permitted by this Agreement.
- 7.2 **Authority.** By executing and delivering this Agreement, Licensee is representing and warranting that Licensee has full right, title, and authority to enter into and perform this Agreement in accordance with the terms hereof and that the person executing and

delivering this Agreement on behalf of Licensee has full right and authority to execute and deliver this Agreement on behalf of Licensee and to bind Licensee hereto.

- 7.3 **Governing Law.** This Agreement is governed by the laws of the State of Florida, USA. If this product was purchased outside the United States, local laws may apply. The parties specifically agree that the body of law known as the United Nations Convention on the International Sale of Goods shall be inapplicable to this Agreement.
- 7.4 **Relationship of the Parties.** This Agreement shall not be construed to create any employment relationship, partnership, joint venture or agency relationship or to authorize any party to enter into any commitment or agreement binding on the other party.
- 7.5 **Execution.** This Agreement may be executed by facsimile or scanned copy transmitted and/or in two or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument.

[Signature Page Follows.]

IN WITNESS WHEREOF, and intending to be bound, the Licensor and Licensee are executing and delivering this Agreement as of the Effective Date.

BLACK ICE SOFTWARE, INC.

[Printed Name of Licensee]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Schedule A

**Corporate End User License Agreement (“Agreement”) for ColorPlus X1 Printer Driver
between Black Ice Software, LLC (“Licensor”) and
_____ (“Licensee”)**

Software:

Product Name: ColorPlus X1 Printer Driver _____

License Fee:

\$ _____

Maintenance Fee:

\$ _____/year

Permitted Division:

Name (or other designation) For Each Permitted Division	Physical Location (Address/Locality) of Permitted Division	Maximum Number of Users at Permitted Division

The above Software License Fee is based on the number of Permitted Divisions designated above. Licensee shall not exceed the aggregate number of Permitted Divisions indicated above.

If Licensee wishes to add one or more additional Permitted Divisions, it is Licensee’s obligation to notify Licensor. Licensor will note the change(s), and the required additional License Fee, reprint the **Schedule A** and mail it to Licensee. It is Licensee’s responsibility to review the revised **Schedule A** for correctness. In the event Licensee objects to any term(s) of such revised Schedule A, Licensee shall notify Licensor in writing of such objections within ten (10) business days of Licensee's receipt thereof, failing which Licensee shall be deemed to have accepted the revised **Schedule A** as sent, and Licensee shall remit to Licensor the additional License Fee in immediately available funds. The failure of Licensee to comply with the requirements set forth herein shall constitute a material breach of the Agreement.

BLACK ICE SOFTWARE, INC.

[Printed Name of Licensee]

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Schedule B

**Corporate End User License Agreement (“Agreement”) for ColorPlus X1 Printer Driver
between Black Ice Software, LLC (“Licensor”) and
_____ (“Licensee”)**

ACKNOWLEDGMENT AND RECEIPT

1. By initialing the line below, **Licensee understands that under *no circumstances* can a refund be issued.** Licensee cannot receive a refund from Licensor of any License Fee or Subscription Fee, nor will Licensee receive a refund from any banking establishment Licensee may have used as a form of payment.

Licensee's Initials _____

2. Licensee acknowledges and agrees that, prior to the Effective Date (defined in the referenced Agreement), Licensor provided and Licensee received a 15-day free evaluation copy of the Software (**ColorPlus X1 Printer Driver**). By initialing the line below, Licensee acknowledges that Licensee has downloaded the Software, tested and used it for 15 days, found that the Software suits Licensee needs, and that Licensee desires to access and use the Software pursuant to the referenced Agreement as of the Effective Date . Upon the Effective Date, Licensor will issue to Licensee an unlock code to enable access to and use of the Software pursuant to the Agreement by Licensee and any Permitted Division (as defined and contemplated by the Agreement).

Licensee's Initials _____

3. Licensor will never be held liable due to the use or misuse of the Software or Documentation.

Licensee's Initials _____

Licensee's signature below completely and unconditionally verifies that Licensee has received Licensee's ColorPlus X1 Printer Driver Software in evaluation version, which once registered (unlocked), shall bind Licensee to the Software License Agreement and shall become Licensee's fully licensed version of the Software pursuant to the terms and subject to the conditions of the Software License Agreement. Licensee has successfully downloaded Licensee's evaluation copy of the Software, and Licensee finds the Software (based on use of the evaluation copy of the Software) satisfactory to Licensee's needs.

Signature _____ **Date** _____

Printed name _____

Licensee/License _____

Address _____

Payment Method:

- I will be paying by: (Check One)
- Company Check _____ (US Company Checks only)
- Bank Transfer _____ (Contact Black Ice Sales Department for account information, a fee of \$35 applies)
- Credit Card _____ (Please Fill in below. Only Visa, M/C, and American Express are accepted.)
- Reseller _____ (Please specify who)

I authorize Black Ice Software, LLC. to charge our credit card for the purchase of the software as described in this License Agreement. I understand that the software is non-refundable, nor will I receive a refund by requesting a "chargeback" from my credit card company.

Authorized Signature _____

Card Holder's Name (Please Print) _____

Credit card # _____ exp. _____

Cardholders Address (if different than Company Address) _____

Cardholders Phone number _____