

# END USER LICENSE AGREEMENT

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## 1. APPLICABILITY

This Software End User License Agreement (“**Agreement**”) is between Prairie Sky Consulting LLC, located in Illinois, United States, company registration number 04646533 (“**PSC**”) and the **Customer** (individual or entity) that has purchased a User’s Manual (“**Documentation**”) describing a complementary Demonstration Software Systems (“**Software**”) and associated **Content** published by PSC. This Agreement applies to all Documentation, associated Software titles, and associated Content published by PSC.

By downloading, installing, reinstalling, or using any portion of this complementary Software or Content, you accept all Terms and Conditions in this Agreement. You agree that this Agreement is enforceable like any other written Agreement. If you do not agree to all Terms and Conditions in this Agreement, you may not download, use, or access the Software or Content.

## 2. DEFINITIONS

“**Access**” means to use or benefit from using the functionality of the Software and/or Content.

“**Content**” means data sets, templates, license key files, and other similar materials and content owned by PSC made available as part of or through the Software.

“**Customer**” the company or individual who completes the purchase of the Documentation and/or submits the Registration Form.

“**Documentation**” means the physical and electronic version of the Software User’s Manual. Access to Software is contingent upon the purchase of a physical copy of the Software User’s Manual and successful submission of Registration Form.

“**Effective Date**” means the date on which PSC sent License Keys to Registered Users.

“**End Date**” means the date on which the Software license ends. On this date your software will stop working.

“**Intellectual Property Rights**” means all rights existing from time to time under patent law, copyright law, trade secret law, trademark law, and all other proprietary rights, and all applications, renewals, extensions, and restorations thereof, now or hereafter in force and effect worldwide.

“**License Key**” means a unique code provided by PSC to enable each registered User to Access the Software and/or Content for a specified duration on a limited number of devices.

“**Registration Form**” means the form used to identify Users for whom the Customer has provided physical Documentation for one Software title.

“**Software**” means the executable file providing the functions described in the associated Documentation.

“User” means an individually named person identified on the Customer Registration Form for whom the Customer will provide a physical copy of purchased Documentation.

### **3. PURCHASE PROCESS**

PSC may provide each User for whom the Customer has purchased the physical Documentation with a complimentary copy of the Software and Content referenced by that Documentation. To qualify to receive the complementary Software and Content, Customers shall follow the steps below. Customers who deviate from this process shall not qualify to receive the complementary Software and Content regardless of the number of physical Documentation copies purchased.

3.1 The Customer shall purchase one physical copy of the Documentation for each Software User from PSC’s print-on-demand service [www.lulu.com](http://www.lulu.com). This print-on-demand service produces and distributes the physical Documentation within the Customer’s country and sends the physical Documentation by postal mail to each User’s physical address.

3.2 PSC recommends Customers with Users at more than one physical location execute additional print-on-demand orders to ensure Documentation is available to each User as soon as possible.

3.3 The Customer shall save a PDF copy of each Documentation purchase receipt. This purchase receipt shall be used as noted below.

3.4 PSC shall not provide purchasing, invoicing, or any other type of procurement information. If the Customer requires specific procurement documentation, the Customer shall create those documents from the information provided by the print-on-demand service.

3.5 Following the Customer’s Documentation purchase, the Customer shall download the Registration Form from the PSC website.

3.6 The Customer shall submit one Registration Form per Documentation title. If the Customer purchases copies of the same Documentation title for distribution to Users in separate physical locations, the Customer shall consolidate all purchases of that Documentation title on a single Registration Form.

3.7 If a Customer purchases more than one Documentation title, the Customer shall submit a separate Registration Form for each Documentation title.

3.8 The Customer shall complete the Registration Form according to the instructions provided on the form.

3.9 When completed, the Customer shall submit the Registration Form by email attachment.

3.9.1 The email “TO” address shall be [bill.east@prairieskyconsulting.com](mailto:bill.east@prairieskyconsulting.com).

3.9.2 The email “FROM” address shall contain a specific Customer user’s email address, not a generic company email box.

3.9.3 The email “CC” address shall contain the “Software Installer’s” email address, if noted on the Registration Form.

3.9.4 (optional) The email “CC” address may also contain the Customer’s generic procurement or IT staff email addresses.

3.9.5 The email “SUBJECT” shall be “COBie Software Registration”.

3.9.6 The Customer shall attach all purchase receipts referenced in the Registration Form to the email.

3.9.7 PSC recommends the Customer turn on delivery and read-receipt notification to ensure PCS receives the email.

3.10 Within five (5) working days of PSC receipt of the Customer's COBie Software Registration email, PSC shall review the content of the Registration Form. If the form requires resubmission, PSC will take no action on the Registration Form until the Customer's resubmitted form resolves all issues.

3.10.1 PSC shall require resubmission of any COBie Software Registration email that does not contain a specific human email address as the "FROM" or "CC" addresses.

3.10.2 PSC shall require resubmission of any Registration Form Users or Installers that does not contain a specific human email address.

3.10.3 PSC will shall require resubmission of any Registration Form where the number of Documentation copies purchased does not match the number of Users.

3.11 Within five (5) working days of a successful review of the Customers Software Registration email, PSC shall take the following actions to fulfill the Customer's request for the associated Software.

3.11.1 PSC shall provide each registered User, or one designated Software Installer, with a DropBox transfer link to download the Software. This transfer will be password protected and limited to a 48-hour window.

3.11.2 Instructions for Information Assurance Review and Software Installation are provided in the purchased Documentation.

3.11.3 DropBox shall be the only mechanism for Software transfer. If the Customer does not normally allow DropBox transfers, they shall make an exception to download this Software and Contents.

3.11.4 PSC shall provide, by email attachment, a complementary electronic copy of the Documentation (PDF Format) by email, to each registered User to complement the physical copy the Customer has purchased.

3.11.5 PSC shall create and provide, by email attachment, a software license key file directly to each registered User to unlock their software for use.

3.11.6 Instructions for license key file installation are provided in the purchased Documentation.

3.11.7 PSC shall invite each User to the LinkedIn COBie Software Community Forum. In cases where the registered User is "not connected" on LinkedIn, PSC shall provide an email asking that registered User to request a connection.

3.12 Following the receipt of the DropBox transfer the authorized installer must follow all Documentation information assurance and installation instructions to prepare the software for use on each registered user's computer.

3.13 Following the receipt of the software license key, each registered User's must follow all Documentation instructions regarding license key installation.

## **4. RETURNS**

Documentation purchases through the print-on-demand service are non-refundable.

If you purchased the Documentation and do not agree to these Terms and Conditions, you shall not submit a Registration Form. Submission of the Registration form email constitutes your acceptance of these Terms and Conditions and acceptance of the complementary Privacy Policy.

## **5. AUTHORIZATION**

Licenses granted for use of the Software, Documentation, and/or Content are contingent upon acceptance by authorized personnel.

The Customer submitting the Registration Form certifies that they, the Users, and Software Installer are 18 years old, or older, and capable of entering into a legally binding agreement. If the Customer is submitting the Registration as an employee, contractor, or agent of a business organization, then the Customer must be authorized to sign for and bind the organization to accept the terms of this agreement.

If an existing agreement exists between the Customer, Users, Software Installer and PSC regarding the Software, Documentation, and/or Content, the terms of this agreement shall supersede that Agreement in its entirety. If this agreement is terminated, the Customer, Software Installer, and User will not have the right to use or Access the Software or Contents.

## **6. LICENSE SCOPE**

Subject to the Terms and Conditions of this Agreement PSC grants the Customer a limited, worldwide, non-transferable, and non-exclusive License (without the right to sublicense) to access the Software, Documentation, and Content for their internal use only. The License's Effective Date begins when PSC sends each registered Users their License Key file. The License End Date occurs approximately 365 calendar days after the Effective Date.

## **7. LICENSE RESTRICTIONS**

The Customer, Users, and Software Installers shall not, and shall not permit anyone else, to do any of the following:

- Access the Software or Content by someone who is not a registered User or Software Installer.
- Access the Software or Content on more than two devices per User.
- Access the Software or Content for a longer period than allowed by your License Key.
- Copy, modify, adapt, translate, and/or create derivative work of the Software, Documentation, and/or Content, or use it for any public display or performance, except as expressly authorized by prior written agreement with PSC.
- Decompile, reverse engineer, or disassemble the Software, Documentation, and/or Content except and only to the extent permitted by applicable law (and then only with advance notice to PSC).
- Provide training on the use of the Software including the use of any copyrighted content appearing in the Documentation or Content, except as expressly authorized by prior written agreement with PSC.
- Remove, obscure, or alter any product identification, proprietary, copyright, trademark or other notices contained in the Software, Documentation, and/or Content or accessed in conjunction with or through the Software, Documentation, and/or Content.
- Distribute, sell, transfer, sublicense, rent, or lease the Software, Documentation, and/or Content, or use the Software, Documentation, and/or Content for time sharing, hosting, service provider, or like purposes.

- Take any action to circumvent or defeat the security or content usage rules provided, deployed, or enforced by any functionality (including without limitation User license key functionality) contained in the Software, Documentation, and/or Content.
- Use the Software, Documentation, and/or Content in violation of any applicable laws or regulations.

## **8. LICENSE REASSIGNMENT**

If a different employee within the Customer's organization needs access to the Software, the Customer shall purchase a new copy of the Documentation and begin a new registration process for that User. If a previously identified User is no longer employed at the Customer's office or no longer needs to use the Software, they are no longer authorized to the Software. License reassignment is not permitted.

## **9. TECHNICAL SUPPORT**

PCS provides no technical support, in any form, with the installation, use, or interpretation of this Software, Documentation, Content, and/or output. Discussion of errors, issues, or changes related to this Software, Documentation, and/or Content shall be made through the Community Support Forum to which Users are invited to participate during the Software Registration process.

Technical support is available from PSC as a supplemental pre-paid, appointment-based service. The on-line form needed to purchase technical support hours is provided on the PSC website.

## **10. DOCUMENTATION**

PSC shall provide a complementary electronic copy of the Documentation (PDF) to each registered User. The PDF User's Manual, like the underlying Software, may not be copied to the computer of a person who is not a registered User or on saved on shared computer storage.

The Customer, Software Installer, and/or Users shall not distribute the physical or electronic Documentation to someone who is not a registered User. Customers and/or Users found to have distributed all or part of the Software, Documentation, and/or Content (in any format) without prior written permission from PSC shall have their license keys revoked without notification or recourse.

## **11. USER QUALIFICATIONS**

Each User shall be responsible for the correct Software and Content use and for the accurate interpretation of the output provided. These outputs may include, but are not limited to, forms, reports, manuals, web pages, and other information described in the Documentation.

Customers and Users shall be responsible for obtaining the prerequisite knowledge before using this Software and/or Content, or interpreting output provided by this Software, Documentation, and/or Content.

To successfully use and interpret the outputs provided by this Software and/or Contents, Users shall have extensive technical and practical knowledge of the COBie version 2.4 described in National Building Information Modeling Standard – United States, version 3, Chapter 4.2, and related Annex A. To get the greatest value from the use of this Software and/or Contents, Users should be technically qualified to the level of a buildingSMART International COBie Certified Professional.

## **12. USER DATA**

The Software relies on each User's business contact information. The collection and use of this information is governed by PSC Privacy Policy.

## **13. PROPRIETARY RIGHTS**

The Customer and each registered User acknowledges that they are obtaining only a limited license right to the Software, Documentation, and Content. They acknowledge that irrespective of any use of the words such as "distribution", "transfer", "purchase", "sale" or like terms in this Agreement, no ownership rights are being conveyed to you. You acknowledge and agree to the following:

- The Software, Documentation, and Contents contain proprietary and confidential information protected by applicable intellectual property and other laws; and
- PSC owns all rights, title, and interest in and to the Software, Documentation, and Contents, including without limitation all Intellectual Property Rights therein.

PSC has and will retain all Intellectual Property Rights for Software, Documentation, and/or Content and all copies, modifications, and derivative works thereof including any changes which incorporate any of your ideas, feedback, or suggestions.

## **14. TERMINATION**

The Customer may terminate this Agreement at any time by manually deleting the Software, Documentation, and/or Content in all its forms from your computer and network locations. If a Customer, Software Installer, and/or User violates this Agreement, the authorization and license to Access the Software, Documentation, and Content shall automatically terminate, and the Customer, Software Installer, and/or User must immediately discontinue use of and destroy all copies of the Software and Content.

The following sections of this Agreement will survive any termination of this Agreement: License Restrictions, Proprietary Rights, Warranty Disclaimer, Reliance, Limitation of Liability, and Arbitration.

## **15. WARRANTY DISCLAIMER**

This Software and Content shall be considered "developmental software" that is licensed "as-is," "with all faults," and "as available." The Customer, Software Installer, and User's bear all risks from downloading, installing, and using this Software, Documentation, and Content.

PSC provides no warranties, guarantees, or conditions in relation to this Software, Documentation, and Contents. PSC does not provide any warranties or conditions, either express or implied, including warranties of merchantability, satisfactory quality, title, noninfringement of intellectual property, or fitness for purpose.

## **16. RELIANCE DISCLAIMER**

Facility design, construction, operations, maintenance, and management are complex and risky ventures. PSC is not responsible for your use of the Software, Documentation, and/or Content in any settings where the use and/or failure of the Software and/or Contents could or does lead to death, personal injury, or severe financial, physical, or environmental damages.

## **17. LIMITATION OF LIABILITY**

The Customer, Software Installer, and Users expressly understand and agree that PSC shall not be liable to to any party for any direct, indirect, incidental, special, consequential, or exemplary damages, including (but not limited to) damages for loss of profits, goodwill, use, data, or other intangible losses (even when PSC has been advised about the possibility of such damages) result from: (1) the use or the inability to use the Software, Documentation, and/or Contents, (2) the cost for procurement of substitute goods or services, (3) unauthorized access to or the alteration of source data used by the Software and/or Contents or license information, or (4) any other matter relating to the Software, Documentation, and/or Contents. These limitations shall apply regardless of failure of essential purpose of any limited remedy and to the fullest extent permitted by law.

These limitations and exclusions apply without regard to whether damages arise from breach of contract or warranty, negligence, or any other cause of action. In no event will PSC's total liability to the Customer, Software Installer, or User for all damages, losses, and causes of action, whether in contract, strict liability, tort, negligence, or otherwise, exceed the amount paid for the Documentation.

## **18. GOVERNING LAW**

This Agreement and all related actions and proceedings is governed by the laws of the State of Illinois, United States of America. All agreements concluded by PSC with the you, as well as the execution of individual orders, shall be governed by and construed in accordance with the law in the State of Illinois, United States of America.

## **19. ARBITRATION**

All claims and disputes arising under or relating to this Agreement are to be settled by binding arbitration in the city of Champaign, Illinois, United States of America, or another location mutually agreeable to the parties. Should parties not be able to mutually agree on a location, the location shall be in Champaign, Illinois. An award of arbitration may be confirmed in a court of competent jurisdiction.

## **20. THIRD PARTY SERVICES**

PSC reserves the right to include third-party services in support of the Software, Documentation, and/or Content. Unless these additional services require separate Customer agreements, PSC is under no obligation to identify or discuss the use of these services.

## **21. LOCALLY REGISTERED AGENT**

The locally registered agent for purchased Documentation may be found by searching the print-on-demand provider's website. There is no locally registered agent for the complementary Software and Content provided by PSC.

# PRIVACY POLICY

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## 1. PURPOSE

Please refer to the EULA Applicability and Definitions sections for definition of capitalized terms below.

PSC collects and processes a limited set of User's and Software Installer's name and company affiliation data for license provisioning, license administration, software community engagement, etc. PSC does not use or supply information for "profiling" or "tracking" activities.

## 2. REGISTRATION FORM

User and Software Installer information is captured once on the Registration Form. Information required on the registration form is: given name, family name, company name, company mailing address, company email address, and company telephone.

## 3. BASIS

Personal data are used by PSC to (1) document consent to the EULA, (2) provide individual User licenses, (3) verify User licensing status, (4) communicate with Users related to Software, Documentation, and/or Content updates, and (5) communicate with Users regarding participation in the User Community.

## 4. TRANSFER

PSC utilizes third-party print-on-demand services. PSC utilizes third-party for web hosting and file transfer processes. PSC is not responsible for information captured during payment process, the use of PSC's website, or when downloading complementary Software and Content. PSC does not share registration information with third parties.

## 5. RETENTION

Upon termination of an End User License Agreement, personal data processed by PSC will be kept for the period required to meet the company's legal obligations.

## 6. USER'S RIGHT

At any point during the period in which the End User License Agreement is in effect, each User enjoys the right to access, clarify, and update their personal information. To invoke this right an individual User must provide an explicit email request to PSC.

The only restriction to this right is if a User's End User License Agreement is executed by the User's company. In this case, all changes must also be explicitly authorized by the company point of contact, (the Customer who submitted the original Registration Form).