

End User License Agreement

YOU ARE NOT ENTITLED TO INSTALL OR USE THIS DPL SOFTWARE (INCLUDING DOCUMENTATION) UNTIL YOU HAVE READ AND ACCEPTED ALL THE TERMS OF THIS LICENSE AGREEMENT. IF YOU DO NOT AGREE TO ACCEPT THE TERMS OF THIS LICENSE AGREEMENT, YOU ARE NOT ENTITLED TO INSTALL OR USE THE SOFTWARE. RETURN THIS PACKAGE TO SYNCOPATION AND YOUR LICENSE FEE WILL BE REFUNDED TO YOU.

1 Background

1.1 This agreement ("Agreement") is entered into between you ("CUSTOMER") and Syncopation Software, Inc., a Massachusetts corporation ("Syncopation"), and governs your use of the specific Syncopation software product(s) listed on your invoice which shall be limited to one or more of the following separate products: DPL Release 7 Standard; DPL Release 7 Professional; DPL Release 7 Enterprise; DPL Release 7 Portfolio. Such licensed product(s), any Maintenance Releases (as defined below), any Major Releases (as defined below) and all related documentation made available to you by Syncopation hereunder shall be referred to herein as the "DPL Software".

2 License Fees

2.1 CUSTOMER shall pay the license fee ("License Fee") for the DPL Software and the maintenance and support fees as stated in the invoice provided by Syncopation. All fees are due upon receipt of the DPL Software or as indicated by the terms on the invoice.

3 Grant of License

3.1 In consideration of payment of the License Fee, Syncopation hereby grants to CUSTOMER a non-exclusive, non-transferable, limited License permitting a single Named User (as defined below) to load, install and use the DPL Software, in object code form, in the manner referred to herein for the term specified in Section 3.2 below. A "Named User" shall mean an employee or independent contractor of CUSTOMER who is authorized to use the DPL Software on CUSTOMER's behalf for CUSTOMER's benefit. If CUSTOMER is an individual, then CUSTOMER shall be the individual purchaser of the DPL Software.

3.2 The license to the DPL Software comes into effect on the effective date indicated on the invoice accompanying the DPL Software ("EFFECTIVE DATE") and expires on the expiration date indicated on the invoice accompanying the DPL Software ("EXPIRATION DATE"). CUSTOMER shall not use the DPL Software before the EFFECTIVE DATE or after the EXPIRATION DATE. CUSTOMER shall destroy all copies of the DPL Software (including documentation) on the EXPIRATION DATE unless a further license agreement for use of the DPL Software after that date has been entered into by Syncopation and CUSTOMER.

3.3 CUSTOMER may make one back-up copy of the DPL Software, excluding the DPL Software's documentation, which may not be copied. Otherwise CUSTOMER may not make, distribute or use copies.

3.4 Save to the extent permitted by applicable law, CUSTOMER may not translate, adapt, vary, modify, disassemble, decompile or reverse assemble the DPL Software, or communicate or divulge the contents of the DPL Software to any person, or sell, rent, lease, sublicense, loan, electronically transfer or distribute the whole or any part of the DPL Software.

3.5 The CUSTOMER may transfer use of this DPL Software from one Named User to another Named User, PROVIDED THAT at any one time only one Named User may use this DPL Software. Concurrent use of the DPL Software is not permitted. "Concurrent use" means simultaneous use of the DPL Software by more than one user of the CUSTOMER under only one license purchase, or use in circumstances where (unless notified to and agreed by Syncopation in advance) use of the DPL Software is transferred from one Named User to another Named User more than once during any period of fourteen (14) days. The CUSTOMER must purchase a separate DPL Software license for each of its users of the DPL Software.

3.6 The terms and conditions of this Agreement are deemed to be accepted by the parties as follows: by Syncopation upon dispatch/delivery by Syncopation or a designated distributor of this DPL Software to the CUSTOMER; and by the CUSTOMER by loading, installing or using the (or any part of the) DPL Software.

3.7 The CUSTOMER undertakes: (i) to maintain accurate and up-to-date records of the Named User and location of the DPL Software and promptly to provide copies of such records to Syncopation upon demand; (ii) to supervise and control use of the DPL Software in accordance with the terms of this Agreement; and (iii) to ensure that any employee who will use the DPL Software under this Agreement is given advance notification of and complies with the terms of this Agreement.

3.8 Syncopation may at its discretion include a temporary license to use the previous release of the DPL Software within the terms of this Agreement but at no extra cost, such license to expire upon installation by CUSTOMER of the current release.

3.9 CUSTOMER may not remove the copyright notices and trade marks from the original or any permitted copies of the DPL Software.

4 Support and Maintenance

4.1 Syncopation shall provide maintenance and technical support for the DPL Software at no charge during the initial ninety (90) days of the license period. After expiration of the initial support term, CUSTOMER shall receive maintenance and technical support services only if purchased by CUSTOMER. Such services shall cover a one (1) year period, unless otherwise stated in the invoice. The fee shall be Syncopation's then current published price. Such maintenance and technical support services shall automatically renew annually for additional one (1) year period(s) at Syncopation's then current published rate, unless either party notifies the other of its intent to terminate such services by providing the other with written or email notice of termination at least thirty (30) days prior to the expiration of the then current term. In the event CUSTOMER allows maintenance and technical support to lapse and CUSTOMER wishes to renew maintenance and technical support, CUSTOMER will pay all back dated maintenance and support fees plus a 20% reinstatement charge.

4.2 The maintenance services initially include the provision of maintenance releases as provided generally by Syncopation to its customers that have purchased maintenance and technical support services and include bug fixes, updates and minor enhancements ("Maintenance Releases") and upgrades to new releases ("Major Releases") for the particular DPL Software purchased by CUSTOMER as stated on CUSTOMER's invoice. The maintenance services expressly exclude releases, updates and upgrades for separate or new products which are offered by Syncopation for an additional charge, in its sole discretion.

4.3 The technical support services include telephone and e-mail support for errors in the DPL Software which cause the DPL Software not to comply with Syncopation's published documentation which accompanies the software. Syncopation will make reasonable efforts to correct such errors at such intervals as it determines reasonable in its sole discretion. Syncopation is only required to provide technical support for the then most current release of the DPL Software. The hours of technical support shall be posted on Syncopation's website.

4.4 Syncopation may modify the terms of its maintenance and technical support services by posting such terms on its website provided that such changes shall not adversely affect CUSTOMER prior to the expiration of the then currently paid maintenance and technical support period.

4.5 CUSTOMER accepts that if it elects not to purchase maintenance and technical support services, Syncopation shall have no obligation to provide such services, or any ancillary services (including implementation or update services), and CUSTOMER may not hold Syncopation liable for the provision or non-provision of such services.

5 Warranty

5.1 Syncopation hereby represents and warrants that it has sufficient right, title and interest in and to the DPL Software to grant to CUSTOMER the License granted hereunder.

5.2 EXCEPT AS OTHERWISE EXPRESSLY SET FORTH HEREIN, AND TO THE EXTENT PERMITTED BY APPLICABLE LAW, SYNCOPATION MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND (WHETHER EXPRESS OR IMPLIED INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY OR NON-INFRINGEMENT) WITH RESPECT TO THE DPL SOFTWARE. TO THE GREATEST EXTENT PERMITTED BY LAW, ANY IMPLIED WARRANTIES NOT EFFECTIVELY EXCLUDED BY THIS AGREEMENT ARE LIMITED TO NINETY (90) DAYS.

5.3 Without prejudice to the generality of clause 5.2 and subject to clause 5.4, no warranty is given by Syncopation that either the media or the DPL Software is error or virus free and CUSTOMER shall be responsible for carrying out its own checks.

5.4 If CUSTOMER discovers a material defect in the materials or workmanship of the media or documentation of the DPL Software which substantially affects CUSTOMER's use of the same and CUSTOMER notifies Syncopation of the defect within ninety (90) days from the date of delivery/dispatch, Syncopation shall, at its sole option and as CUSTOMER's sole and exclusive remedy, either refund the License Fee or use all reasonable endeavors to replace such media or documentation PROVIDED THAT such defect has not been caused by any incorrect use, abuse or corruption of the DPL Software or by use of the DPL Software on any equipment with which it is incompatible.

6 Limitations and Exclusions

6.1 TO THE EXTENT PERMITTED BY APPLICABLE LAW, SYNCOPATION SHALL HAVE NO LIABILITY TO CUSTOMER WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), UNDER ANY WARRANTY OR OTHERWISE ARISING OUT OF THIS AGREEMENT OR RELATED TO THE DPL SOFTWARE, FOR ANY LOSS OR DAMAGE TO CUSTOMER'S DATA, LOSS OF BUSINESS OR PROFIT, OR ANY CONSEQUENTIAL, INDIRECT, OR INCIDENTAL LOSS OR DAMAGE.

6.2 IN NO EVENT SHALL SYNCOPATION'S LIABILITY IN THE AGGREGATE ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED THE LICENSE FEE.

6.3 Syncopation shall not be liable to CUSTOMER for the adequacy, accuracy, interpretation, results, outputs, use or usefulness of the DPL Software. CUSTOMER waives any claims or rights of recourse it may have against Syncopation.

7 Ownership Rights

7.1 Title to the DPL Software (and all copies thereof) and all intellectual property rights therein are, and shall remain, vested in Syncopation or its licensors, as applicable, regardless of the ownership rights in the media on which the copies are stored. CUSTOMER shall not acquire any property rights, title, or interest in the DPL Software and all rights are reserved except as expressly provided herein.

8 Restricted Rights

8.1 CUSTOMER shall be responsible for complying with all applicable laws concerning the DPL Software and its use. Without prejudice to the foregoing, CUSTOMER acknowledges that the DPL Software may be restricted by the United States government from export to certain countries and CUSTOMER agrees that it will not distribute or re-export the DPL Software in any way which will violate any of the export control laws or regulations of the United States.

8.2 The DPL Software is a commercial product, developed at private expense, and provided with restricted rights. Use, reproduction, release, modification or disclosure of the DPL Software, or any part thereof, including technical data, by the United States Government is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies.

9 Termination

9.1 This License is terminated automatically:

9.1.1 on the EXPIRATION date;

9.1.2 if CUSTOMER fails to comply with any part of this Agreement; or

9.1.3 if CUSTOMER becomes bankrupt or insolvent, or becomes the subject of any proposal, resolution or petition for winding up, or is unable to pay its debts, or if a trustee, receiver, administrative receiver or similar officer is appointed in respect of all or any part of its business or assets; or

9.1.4 (without prejudice to Syncopation's other rights) Syncopation has not received the License Fee in full, cleared funds within 60 days of CUSTOMER's receipt of the DPL Software or its invoice, whichever occurs first.

9.2 Upon termination CUSTOMER must immediately destroy all copies of the DPL Software (including documentation) or return them to Syncopation. All provisions of this Agreement relating to proprietary rights, non-disclosure and limitation of liability shall survive the termination of this Agreement. If this Agreement is terminated pursuant to this Clause 9, CUSTOMER will not be entitled to a refund of any License fees paid under this Agreement.

10 Notices

10.1 Any notice provided pursuant to this Agreement, if specified to be in writing, shall be in writing and shall be deemed given (i) if by hand delivery, upon receipt thereof, (ii) if mailed, three (3) days after posting, postage prepaid, or (iii) if by next day delivery service, upon such delivery. All notices to Syncopation shall be addressed to the address appearing above or such other address as Syncopation may in the future notify to the CUSTOMER.

11 Governing Law

11.1 This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts and the parties hereby consent to the exclusive jurisdiction of the Courts of the Commonwealth of Massachusetts. The parties agree that the United Nations Convention on Contracts for the International Sale of Goods is specifically excluded from application to this Agreement.

12 Effect of Invalidity

12.1 The invalidity in whole or in part of any provision hereof shall not affect the validity of any other provision.

13 Assignment

13.1 Either party (the "Transferor") may assign or transfer all of its rights and/or obligations under this Agreement and this Agreement to any successor to the whole or part of its business, whether by sale, assignment, transfer, merger, operation of law or otherwise, (the "Successor"). In such case the Transferor and the Successor may affect the novation by giving the other party written notice in which the Successor agrees in writing to accept and assume the rights and the obligations of the Transferor. The effect of such notice will be that:

13.1.1 the Successor will be substituted for the Transferor with effect from the date specified in the notice and the Transferor will no longer have those rights and obligations but such notice shall not affect any rights or obligations under this Agreement prior to that date; and

13.1.2 in the case of a transfer by Syncopation, any limit on the liability of Syncopation under the Agreement will apply to Syncopation and the Successor on an aggregated basis so that the maximum combined liability of Syncopation and the Successor will not exceed the limit of liability of Syncopation before the novation takes effect.

13.2 Subject to Clause 13.1, the CUSTOMER shall not assign or otherwise transfer all or any part of the DPL Software or this Agreement without the prior written consent of Syncopation.

14 Entire Agreement

14.1 This Agreement supersedes all prior agreements, representations, warranties, undertakings and understandings made with respect to the same subject and is the entire agreement of the parties as to its subject matter. This Agreement may not be changed or modified in any manner, orally or otherwise, except in writing signed by each party.