QBuild
Engineering ERP Integration

QBuild Software
210 Telson Road
Markham, ON L3R 1E6

+1 905 479 7811
+1 905 479 2636
info@QBuildSoftware.com

QBuild Corporation End User License Agreement

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TABLE OF CONTENTS

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SOFTWARE LICENSE AGREEMENT

PLEASE READ THIS SOFTWARE LICENSE AGREEMENT CAREFULLY BEFORE DOWNLOADING, INSTALLING OR USING THE SOFTWARE.

BY DOWNLOADING, INSTALLING OR USING THE SOFTWARE (OR PERMITTING THE SOFTWARE TO BE DOWNLOADED OR INSTALLED ON YOUR BEHALF), YOU ("**CUSTOMER**") ARE CONSENTING TO BE BOUND BY THIS AGREEMENT. IF YOU ARE ACCEPTING THESE TERMS ON BEHALF OF A CUSTOMER, YOU REPRESENT AND WARRANT THAT YOU HAVE FULL AUTHORITY TO BIND THE CUSTOMER TO THESE TERMS. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE AND RETURN THE SOFTWARE TO THE PLACE OF PURCHASE.

1. INTERPRETATION

1.1 Definitions. In this Agreement, unless the context otherwise requires, the following terms have the following meanings:

"**Agreement**" means this agreement and any schedule, appendix, addendum or amendment which is signed by the parties and which references this agreement.

"**Claim**" has the meaning attributed to such term in section 7.1 of this Agreement.

"**Customer**" has the meaning set out in above.

"**Designated Site**" means the Customer's business premises for the installation of the Software as set out in the Quotation.

"**Parties**" means the Supplier and the Customer; and "**Party**" means either one of them.

"Quotation" means the Quotation between the Customer and the party (either the Supplier or an authorized reseller of the Supplier) with respect to the Software in the form provided by Supplier.

"**Software**" means the Supplier's computer software referred to as CADLINK.

"**Supplier**" means QBuild Corporation, a corporation incorporated under the laws of Canada.

"Term", **"Initial Term"** and **"Renewal Term"** have the meaning ascribed to such terms in section 2.3.

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1.2 Headings. The inclusion in this Agreement of headings, subheadings and table of contents is for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

1.3 Gender and Number. In this Agreement, words importing the singular include the plural and vice versa and words importing gender include all genders.

1.4 Currency. All payments required to be made under this Agreement shall be paid in the currency for payment as set out in the Quotation.

1.5 Governing Law. This Agreement shall be governed by the laws of the Province of Ontario and the laws of Canada applicable in the Province of Ontario.

1.6 Invalidity of Provisions. Each of the provisions contained in this Agreement is distinct and severable and a declaration of invalidity or unenforceability of any such provision by a court of competent jurisdiction shall not affect the validity or enforceability of any other provision hereof.

1.7 Entire Agreement. This Agreement and the Quotation constitute the entire agreement between the parties pertaining to its subject matter and supersedes all prior agreements, understandings, negotiations and discussions, whether oral or written, of or between the Parties in connection with the subject matter of this Agreement. There are no warranties, representations or agreements between the parties in connection with such subject matter except as specifically set forth or referred to in this Agreement. The terms of this Agreement and the Quotation apply exclusively notwithstanding any conflicting or additional terms and conditions in any purchase order or other document or communication from the Customer.

1.8 Modification and Waiver. This Agreement may not be modified unless agreed to in writing by both the Customer and the Supplier. No extension of any time limit granted by a Party shall constitute an extension of any other time limit or any subsequent instance involving the same time limit. No consent by a Party to, nor waiver of, a breach by the other, whether express or implied, shall constitute a consent to or waiver of or excuse for any other different or subsequent breach, unless such waiver or consent is in writing and signed by the Party claimed to have waived or consented. Except as otherwise provided herein, no term or provision hereof shall be deemed waived and no breach shall be deemed excused.

1.10 Severability. In the event that any part, article, paragraph, sentence or clause of this Agreement shall be held to be indefinite, invalid, illegal or otherwise unenforceable, the entire Agreement shall not fail, but the unenforceable, illegal, invalid or indefinite provision shall be severed from the remainder of this Agreement, which shall continue in full force and effect.

1.11 Priority. In the event of any discrepancy between the provisions of any Quotation relating to the subject matter of this Agreement and this Agreement, the provisions of this Agreement shall prevail.

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1.12 Language. The parties confirm that it is their express wish that this agreement, as well as any other documents relating to this agreement, including notices, schedules and authorizations, have been and shall be drawn up in the English language only. Les parties aux présentes confirment leur volonté expresse que cette convention, de même que tous les documents s'y rattachant, y compris tous avis, annexes et autorisations s'y rattachant, soient rédigés en langue anglaise seulement.

2. LICENSE

2.1 Grant of License. The Supplier hereby grants to the Customer a revocable, personal, non-transferable, non-exclusive license to use the Software during the Term, as follows:

(a) the Customer may install and use the Software solely for the business purposes of the Customer; and

(b) the Customer may install and use the Software only on its computer equipment at the Designated Site and only on the number of computer workstations and/or servers for which Customer has paid a license fee.

Supplier may from time to time ask for written confirmation from the Customer as to the number of computer workstations and/or servers on which the Software is installed. The Customer shall use reasonable commercial efforts to respond with 10 days of such request. At Supplier's option, Supplier may terminate this license for failure to pay the required license fee.

2.2 Limitation on Grant of License. The Customer acknowledges that the only right which the Customer obtains to the Software is the license granted in accordance with the terms of this Agreement. Such license does not permit the Customer to, and the Customer agrees that it will not:

(a) install or use the Software for any use or purpose other than for the Customer's business purposes;

(b) install or use the Software on any computer hardware or equipment other than at the Designated Site;

(c) provide, lease, lend, or otherwise use or allow others to use the Software for their own benefit or for the benefit of third parties;

(d) modify, incorporate into or with other software, or create a derivative work of any part of the Software;

(e) copy, reproduce or duplicate the Software, by any means or in any manner, except for backup purposes as set out above;

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(f) decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, underlying user interface techniques or algorithms of the Software by any means whatever.

2.3 Term. This Agreement will be effective from the date it is accepted by the Customer by an email or other communication to the Supplier confirming its acceptance (or failing such communication, shall be deemed effective from the date the Software is download or installed by or on behalf of the Customer) for an initial term specified in the Quotation (the "**Initial Term**"). If the Quotation does not specify the length of the Initial Term, then the Initial Term shall be a period of one year. The term shall be automatically extended for additional twelve (12) month periods (each such twelve month period being referred to as a "**Renewal Term**") unless the Customer terminates this Agreement by giving the Supplier at least 90 days' written notice prior to the end of the Initial Term or the Renewal Term, as the case may be. The Initial Term and all Renewal Terms are sometimes collectively referred to as the "**Term**". Upon termination of this Agreement, the Customer shall immediately return or destroy the Software from its computer workstations and servers and all portions and copies thereof and all documentation provided in connection with the Software and, if requested by the Supplier, shall certify in writing as to the destruction and return of the same.

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3. DELIVERY, INSTALLATION AND ACCEPTANCE

3.1 Installation. The Supplier agrees to install the Software on the Customer's computer equipment at the Designated Site. The Software may only be installed and used only on the number of computer workstations and/or servers for which Customer has paid a license fee.

3.2 Customer Responsibilities. The Customer agrees:

(a) to ensure that sufficient Customer representatives are present as the Supplier may require in connection with the delivery and installation of the Software at the Designated Site;

(b) to ensure that the computer equipment on which the Software is to be installed is in good condition and functioning properly.

3.3 Notice. The Supplier will notify the Customer when the Software has been installed and is functioning.

4. CHARGES AND PAYMENT

4.1 Payment. In consideration of the grant of license contained in this Agreement, the Customer agrees to pay the Supplier a license fee in the manner and upon the timing set out in the Quotation. If the Quotation is silent on the timing of the payment of a license fee, then (a) the license fee for the first year of the term shall be due and payable upon order of the Software by the Customer; and (b) for each Renewal Term, the license fee for each Renewal Term shall be due and payable within 30 days of date of invoice sent by Supplier for the applicable Renewal Term (which Supplier is expecting to invoice Customer within 30 days of commencement of a Renewal Term).

4.2 Taxes. All charges and fees provided for in this Agreement are exclusive of and do not include any taxes, duties, or similar charges imposed by any government. The Customer agrees to pay or reimburse the Supplier for all federal, state, dominion, provincial, or local sales, value added tax, use, personal property, import, export, excise or other taxes, fees, or duties arising out of this Agreement or the transactions contemplated by this Agreement. If the Customer fails to make any payment when due, the Supplier may suspend delivery of products, support services and any other services until the past due payment is made.

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5. PROPRIETARY RIGHTS

5.1 Property Rights. The Customer acknowledges as follows:

(a) the Software is licensed, not sold;

(b) all right, title, interest, ownership rights, and all intellectual property rights in and to the Software (including without limitation the related source code, object code and documentation) are and shall remain solely and exclusively in the Supplier;

(c) the Customer agrees not to take any action to jeopardize, limit or interfere in any manner with the Supplier's ownership of or rights in or to the Software;

(d) the Customer acquires no right, title or interest whatsoever in or to the Software except the right to use the Software as specifically provided in this Agreement; and

(e) the Customer acknowledges that the Software is protected by copyright, other intellectual property laws and by international treaties, and agrees to abide by all applicable laws, regulations and treaties regarding the Software and the license granted under this Agreement.

5.2 Equitable Remedies. The Customer acknowledges and agrees that money damages and other remedies at law may not be a sufficient remedy to the Supplier in the event of a breach by the Customer of section 2.2 or section 5.1 of this Agreement, and that the equitable remedies of specific performance and injunction may be the appropriate remedies in such circumstances in addition to any other remedies to which the Supplier may be entitled. The Customer agrees not to oppose the granting of equitable relief on the grounds that money damages are adequate, and waives any objection to the imposition of such relief and any requirement for the posting of any security, including a bond, with respect to such relief.

6. REPRESENTATIONS AND WARRANTIES

6.1 Representations and Warranties of the Supplier. The Supplier represents and warrants that the performance by the Supplier of its obligations under this Agreement will not violate the intellectual property rights of any third party, including without limitation any trade-mark, copyright or other similar rights.

6.2 Representations and Warranties of the Customer. The Customer represents and warrants that the Customer has the corporate power and authority to enter into and to perform its obligations under this Agreement.

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7. INFRINGEMENT

7.1 Notice of Infringement. The Customer shall immediately notify the Supplier in writing of any claim, demand, action, suit or proceeding, threatened or actual, against the Customer, which relates to the Customer's use of the Software and in which it is alleged that the Customer or the Software has or may have infringed the trademark, patent, copyright or other similar intellectual property rights of any third party (a "Claim").

7.2 Option to Defend. The Supplier, if it elects to do so by notice in writing to the Customer, may defend and/or settle any Claim, in its sole discretion and in whatever manner that the Supplier deems appropriate, and, in that event, the Customer hereby appoints the Supplier as its lawful attorney, with full power of substitution, to do such things as the Supplier in its discretion considers necessary or desirable in order to defend and/or settle any such Claim, and such appointment, coupled with an interest, is irrevocable by the Customer. In the event that the Supplier elects to undertake the defence and/or settlement of a Claim, the Customer agrees to co-operate in all reasonable respects with the Supplier in that regard, at the Supplier's expense.

7.3 Indemnification by the Supplier for Claims. The Supplier agrees to indemnify and hold the Customer harmless from and against any loss, damage or liability, including reasonable legal costs, that the Customer may suffer or incur as a result of or in connection with any Claim in which it is determined by a court of competent jurisdiction (**where all rights to object to or appeal from the determination have been exhausted or have expired)**, or admitted in writing by the Supplier, that the Customer's use of the Software in accordance with the terms of this Agreement has infringed the trade-mark, patent, copyright or other similar intellectual property rights of any third party.

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8. LIMITED WARRANTY

8.1 Limited Warranty. The Supplier warrants to the Customer as follows:

(a) for a period of twelve months from the date of installation of the Software on the Customer's computer equipment at the Designated Site, the Software will perform according to the Supplier's general standards; and

(b) any services which the Supplier is obligated to perform under this Agreement, including without limitation installation, maintenance and support services, will be performed in a good and professional manner and in accordance with all applicable laws and regulations and all generally accepted industry standards for the provision of similar services.

8.2 Exclusive Remedies. Notwithstanding anything herein to the contrary, the Supplier's entire liability, and the Customer's sole and exclusive remedy, for a breach of the warranty set out in section 8.1 shall be, at the Supplier's sole option, for the Supplier to:

(a) use commercially reasonable efforts to promptly correct the breach;

(b) provide a fix, patch or work-around for the problem; or

(c) return the license fee paid by the Customer for the Software.

8.3 Disclaimer. Except as expressly set out in section 6.1 and section 8.1, the Supplier makes no representations, warranties or conditions, express, statutory or implied, with respect to the Software, the documentation or any services to be provided by the Supplier hereunder. THE SUPPLIER EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS, WARRANTIES OR CONDITIONS, INCLUDING WITHOUT LIMITATION ANY IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. The Supplier does not warrant that the Software will meet the Customer's requirements nor that it will function uninterrupted, error free or that all defects in the Software will be corrected. The Supplier does not represent or warrant that the Software will be capable of achieving any particular result or results in the Customer's business or operations. THE LIMITED WARRANTY SET OUT ABOVE IS GIVEN AND ACCEPTED IN LIEU OF ANY AND ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND ANY IMPLIED WARRANTIES OR CONDITIONS ARISING FROM A COURSE OF DEALING, USAGE OF TRADE, OR COURSE OF PERFORMANCE.

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8.4 No Liability. Notwithstanding anything to the contrary set out elsewhere in this Agreement, in no event whatsoever will the Supplier, its directors, officers, employees, agents, contractors or affiliates, be liable for any claim for:

(a) punitive, exemplary or aggravated damages;

(b) damages for loss of profits or revenue, or failure to realize expected savings;

(c) indirect, consequential or special damages of any kind;

(d) contribution, indemnity or set-off in respect of any claims against the Customer by any third party;

(e) any damages whatsoever related to any software that is not designed or manufactured by the Supplier or any computer hardware; or

(f) any damages whatsoever relating to interruption, delays, errors or omissions.

8.5 Limitation on Liability. The parties specifically agree that the maximum total liability of the Supplier, its affiliates, suppliers, directors, officers, agents, representatives and employees, for any claim whatsoever arising in connection with this Agreement, the Software or both, under any circumstances, regardless of the cause of action and including without limitation claims for breach of contract, tort, negligence or otherwise, and the Customer's sole remedy therefor, shall be strictly limited to an award for direct, provable damages not to exceed the amount of fees paid by the Customer to the Supplier under this Agreement.

9. GENERAL PROVISIONS

9.1 Assignment. This Agreement may not be assigned by the Customer without the prior written consent of the Supplier.

9.2 Force Majeure. The Supplier will have no obligation to provide installation or maintenance services to the extent and for the period that the Supplier is prevented from doing so by reason of *force majeure* or any cause beyond its reasonable control, including without limitation the inability to use or the failure of any third party telecommunications carrier or other services.

9.3 Attornment. Subject to the right of the Supplier to pursue equitable remedies pursuant to section 5.2 of this Agreement in the courts of the Customer's jurisdiction, each Party irrevocably submits to the exclusive jurisdiction of the courts of Ontario for the purpose of any suit, action or other proceeding arising out of or related to this Agreement or its subject-matter, and the Customer agrees not to assert that Ontario is an inconvenient forum for any such suit, action or proceeding.