



END USER LICENSE AGREEMENT TERMS AND CONDITIONS

THIS END USER LICENSE AGREEMENT (this “**Agreement**”) is between AFFECTING CHANGE INC., a Canadian corporation (“**AC**”) and _____ (“**User**” or “**You**”) on _____ (“**Effective Date of Agreement**”).

RECITALS

A. AC has developed and owns its proprietary AC enabledchange™ Template (as defined herein), which assists authorized end users of such AC enabledchange™ Template to perform or carry out the Function (as defined herein).

B. The parties seek to give the User a right to use the AC enabledchange™ Template for the Function only, and pursuant to the other terms and conditions of this Agreement.

C. The enabledchange™ Template may be available through the AC website (at <http://www.affectingchange.com>) (the “AC Website”) or otherwise as made available directly from AC.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.1 “Function” means use of the AC enabledchange™ Template for the purpose of facilitating the design process to achieve a type of green building certification.

1.2 “AC enabledchange™ Template” means AC’s proprietary calculator, currently known as the “enabledchange™ Template”, and its various versions, which assist an end user to perform and carry out the Function (as defined herein).

1.3 “AC Marks” means any trademarks, services marks, names, or logos that are proprietary to AC.

1.4 “Usage Period” means the time period that commences on the Effective Date of this Agreement and terminates or expires on the Expiration Date.

1.5 “Expiration Date” means the date noted on the User’s copy of the AC enabledchange™ Template.

1.6 “Limited License” means a personal, limited, non-exclusive, non-transferable, non-sublicensable, non-assignable, personal, single-user, revocable right to allow only the User the ability to use the AC enabledchange™ Template (only in the explicit version that is made available to the User as of the Effective Date) only to carry out or perform the Function (as defined herein), but for no other uses, purposes or functionalities whatsoever, only during the Usage Period, and subject to User’s compliance with all the terms and conditions of this Agreement, including without limitation payment of any License Fee (if such is applicable).

1.7 “License Fee” means the fee paid by the User to AC as a condition to the User’s use of the AC enabledchange™ Template, including without limitation as a condition to the grant of the Limited License to the User.

1.8 “New Versions” means updated or upgrades versions of the particular AC enabledchange™ Template that is the subject of the Limited License.

3. Additional Restrictions on Limited License in, and Use of, the AC enabledchange™ Template. Any rights granted to User under this Agreement, including without limitation the Limited License to use the AC enabledchange™ Template, are explicitly conditioned on and subject to the following:

3.1 User hereby acknowledges and agrees as following with regard to all New Versions:

(i) the Limited License only governs the specific version of the AC enabledchange™ Template in existence as of the Effective Date of this Agreement and, explicitly, the Limited License does not cover, include or govern any New Versions; and

(ii) in the event AC develops any New Versions after the Effective Date of this Agreement, AC is not obligated to grant User any rights to use such New Versions.

3.2 In addition to any other terms and conditions on the Limited License set forth above, User hereby agrees it will not do any of the following actions, with the agreement that any one of the following actions shall constitute an immediate breach of the Limited License and this Agreement by User:

(i) Create derivative works of the AC enabledchange™ Template;

(ii) share the AC enabledchange™ Template with, or disclose them to, any third party without AC’s prior express written consent in each instance (which may or may not be granted in AC’s sole discretion);

(iii) distribute, sell, assign, sublicense, lease, loan, rent, timeshare, or otherwise transfer the AC enabledchange™ Template or any of User’s rights in or to the AC enabledchange™ Template under this Agreement to any other person or entity;

(iv) remove, alter, cover or obscure any trademark, logo, product identification, copyright notice, or other notice on the AC enabledchange™ Template;

(v) reverse engineer, decompile, or disassemble the AC enabledchange™ Template (or its underlying AC enabledchange™ Template that comes into the possession or control of User for any reason), or otherwise extract or export information or data from any portion of the foregoing;

(vi) use the AC enabledchange™ Template in any way in order to attempt to discover or ascertain any components of the AC enabledchange™ Template (if such components of the AC enabledchange™ Template have not be explicitly given to User by AC); and/or

(vii) permit or cause anyone else to do anything prohibited by this Section 3 or by any other provision in this Agreement.

3.3 For purposes of AC maintaining the integrity and accuracy of AC’s products and services, including without limitation the integrity and accuracy of the particular version of the AC enabledchange™ Template that is the subject of the License, AC has the right, in its discretion, and at any time and from time to time, to change the Expiration Date. User hereby acknowledges and agrees that upon Expiration Date of the Usage Period, the user’s limited license to use the AC enabledchange™ Template terminates and any continued use of such AC enabledchange™ Template thereafter shall constitute an immediate breach of the limited license and this Agreement by User.

4. Ownership by AC.

4.1 AC or its third-party suppliers or licensors (collectively the “Third Party Licensors”), if any, retains all rights, title and interest in and to all patents, copyrights, trademarks, trade secrets, other intellectual property rights and other proprietary rights relating to, arising out of, or residing in the AC enabledchange™ Template, the AC enabledchange™ Template, and the AC Marks. User will do nothing inconsistent with the above ownership rights of AC or its third-party Licensors. Except for the Limited License to use only the AC enabledchange™ Template as expressly granted in Section 2 of this Agreement, User acquires no rights, title or interest, whether express or implied, in or to the AC enabledchange™ Template, the AC enabledchange™ Template, or any AC Marks, or any other AC intellectual property rights, and all rights not expressly granted in this Agreement are reserved exclusively by AC or its Third-Party Licensors, if any exist.

4.2 Without limiting the forgoing in any way, and for the avoidance of doubt, the User acknowledges and agrees that: (a) neither the above Limited License nor any other provisions of this Agreement grants the User any independent right or license to use any of the AC Marks in any way apart from the explicit way any such AC Marks may have been expressly incorporated by AC into its AC enabledchange™ Template; and (b) User shall not contest, challenge or impair or assist others to contest, challenge or impair AC’s rights, title and interest in and to the AC Marks, its AC enabledchange™ Template or its underlying AC enabledchange™ Template, or in any registrations thereof or attempt to register any of the foregoing (including without limitation attempt to register any trademarks, service marks, or trade names that are the same as or confusingly similar to the AC Marks).

5. AC enabledchange™ Template is Confidential and Proprietary to AC.

5.1 For purposes of this Agreement, the term “AC enabledchange™ Template” means AC’s proprietary and confidential logic, methodologies, processes, and/or trade secrets used or employed by AC to develop the AC Collector Tool, including but not limited to its logic related to the conversion or characterization of any data. The AC enabledchange™ Template is confidential and proprietary to AC, and AC has taken steps to keep its AC enabledchange™ Template confidential.

5.2 User hereby acknowledges and agrees as following with regard to the AC enabledchange™ Template and the overall AC enabledchange™ Template:

(a) The AC enabledchange™ Template may differ from methodologies or protocols developed or used by others. Consequently, the results achieved by a building by using the AC Compliance Tool may differ from the status which might be achieved by that same building if another party’s methodology or protocols are used.

(b) Without limiting the generality of any provision of this Agreement, User hereby agrees that it will assist AC in preserving the integrity and confidentiality of the AC enabledchange™ Template and its underlying AC enabledchange™ Template by: (i) not using any part of the AC enabledchange™ Template other than as explicitly intended by such AC enabledchange™ Template in existence as of the Effective Date; and (ii) not disclosing to, or otherwise sharing to, any third party the contents or components of any AC enabledchange™ Template which may come into the User’s control or possession for any reason.

6. Representation and Warranties by User; Indemnification by User.

6.1 Representation and Warranties by User.

User hereby represents and warrants to AC that any information, data or other content that User uses as part of its use of the Limited License will not infringe on any copyright or other intellectual property rights of any third party.

6.2 Indemnification by User.

To the maximum extent permissible by law, User will indemnify AC, its subsidiaries, affiliates, directors, officers, consultants, agents, and employees and hold it harmless from and against any and all claims, liabilities, damages, penalties, settlements, and costs and expenses (including, without limitation, reasonable attorneys’ fees), asserted by any and all third parties (collectively “Claims”) alleging or resulting from: (a) User’s breach of any of the terms or conditions of this Agreement including without limitation any covenants, representations or warranties of User under this Agreement; or (b) any use of the AC enabledchange™ Template not in strict compliance with this Agreement or the AC enabledchange™ Template’s instructions or documentation.

7. Termination of Agreement; Effect of Termination.

7.1 AC has the right to immediately terminate this Agreement or, in the alternative, this Agreement shall terminate immediately and automatically, upon any one or more of the following:

(a) Upon the termination or expiration of the Usage Period as contemplated by Section 3 herein;

(b) Upon User’s breaches any of the terms of this Agreement;

(c) Upon User’s breach of any other AC agreement or AC policy to which the User is bound, including but not limited to (if applicable to User) any AC Privacy Policy (the “Privacy Policy”).

7.2 In addition to any other rights that AC has in law or equity, upon termination of this Agreement for any reason, User hereby agrees that it must immediately cease all use of the AC enabledchange™ Template and permanently destroy any copies of the AC enabledchange™ Template in User’s possession.

7.3 The following provisions will survive termination of this Agreement and the Limited License for any reason: Sections 3 (d), 4, 5, 6, 7, 8, 9 and 10.

8. Warranty Disclaimer. THE AC enabledchange™ Template, THE AC ENABLEDCHANGE™ TEMPLATE, AND THE AC MARKS ARE PROVIDED “AS IS” AND “WITH ALL FAULTS” WITHOUT WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED OR OTHERWISE. AC AND ITS THIRD-PARTY SUPPLIERS, IF ANY, HEREBY EXPRESSLY DISCLAIM ALL WARRANTIES, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT OF THIRD-PARTY RIGHTS.

AC DOES NOT GUARANTEE OR WARRANT THAT THE AC ENABLEDCHANGE™ TEMPLATE WILL MEET USER’S REQUIREMENTS, THAT USER’S USE OF THE AC ENABLEDCHANGE™ TEMPLATE WILL BE UNINTERRUPTED OR ERROR FREE, OR THAT USER WILL ACHIEVE ANY SPECIFIC RESULT FROM THE USE OF THE AC ENABLEDCHANGE™ TEMPLATE.

IN THE EVENT THE USER DOWNLOADS THE AC ENABLEDCHANGE™ TEMPLATE FROM ANY EMAIL OR WEBSITE (INCLUDING ANY EMAIL SENT BY AC OR ANY AC WEBSITE), THE USER DOES SO AT THE USER’S OWN DISCRETION AND RISK AND USER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO USER’S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE SAME.

THE AC ENABLEDCHANGE™ TEMPLATE DOES NOT PURPORT TO INSTRUCT USERS ON THE APPROPRIATE DESIGN, CONSTRUCTION, OPERATIONS, MAINTENANCE, STANDARDS, APPLICABLE LAWS, CODES OR REGULATIONS FOR ANY BUILDING PROJECT OR BUILDING THEREIN.

8. Warranty Disclaimer (Cont'd).

USE OF THE AC ENABLEDCHANGE™ TEMPLATE DOES NOT ESTABLISH, EXPRESSLY OR IMPLICITLY, THE APPROPRIATE STANDARD OF CARE OF LICENSED DESIGN OR OTHER PROFESSIONALS NOR THE APPROPRIATE DUTIES AND RESPONSIBILITIES OF OWNERS, DESIGN, CONSTRUCTION, OPERATIONS OR MAINTENANCE PERSONNEL.

AC DOES NOT GUARANTEE OR WARRANT THE ACTUAL PERFORMANCE OF ANY PROJECT OR BUILDING THEREIN AS A RESULT OF THE USE OF THE AC ENABLEDCHANGE™ TEMPLATE.

THE AC ENABLEDCHANGE™ TEMPLATE IS NOT A DESIGN, CONSTRUCTION, OPERATIONS OR MAINTENANCE TOOL OR A QUALITY OR PERFORMANCE ASSURANCE SYSTEM. BUILDING SYSTEMS, TECHNOLOGY, CONSTRUCTION PROCESSES, DESIGN METHODOLOGIES AND BEST PRACTICES ARE CONSTANTLY EVOLVING AND NO THIRD-PARTY TOOL, INCLUDING THE AC ENABLEDCHANGE™ TEMPLATE, CAN ACCOUNT FOR THESE CHANGES OR THE SITE-SPECIFIC VARIANCES AND LIMITATIONS ASSOCIATED WITH INDIVIDUAL PROJECTS AND THE BUILDINGS THEREIN.

USE OF THE AC ENABLEDCHANGE™ TEMPLATE DOES NOT SERVE AS A SUBSTITUTE FOR THE WORK AND ADVICE OF KNOWLEDGEABLE, LICENSED DESIGN, AND OTHER PROFESSIONALS; SKILLED CONSTRUCTION PERSONNEL; BUILDING OPERATORS; AND DEDICATED BUILDING OWNERS.

AC MAKES NO REPRESENTATIONS OR WARRANTIES ABOUT THE RESULTS TO BE OBTAINED FROM USING THE AC ENABLEDCHANGE™ TEMPLATE.

AC IS NOT RESPONSIBLE FOR ANY STATEMENT, OPINION, OR ADVICE (OR ANY DAMAGES ARISING FROM THE FOREGOING) MADE BY ANYONE (INCLUDING, WITHOUT LIMITATION, BY ANOTHER USER) OTHER THAN BY AN AUTHORIZED AC SPOKESPERSON SPEAKING IN HIS/HER OFFICIAL CAPACITY.

AC DOES NOT ENDORSE OR VERIFY THE ACCURACY OR RELIABILITY OF ANY STATEMENT, OPINION, OR ADVICE MADE BY ANYONE (INCLUDING, WITHOUT LIMITATION, BY ANOTHER USER) OTHER THAN BY AN AUTHORIZED AC SPOKESPERSON SPEAKING IN HIS/HER OFFICIAL CAPACITY.

9. Limitation of Liability.

AC AND ITS THIRD-PARTY SUPPLIERS, IF ANY, WILL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL, CONSEQUENTIAL, INCIDENTAL, OR OTHER DAMAGES OF ANY KIND (INCLUDING LOST PROFITS, LOSS OF BUSINESS OR GOODWILL, LOSS OF USE OF DATA, INTERRUPTION OF BUSINESS, OR LOSS OF PRODUCTIVITY, BUILDING INEFFICIENCIES, SUBSTANDARD OR UNANTICIPATED BUILDING AND/OR SYSTEM PERFORMANCE) UNDER ANY THEORY OF LIABILITY, EVEN IF AC OR ITS THIRD-PARTY SUPPLIERS, IF ANY, HAVE BEEN ADVISED OF THE POSSIBILITY OF THE SAME.

USER ACKNOWLEDGES THAT THIS LIMITATION IS REASONABLE AND THAT THIS LIMITATION OF LIABILITY IS A FUNDAMENTAL PART OF THIS AGREEMENT WITHOUT WHICH AC WOULD BE UNWILLING TO GRANT THE LIMITED LICENSE TO THE USER OR PERMIT THE USER THE RIGHT TO USE THE AC ENABLEDCHANGE™ TEMPLATE.

NOTWITHSTANDING ANY PROVISION TO THE CONTRARY, THE AGGREGATE LIABILITY OF AC AND ITS THIRD-PARTY SUPPLIERS, IF ANY, UNDER THIS AGREEMENT WILL BE LIMITED TO THE LESSER OF: (A) TOTAL AMOUNT USER HAS PAID TO AC FOR THE LIMITED LICENSE IN THE PAST TWELVE (12) MONTHS, IF ANY HAS BEEN PAID; OR (B) 1500.00 CANADIAN DOLLARS.

SOME PROVINCES DO NOT ALLOW THE EXCLUSION OF CERTAIN DAMAGES OR CERTAIN LIMITATIONS OF LIABILITY, SO THE ABOVE LIMITATION MAY NOT BE ENFORCEABLE AGAINST USER.

10. General.

10.1 Assignment. User may not assign this Agreement without the prior written consent of AC. At AC's sole discretion, AC may assign this Agreement and all documents that it incorporates to a third party in the event of a merger, acquisition or corporate reorganization of AC or a transfer of substantially all of AC's assets.

10.2 Entire Agreement; Waiver. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof. The failure of either party to require performance by the other party of any provision hereof will not affect the full right to require such performance at any time thereafter; nor will the waiver by either party of a breach of any provision of this Agreement be taken or held to be a waiver of the provision itself.

10.3 Severability. In the event of invalidity of any provision of this Agreement, the parties agree that such invalidity will not affect the validity of the remaining portions of this Agreement.

10.4 Governing Law. This Agreement, your rights and obligations and all actions contemplated by this Agreement will be governed by the laws of the Canada and the Province of Ontario (without regard to its conflict of law provisions), as if the Agreement were a contract wholly entered into and wholly performed in Toronto, Ontario, independent of your actual state or country of residence. Any dispute, controversy or claim arising out of or relating to this Agreement whether at law or in equity will be resolved exclusively in the federal or provincial courts located in Toronto, Canada, and you hereby irrevocably attorn and unconditionally consent to the exclusive jurisdiction and venue of such courts.

10.5 Amendment. USER AGREES THAT AC MAY CHANGE AND AMEND THE TERMS AND CONDITIONS OF THIS AGREEMENT (INCLUDING WITHOUT LIMITATION DESIGNATING THE EXACT "EXPIRATION DATE" OF THE USAGE PERIOD AS CONTEMPLATED BY SECTION 3 HEREIN) AT ANY TIME UPON NOTICE TO USER (WHICH NOTICE MAY BE VIA EMAIL, OTHER ELECTRONIC MEANS OR BY ANY OTHER REASONABLE METHOD), AND THAT USER'S CONTINUED USE OF THE AC ENABLEDCHANGE™ TEMPLATE OR ANY OTHER RIGHTS UNDER THIS AGREEMENT AFTER RECEIPT OF THE NOTICE CONSTITUTES ACCEPTANCE OF ANY NEW OR ADDITIONAL TERMS OR CONDITIONS. BY ACCEPTING THIS AGREEMENT OR BY USING THE AC ENABLEDCHANGE™ TEMPLATE IN ANY WAY, USER ACKNOWLEDGES AND AGREES TO BE BOUND BY EACH OF THE TERMS AND CONDITIONS SET FORTH ABOVE IN THIS AGREEMENT.

10.6 Counterparts. This Agreement may be executed in two or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument and be binding upon the parties.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the Effective Date written above.

First Name: _____

Last Name: _____

Title: _____

Name of Organization: _____

Date of Signature: _____

I have authority to bind the organization (tick to accept).