

FAX C++/ACTIVEX FOR MODEMS DISTRIBUTION/RUNTIME LICENSE AGREEMENT

This Software Distribution/Runtime License Agreement (“Agreement”) is made and entered into by and between _____ (“Licensee”), a _____ corporation having its principal place of business at _____ and Black Ice Software, LLC. (“Licensor”), a New Hampshire corporation having its principal place of business at 20 Broad St, Suite 2, Nashua, NH 03064 effective _____ (the “Effective Date”). The parties agree as follows:

1. **Scope.** This Agreement establishes the terms and conditions governing the commercial distribution of **Fax C++/ActiveX for Modems** (the “Software”), developed by the Licensor, as a component of _____ (the “Application”), a product of the Licensee, which will be developed to _____ (“Brief Description of Application Purpose”).

Distribution of the Software by the Licensee or its affiliates or resellers in any other form other than as a component of the Application is strictly prohibited.

2. **License Grant.** In consideration of the license fees paid and subject to the terms and conditions of this Agreement, Licensor grants to Licensee a worldwide, non-exclusive, non-transferable, limited license to reproduce exact copies, distribute and sublicense use of the Software, solely as incorporated in the Application, directly or indirectly through Licensee’s normal distribution channels to end users. Licensee shall not distribute or sublicense the Software except as incorporated in the Application. Software updates provided to Licensee under a Licensor support plan shall be deemed Software hereunder and may be re-distributed to end users as incorporated in Application updates. Licensor reserves all rights not expressly and unambiguously granted herein.

3. **Term and Termination.** This Agreement may be terminated by either party immediately upon the occurrence of any of the following events:

- a) the other party ceases to do business as a going concern or otherwise terminates its business operations;
- b) the other party becomes insolvent or files a petition for bankruptcy;
- c) an involuntary petition for bankruptcy is filed against the other party, which petition is not dismissed within sixty (60) calendar days of filing;
- d) a trustee or receiver is appointed for substantially all of the other party’s assets; or
- e) the other party makes an assignment for the benefit of creditors.

If either party defaults in the performance of any material provision of this Agreement, then the non-defaulting party may terminate this Agreement by written notice to the defaulting party that if the default is not cured within thirty days (30) days the Agreement will be terminated.

In the event of license termination, Licensee shall immediately cease distribution of the Application which contain Software and thereafter destroy all copies of the Software, whether or not included in any Application, except those reasonably required to provide support to installed end users. Existing end user licenses shall continue to be governed by their respective terms regardless of the termination of this Agreement. The provisions of sections 6, 7, 8, 10, 11, and 13-26 shall survive any expiration or termination of this Agreement.

4. **License Fees.** Licensee shall pay to Licensor, in immediately available funds, the amounts designated in **Schedule 1** as consideration for the license granted pursuant to this Agreement (the “License Fees”). Payment shall be as outlined in **Schedule 1** and Section 6 herein.

5. **Other Charges.** The License Fee does not include travel and out-of-pocket expenses for implementation meetings, installation and training, optional products and services, consulting services requested by Licensee, shipping charges,

or the cost of any recommended hardware. Licensee agrees to pay such fees and costs, when and as the services are rendered and the expenses incurred, as invoiced by Licensor.

6. Reporting and Payment. Licensee must purchase a runtime license for each Distribution of the Application. For purposes hereof, a "Distribution of the Application" shall mean any and all copies of the Application installed, used, distributed, leased or sold by Licensee and any of its customers, employees, distributors, resellers, affiliates or other channel partners. If the Application is installed on a server or network by Licensee or its customers, the number of Distributions that must be reported and the number of runtime licenses that must be purchased hereunder will be the number of computers that are permitted access to the Application via the network or server. No additional runtime licensing is required for updates and upgrades to the Application distributed to users of the Application for which runtime licenses have been paid and accounted for hereunder unless a major new version of the Software is included in the upgrade. If a major new version of the Software is included in an upgrade to the Application, each user that is upgraded will be considered to be a new Distribution for purposes of runtime license payment and reporting hereunder. All amounts due hereunder are based on United States currency. Licensee agrees to maintain full, clear and accurate records as to all Distributions of the Application. Licensee will submit to Licensor, within thirty (30) days of the close of each calendar quarter, a report setting forth the number of Distributions of the Application made during such quarter, and, provided that Licensee has not prepaid Licensor for Distributed runtime licenses in accordance with Schedule 1, each such report shall be accompanied by a check in the amount of runtime licensing that is due, if any. If no Distributions have been made during said quarter, Licensee will provide a certification so stating. Licensee shall keep adequate records to accurately determine the payments due under this Agreement.

7. Audit Rights. Licensor shall have the right, at any time up to one year after the termination or expiration of this Agreement, to have Licensee's books and records related to the distribution of the Software examined by an independent certified public accountant ("CPA") or other disinterested third party selected by Licensor. If such examination reveals that the license fees paid by Licensee pursuant to this Agreement are understated by 5% or more for any period, Licensee shall, in addition to paying any license fees determined to be due, reimburse Licensor for the reasonable fees and expenses of such examiner.

8. Protection of Software.

a) All Software provided by Licensor to Licensee is owned by Licensor and its licensors, and its structure, organization and code, as well as the ideas and know-how embodied in it, are the valuable trade secrets of Licensor and its licensors, which are protectible under applicable trade secret, industrial property and/or unfair competition laws. Licensee may use the Software only in accordance with those rights which are expressly and unambiguously granted by this Agreement. Further, Licensee shall exercise such care against unauthorized use or disclosure of the Software as it uses with respect to its own proprietary information of like importance, provided that in no event shall Licensee use less than reasonable care. Licensee shall not, and shall not allow any third party (by license agreement or otherwise) to: 1) decompile, disassemble, or otherwise reverse engineer or attempt to reconstruct or discover any source code or underlying ideas of the Software by any means whatsoever; 2) remove any product identification, copyright legend or other notices; 3) modify, incorporate into or with other software or create a derivative work of any part of the Software except as permitted under separate development license agreement with Licensor; or 4) load or use any portion of the Software (whether or not modified or incorporated into or with other software) on or with any unlicensed machine or system.

b) Licensor-proprietary code is also protected under U.S. Copyright Law and international copyright treaty provisions. Except as may be reasonably required to use the Software in accordance with the rights granted by this Agreement and except as strictly required for back-up and archival purposes, copying of the Software or any portion thereof (including Software that has been modified or incorporated into the Application) is expressly prohibited. On all such copies as are permitted hereunder, Licensee shall reproduce and include the copyright notice and any other notices that appear on the original Software.

9. Upgrades, Enhancements, Support and Consulting. Upgrades and enhancements are not provided as part of this Agreement. Upgrades and enhancements to the Software may be provided by Licensor to Licensee by separate, written agreement. Licensee may purchase Software support, including telephone support, provision of upgrades and

correction of defects, under separate contract. Professional consulting services may also be contracted on an hourly basis. Such services are not included as part of this Agreement, and may be provided by Licensor subject to a separate, written agreement.

10. Warranty. Licensor cannot warrant the performance of any Application created by or for Licensee using the Software, nor does Licensor make any representations or warranties with respect to performance of the Software in the Application. The Software is licensed for use "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, 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.

11. LIMITATION OF LIABILITY. EXCEPT AS EXPLICITLY STATED IN SECTION 12 (INTELLECTUAL PROPERTY INDEMNIFICATION), IN NO EVENT WILL LICENSOR'S LIABILITY TO LICENSEE OR ANY END USER, 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 END USER OR TRANSFEREE FROM 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.

12. Intellectual Property Indemnification. Licensor will defend, at its own expense, any claim, suit or proceeding brought against Licensee to the extent it is based upon a claim that unmodified Licensor-proprietary code licensed to Licensee pursuant to this Agreement infringes upon any United States patent, copyright or trade secret of any third party. Licensee agrees that it shall promptly notify Licensor in writing of any such claim or action and give Licensor full information and assistance in connection therewith. Licensor shall have the sole right to control the defense of any such claim or action and the sole right to settle or compromise any such claim or action. Provided Licensee complies with the provisions hereof and is not otherwise in breach of any provisions of this Agreement, Licensor will pay all damages, costs and expenses finally awarded to third parties against Licensee in such action. If such Software is, or in Licensor's opinion may be, held to infringe, Licensor may, at its option, replace or modify such Software so as to avoid infringement, or procure the right for Licensee to continue the distribution of such Software. If neither of such alternatives is, in Licensor's opinion, commercially reasonable, the infringing Software shall be returned to Licensor and Licensor's sole liability, in addition to its obligation to reimburse awarded damages, costs and expenses set forth above, shall be a credit to Licensee of license fees paid to Licensor by Licensee under this Agreement, as depreciated on a straight line five (5) year basis.

Licensor will have no liability for any claim of infringement arising as a result of a) Licensee's use of the licensed Software in combination with any items not supplied by Licensor where such combination is the basis of the infringement claim; b) any modification of the licensed Software by Licensee or third parties; c) use of other than the latest revision of the Software if use of the latest revision would avoid the infringement; or d) use of the Software outside the scope of the granted licenses.

THE FOREGOING STATES THE ENTIRE LIABILITY OF LICENSOR TO LICENSEE OR ANY SUBLICENSEE OF SOFTWARE CONCERNING INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, INCLUDING, BUT NOT LIMITED TO, PATENT, COPYRIGHT AND TRADE SECRET RIGHTS.

13. Export. Licensee agrees and warrants that it will not directly or indirectly export or re-export the Software or the Application without first obtaining appropriate governmental approvals. Licensee shall indemnify, defend and hold Licensors harmless against any violation of this provision.

14. U.S. Government Restricted Rights. If Software licensed hereunder is supplied to the United States Department of Defense (DOD), then Software is subject to "Restricted Rights" as that term is defined in the DOD supplement to the Federal Acquisition Regulations ("DFAR") in paragraph 252.227-7013(c)(I)(ii). If Software is supplied to any unit or agency of the United States Government other than DOD, the Government's rights in the Software will be as defined in paragraph 52.227-19 of the Federal Acquisition Regulations ("FAR"). Use, duplication, reproduction or disclosure by the Government is subject to such restrictions.

15. Assignment. Neither this Agreement nor any of the rights granted hereunder is assignable or transferable by Licensee without the prior written approval of Licensors, and any such attempted assignment shall be null and void.

16. Late Charges and Collection Expenses. If any fee or cost is not paid within thirty (30) days after it is due, Licensee shall pay Licensors interest on such unpaid amounts at a rate of one and one-half percent (1 1/2%) per month (eighteen percent (18%) per annum) or, if less, the highest rate allowed by applicable law from the date such fee or cost first became due. Licensee shall reimburse Licensors for all reasonable costs incurred (including reasonable attorneys' fees) in collecting past due amounts owed by Licensee.

17. Taxes and Other Charges. The prices set forth in this Agreement do not include federal, state, municipal or other political subdivision excise, sales, use, property, occupational or like taxes now enforced or enacted in the future, all of which Licensee shall be responsible to pay (either directly or by reimbursement to Licensors). All prices and fees under this Agreement are subject to an increase equal to any such taxes that Licensors may be required to collect or pay, except taxes based on Licensors' net income.

18. Notices. All notices under this Agreement shall be in writing, shall reference this Agreement, and shall be deemed given: 1) when delivered personally; 2) when sent by confirmed facsimile; 3) five days after having been sent by registered or certified mail, postage prepaid, return receipt requested; or 4) one day after deposit with a commercial overnight carrier, with written verification of receipt. All communications will be sent to the addresses set forth herein.

19. Remedies. The parties agree that a material breach of this Agreement adversely affecting Licensors' proprietary rights in the Software would cause irreparable injury to Licensors for which monetary damages would not be an adequate remedy and therefore, that Licensors shall be entitled to equitable relief in addition to any remedies it may have hereunder or at law. The prevailing party in any action to enforce this Agreement shall be entitled to recover reasonable costs and expenses, including, without limitation, attorneys' fees.

20. Waiver/Severability. Failure by either party to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision. Similarly, the provision of any accommodation exceeding the requirements of this Agreement shall not constitute a waiver of any provision hereof, nor shall it be construed to establish a course of dealing contrary to the express terms hereof. If any provision of this Agreement shall be adjudged by a court of competent jurisdiction to be unenforceable, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect.

21. Governing Law. This Agreement is made under and shall be governed by and construed in accordance with the laws of the State of New Hampshire, USA, except that body of law pertaining to conflict of laws. 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. Any action hereunder shall be brought in the appropriate state or federal courts of or for New Hampshire, and each party hereby agrees and submits to the personal jurisdiction and venue thereof.

22. Force Majeure. Neither party to this Agreement shall be liable for non-performance to the extent that such non-performance is caused by events or conditions beyond that party's control, provided such party promptly notifies the other thereof and makes reasonable efforts to perform.

23. Entire Agreement. This Agreement, including all attachments, constitutes the entire agreement between the parties

with respect to the subject matter hereof. It supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter, and it shall supersede any and all conflicting provisions of any order document between the parties. Unless otherwise provided herein, this Agreement may be modified, amended or waived only by a written instrument signed by duly authorized representatives of both parties.

24. Headings. The paragraph headings throughout this Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

25. Relationship of Parties. Nothing contained in this Agreement or in the transactions contemplated hereby shall create or be deemed to create any relationship of agency, joint venture or partnership between Licensor and Licensee.

26. Survival. The representations, warranties, covenants, indemnities and other agreements of Licensee contained herein shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives.

LICENSOR:

Black Ice Software, LLC.

Company Name

Signature

Title

Name

Date

LICENSEE:

Company Name

Signature

Title

Name

Date

Delivery:

Please indicate email address for electronic delivery _____

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 _____

SCHEDULE 1

1. License Fees.

(a) Application Distribution.

(i) Per Port Runtime Licensing. Except as otherwise provided in paragraph 1(a)(ii) hereof, Licensee will pay a runtime license fee of Twenty Dollars (\$20.00) for each port used by the Application distributed by Licensee, to be reported and paid pursuant to Section 6 of the License Agreement.

(ii) Prepaid Runtime Licensing. In lieu of paying Twenty Dollars (\$20.00) per port as set forth in paragraph 1(a)(i) hereof, Licensee may pay in advance for its projected runtime licensing needs in the quantities and for the prices set forth below:

<u>Quantity Prepaid</u>	<u>Price Per Port</u>	<u>Minimum Prepayment</u>
50+	\$15.00	\$750.00
100+	10.00	1,000.00
250+	8.00	2,000.00
500+	6.00	3,000.00
1000+	5.00	5,000.00
Unlimited	0.00	15,000.00

Number of Runtime licenses:	Price per license:	Total cost:
_____	_____	_____

In order to receive the runtime pricing contained in this paragraph 1(a)(ii), Licensee must prepay for its runtime licenses in accordance with the above schedule prior to use or distribution of the Application. To select a prepaid distribution option, Licensee shall send Licensor a purchase order covering the desired number of copies of the Application before making the uses or distributions covered by the purchase order, and Licensor will generate an invoice covering the prepaid copies. During the term hereof, Licensee may, from time to time, issue multiple purchase orders for multiple quantity orders. For example, if Licensee desires to use or Distribute two hundred fifty (250) ports of the Application, and would like to take advantage of the Six Dollar (\$6.00) per port rate, Licensee must prepay for its runtime licenses at the rate of Six Dollars (\$6.00) per port (\$1,500.00 prepayment), whereupon Licensee will have the right to use or Distribute up to two hundred fifty (250) ports of the Application. Thereafter, from time to time, if Licensee desires to use or Distribute additional copy(s) of Application and pay a rate of less than Twenty Dollars (\$20.00) per port for such additional copies, Licensee will be required, prior to shipment or use of any such additional port(s) of Application, to prepay for such port(s) by selecting any of the above prepayment options and making the applicable prepayment to Licensor. For quantity purposes, each purchase order will be viewed separately. For example, if Licensee prepays for two hundred fifty (250) Distributions and subsequently places another order for two hundred fifty (250) additional Distributions, the required prepayment due for the second two hundred fifty (250) Distributions is One Thousand Five Hundred Dollars (\$1,500.00). **Any Distribution of Application for which runtime licensing has not been prepaid prior to distribution or use pursuant to the procedure described above will carry a runtime licensing obligation of Twenty Dollars (\$20.00) per copy to be reported and paid quarterly in accordance with Section 6 of the License Agreement.**