

Beyond 20/20 Inc.  
Beyond 20/20™ License Agreement

Before opening the package containing the Beyond 20/20 software or clicking "ACCEPT" when this license is shown when installing or using the software, please carefully read this license, which contains the terms and conditions under which you are acquiring a license to use the software. If you do not accept the terms and conditions of the license, please DO NOT INSTALL THE SOFTWARE AND promptly return the unopened OR UNINSTALLED SOFTWARE to the place AT WHICH YOU ACQUIRED IT for a full refund of ANY license fee paid. If you open THE ACCOMPANYING SOFTWARE OR INSTALL OR USE IT, you will be acquiring a license to use the SOFTWARE IN OBJECT CODE FORM, in accordance with the terms and conditions of this license Agreement, and You will be considered to have accepted and agreed to these terms and conditions.

**1. Grant of License**

a) Subject to the terms and conditions contained in this license agreement and in the product license registration (the "Registration") (collectively, the "Agreement") and subject to Beyond 20/20 Inc. having received and accepted full payment of the applicable license fee, Beyond 20/20 Inc. hereby grants to the licensee identified on the Registration ("You") a non-assignable, non-exclusive, non-transferable, restricted license to use the software identified on the Registration (the "Software") in object code form solely on the computer(s), at the site(s), for the subject matter(s), for the type of use, for the number of permitted users and for the term specified on the Registration. "Software" means (a) all of the contents of the disk(s), CD-ROMs, or other media with which this Agreement is provided, including but not limited to (i) Beyond 20/20 and third party software delivered by Beyond 20/20 with the license agreement and (ii) related explanatory written material ("Documentation"); and (b) modified versions, upgrades, updates, additions, maintenance releases and copies of the Software, if any, provided to You by Beyond 20/20 Inc. if a separate license agreement is not delivered with or as part of them.

b) If Beyond 20/20 Inc. has permitted You to install the Software for evaluation purposes, You agree to evaluate the Software only for the evaluation period specified on the Registration. You agree not to use the Software to process data in a live, production mode. You also agree to remove the Software and all files generated by the Software from Your computer and to return the Software to Beyond 20/20 Inc. at the end of the evaluation period except if you obtain a further license from Beyond 20/20.

c) All license fees are exclusive of applicable taxes. You will be solely responsible for all applicable sales or equivalent tax consequences, which may relate to or arise from this Agreement.

**2. Confidentiality**

You acknowledge that the Software and Documentation relating thereto contain confidential information of Beyond 20/20 Inc. and its licensors and You agree not to disclose such confidential information, either directly or indirectly, to any third party. For the purposes of this Agreement, confidential information shall include, but shall not be limited to, product plans, commercial plans, policies, functional and technical specifications and other proprietary information furnished by Beyond 20/20 Inc. or its licensors (the "Confidential Information"), but shall not include information that has become generally available to the public, other than as a result of Your breach of any obligation under this Agreement or information disclosed to You on a non-confidential basis by a third party who did not owe an obligation of confidence in respect of such information. You agree to treat the Confidential Information in the same manner as You treat Your own confidential information, but in no case will the degree of care be less than reasonable care. Without limiting the generality of the foregoing, the Confidential Information shall be accessible only to You and Your employees and contractors with a need for access to same for the purposes of performing their duties, and You shall advise such employees and contractors of the confidentiality restrictions contained herein and ensure their compliance with such restrictions. Upon Beyond 20/20 Inc.'s request when this Agreement has expired or is terminated, You shall promptly return to Beyond 20/20 Inc. or destroy all Confidential Information that has been supplied to You by Beyond 20/20 Inc. You acknowledge and agree that any actual or threatened unauthorized use, reproduction, distribution or disclosure of Confidential Information is likely to cause irreparable harm and

significant injury, the degree of which would be difficult to ascertain, and which would not likely be compensable by money damages alone, and therefore: (a) Beyond 20/20 Inc. and its licensors will have the right to seek an order to enforce the terms of this Agreement by specific performance; and (b) You agree that in such an event the issuance of an injunction is likely to be an appropriate remedy, without prejudice to any other rights and remedies that Beyond 20/20 Inc. or its licensors may have for Your breach of this Agreement.

### **3. Ownership**

The copyright, intellectual property, and all other right, title and interest in the Software, Documentation, and any Beyond 20/20 tables, extracts and files created with the Software including, without limitation, any Executables produced with the Software, remain the exclusive property of Beyond 20/20 Inc. and/or its licensors. Physical copies of the Software remain the property of Beyond 20/20 Inc. and/or its licensors and such copies are deemed to be on loan to You during the term of this Agreement. The data content of the Beyond 20/20 tables and extracts belong to the owners of the data.

### **4. Restrictions**

No rights are granted to You except those expressly set forth in writing in this Agreement. You agree not to modify, translate, adapt, reverse engineer, decompile or disassemble, or otherwise attempt to discover the source code of the Software. In addition, except to the extent specifically permitted in this Agreement, You agree not to:

(i) rent, lease, assign, sub-license, sell, transfer, transmit, publish, distribute, permit concurrent use of, grant other rights, or otherwise disseminate or provide access to the Software or any files created with the Software including, without limitation any Executables, whether voluntarily or by the operation of law or otherwise, except as expressly set out in writing;

(ii) provide use of the Software in a computer service business, network, time sharing, or interactive cable television arrangement to persons who are not properly licensed by Beyond 20/20 Inc.;

(iii) create derivative works with any part of the Software;

(iv) make copies of the Software or Documentation, except that You may make one (1) backup copy of the Software, provided Your back-up copy is not installed or used on any computer unless the computer(s) on which the Software is permitted to be installed is inoperable as a result of a technical malfunction or other similar condition;

(v) use the Beyond 20/20 tables or extracts created using the Software on any other computer systems unless You are properly licensed to use a Beyond 20/20 browser on those computer systems; or

(vi) make the Software available over the Internet.

### **5. Trademarks and Copyright**

The Software and any copies that You are permitted to make are owned by Beyond 20/20 Inc. and its licensors. Any copies that You are permitted to make pursuant to this Agreement must contain the same copyright and other proprietary notices that appear on or in the Software and Documentation and you must not alter or remove any such copyright or other notice on the original copy of the Software or Documentation. You acknowledge that "Beyond 20/20 Inc.", "Beyond 20/20", "Beyond 20/20 Publisher's Edition", "Beyond 20/20 Browser", "Beyond 20/20 Professional Browser", "Beyond 20/20 Publication Browser", "Beyond 20/20 Web Data Server", "Beyond 20/20 Perspective", "Beyond 20/20 Toolkit" and "Beyond 20/20 Data Connection Wizard" are trademarks of Beyond 20/20 Inc. You shall not make any use of such trademarks without the prior written consent of Beyond 20/20 Inc. This Agreement does not grant You any intellectual property rights in the Software.

## **6. Limited Warranty**

Beyond 20/20 Inc. warrants to You that the Software will perform substantially in accordance with the Documentation for thirty (30) days following Your acquisition of the Software, provided Beyond 20/20 Inc. has received payment from You of the applicable license fee. During such 30-Day Warranty and provided the Software is operated as directed in the Documentation, Beyond 20/20 Inc. warrants that: (i) the Software functions substantially as described in the Documentation, and (ii) the media containing the Product, if provided by Beyond 20/20 Inc., is free from defects in material and workmanship and will so remain for thirty (30) days from the date You acquired the Software.

Beyond 20/20 Inc.'s sole responsibility for any breach of this warranty shall be, at Beyond 20/20 Inc.'s sole discretion: (i) to replace the defective media, or (ii) to advise You how to achieve the same functionality with the Software as described in the Documentation through procedures different from those set forth in the Documentation. Repaired, corrected, or replaced Software and Documentation shall be covered by this limited warranty for the period remaining under the warranty that covered the original Software. Only if You inform Beyond 20/20 Inc. of Your problem with the Software during the warranty period and provide evidence satisfactory to Beyond 20/20 Inc. of the date You purchased a license to the Software will Beyond 20/20 Inc. be obligated to honor this warranty. Beyond 20/20 Inc. will make reasonable commercial efforts to replace and advise under this warranty and if the problem persists following such replacement or advice, Beyond 20/20 Inc. will refund the license fees paid hereunder provided You return to Beyond 20/20 Inc. all copies of the Software and Documentation and purge all copies from Your systems.

Beyond 20/20 Inc. shall have no responsibility for the Software if it has been altered in any way, if the media or the Software has been damaged by accident, abuse or misapplication, or if the problem arises out of use of the Software in conjunction with software not supplied by Beyond 20/20 Inc. Unless otherwise expressly agreed to in writing, Beyond 20/20 Inc. is not responsible for the installation or integration of the Software or for any data conversion required in order to use the Software.

Except as otherwise expressly provided in this agreement, at to the maximum extent permitted by law, Beyond 20/20 Inc. and its licensors provide the Software and any related services strictly "As Is" and with all faults. Beyond 20/20 Inc. does not warrant that the Software will be error free or secure or that its operation will be uninterrupted. The limited warranty contained in this agreement is in lieu of all other warranties, conditions, undertakings or terms, express or implied, written or oral, and Beyond 20/20 Inc. hereby disclaims all warranties and conditions of any kind including but not limited to implied warranties and conditions of merchantability, fitness for a particular purpose, non-infringement of third parties' rights, and those arising by statute or from a course of dealing, usage or trade. No Beyond 20/20 Inc. agent, employee, representative, or dealer is authorized to modify, extend or add to this warranty. The warranties in this Agreement give You specific legal rights. You may have other rights, which vary from jurisdiction to jurisdiction.

## **7. Limitation of Liability**

Except as otherwise expressly provided in this agreement, You assume the entire risk as to the results and performance of the Software. Under no circumstances and under no legal theory, whether in tort, contract or otherwise, shall Beyond 20/20 Inc. or its agents, licensors, suppliers or resellers have any liability to You or any other person or entity for any direct, indirect, incidental, special, exemplary, consequential or other damages of any kind or nature whatsoever, including but not limited to loss of good will, loss of data, loss of software or hardware, loss of profit, work stoppage, computer failure or malfunction, or any and all other commercial or economic damages or losses, even if Beyond 20/20 Inc. has been advised of the possibility of such damages or if such damages could have been reasonably foreseen.

Without limiting the provisions of this section, the maximum aggregate liability of Beyond 20/20 Inc. and its agents, licensors, suppliers or resellers in connection with this agreement or the Software, whether arising in tort, contract, or otherwise, shall not exceed the license fee paid by You to Beyond 20/20 Inc. Under this Agreement, this section shall survive and apply notwithstanding any fundamental breach or the failure of essential purpose of this Agreement. You agree that these limitations of liability are agreed

allocations of risk and are reflected in the fees paid under this Agreement. Nothing in this Agreement shall restrict Beyond 20/20 Inc.'s liability in a manner which is expressly prohibited by applicable statute or regulation.

#### **8. Publicity**

You authorize Beyond 20/20 Inc. to publicly reference You as a user of the Software. You grant Beyond 20/20 Inc. the right to publish and disclose Your name and the general nature of usage including, without limitation, in brochures, press releases, proposals, promotional literature, on its web site and other publications and public disclosures.

#### **9. Termination**

Beyond 20/20 Inc. may terminate this license due to Your failure to comply with any of the provisions of this Agreement. Upon termination, all Your license rights to the Software shall cease and You agree to purge the Software from Your systems and destroy or return to Beyond 20/20 Inc. all copies of the Software and Documentation and provide evidence satisfactory to Beyond 20/20 Inc. of such purging and destruction or return.

#### **10. U.S. Government Restricted Rights Legend**

Pursuant to FAR 12.212(a) and DFAR 227.7202-1(a), use, duplication or disclosure by the Government is subject to the terms of Beyond 20/20 Inc.'s standard form license.

#### **11. Export Restrictions**

You hereby agree and confirm that You are not a resident of, and this transaction is not in any way connected with, any jurisdictions which are prohibited by applicable law, including without limiting the foregoing, jurisdictions included under the Area Control List of the Exports and Imports Permit Act of Canada. You agree and confirm that this transaction is in full and complete compliance with the laws of the jurisdiction to which the Software is delivered, and that You shall not, in any manner whatsoever, either remove, convey, export or transmit the Software from such jurisdiction other than in compliance with all applicable laws.

#### **12. Governing Law**

This Agreement shall be governed by the laws of the Province of Ontario, Canada, without giving effect to the principles of conflicts of law, and excluding (i) that body of law applicable to choice of law and (ii) the United Nations Convention on Contracts for the International Sale of Goods. You agree that the courts of such province constitute a convenient forum for any such litigation and You attorn and submit to the non-exclusive jurisdiction of such courts.

#### **13. General**

If any provision of this Agreement is found to be invalid or unenforceable, such provision shall be severed from this Agreement and the remaining provisions shall remain in full force and effect. A delay or failure by either party to exercise any right, or a partial or single exercise of any right, shall not constitute a consent to any subsequent breach. Neither party shall be responsible for any failure or delay in complying with the terms of this Agreement resulting from events of force majeure beyond the control of such party which could not be avoided by exercise of due care.

You shall have no right to assign this Agreement any rights or obligations under this Agreement. Notwithstanding any provision to the contrary in any purchase order, all purchase orders from You shall be conclusively deemed to be governed by this Agreement and any terms additional to or inconsistent with this Agreement shall be deemed stricken from such purchase order.

This Agreement (including the Registration) contains the complete understanding and agreement of the parties and supersedes all prior agreements or understandings, oral or written, relating to the subject matter herein. In the event of any conflict or inconsistency between this Agreement and the Registration, the terms of the Registration shall prevail to the extent of such conflict or inconsistency. This Agreement may be amended only in writing and executed by both parties.

The parties confirm that it is their wish that this Agreement as well as all other documents relating to this Agreement, including notices, be drawn up in English only. Les parties aux présentes confirment que c'est leur volonté que la présente convention de même que tous les documents, y compris les avis, qui s'y rattachent, soient rédigés en anglais.

The provisions of this Agreement that are expressed or by their sense and context are intended to survive the termination of this Agreement shall so survive, including without limitation, Sections 2, 3, 5, 6, 7 and 13.

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