

FairCom® BTRV – Production Edition
V5 License Agreement

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Definitions:

The following definitions apply throughout this Agreement:

- A. **“Deploy,” “deployment” or “deployed”** shall mean any use, access, distribution, delivery or shipment of any FairCom Technology.
- B. **“Development Environment”** shall mean any computer hardware and software used exclusively for the purpose of developing software. Any environment that combines software development with any other purpose is not a Development Environment.
- C. **“FairCom BTRV Client-Side”** shall mean the software components licensed by FairCom that allow an application to communicate exclusively with a FairCom BTRV Server, and which may include BTRV drivers or any other tools or utilities that accompany this Agreement.
- D. **“FairCom BTRV Server”** shall mean the multi-threaded SQL database server binary executable file licensed hereunder to perform database services for ISAM based applications.
- E. **“License Authorization File”** shall mean a computer binary file provided by FairCom that contains unique licensing information. Said licensing information permits the FairCom BTRV Server to run on a specified operating system, to support specific features, to operate for a specific time period, and to support a fixed number of concurrent Users and/or CPUs.
- F. **“Production Environment”** shall mean all computer hardware and software used for commercial or business use including but not limited to internal data processing or operations by end users, applications, services, automation or machine learning.
- G. **“Proprietary Information”** means, without limitation, any and all Software source code, object code, binary executable files, data, inventions, patents, discoveries, improvements, trademarks, copyrights, trade secrets, algorithms, mathematical constraints, FairCom confidential information, know-how and ideas embodied in the Software and any and all intangible intellectual property or privileges of a nature similar to the foregoing, including, without limitation, in every case in any part of the world and whether or not registered, whether received by Licensee from FairCom or from any third party under obligation to FairCom to maintain such information as confidential or not.
- H. **“Software”** shall mean all source code, object code, libraries, drivers, binary executable files, documentation, sample/utility programs and media that may accompany this license or is provided via FairCom’s website or portal. It also expressly excludes any form of the described software that is licensed separately or targeted at different markets.
- I. **“Test Environment”** shall mean any environment that is not a Development Environment or a Production Environment.
- J. **“User”** shall mean any person, device or process that accesses the FairCom BTRV Server, either directly or indirectly.

License:

1. Grant of License.

Subject to all of the terms set forth herein, FairCom grants to Licensee and Licensee accepts the non-exclusive, limited, non-transferrable, non-sublicensable, right and license to:

- a) install and use the FairCom BTRV Client-Side on any number of computers to allow Users to access a FairCom BTRV Server. Any use of hardware or software that reduces the number of persons, devices, or processes directly accessing the FairCom BTRV Server (such as multiplexing or pooling) does not reduce the number of User licenses required; and
- b) install and use the FairCom BTRV Server on one (1) single server computer in a Production Environment for each License Authorization File obtained from FairCom. Using a FairCom BTRV Server on a different operating system, supporting a greater number of concurrent Users or CPUs or beyond the time period specified on the Proof of Entitlement document that accompanies the Software is a violation of this Agreement. The FairCom BTRV Server is licensed on a per executable basis. If more than one copy of the Software needs to be installed, additional licenses must be purchased for each installation. Licensee may install and use any updates to the Software provided you have paid any required fees for the right to do so. Once an update is installed, the prior version of the Software may not be used or transferred to another party.
- c) install and use the FairCom BTRV Server on one (1) single server computer in a Production Environment for each corresponding License Authorization File obtained from FairCom exclusively for the purpose of cold backup (FairCom BTRV Server installed, but not started) and provided the corresponding production FairCom BTRV server is not operational nor replication enabled at the same time the cold back is operational. Using a FairCom BTRV Server for anything other than cold back up, on a different operating system, supporting a greater number of concurrent Users or CPUs, in a Production Environment while the corresponding production server is operational, or beyond the time period specified on the Proof of Entitlement document that accompanies the Software is a violation of this Agreement. The FairCom BTRV Server is licensed on a per executable basis. If more than one copy of the Software needs to be installed, additional licenses must be purchased for each installation. Licensee may install and use any updates to the Software provided you have paid any required fees for the right to do so. Once an update is installed, the prior version of the Software may not be used or transferred to another party.

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- a. Either party may terminate this Agreement with thirty (30) days written notice.
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- c. FairCom may terminate this Agreement immediately if Licensee violates any term of this Agreement or infringes the rights of FairCom in the Software or any third-party intellectual property rights.
- d. In the event this Agreement accompanies a term-limited version of the Software, the Agreement will terminate upon expiration of the License Authorization File included with the Software, unless otherwise updated with a new License Authorization File.

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18. Governing Law.

This Agreement is deemed by FairCom and Licensee to have been executed in Boone County, Missouri in the United States of America ("U.S.A.") and the Agreement and any subsequent amendments shall be construed in accordance with the laws of the State of Missouri, U.S.A. Any litigation concerning or arising out of this Agreement shall be commenced and prosecuted in the Circuit Court of Boone County, Missouri, U.S.A. and Licensee hereby consents to personal jurisdiction in that forum.

19. Compliance Certification and Audit.

Upon FairCom's written request, Licensee shall, within thirty (30) days of receipt of such request, provide FairCom a letter certifying that Licensee is in full compliance with the terms of this Agreement and any amendments hereto. Said letter shall be signed by you personally if you are acting on your own behalf, or by a company officer if you are representing an entity that is an organization, corporation, or other party on whose behalf you are acting. While this Agreement is in effect and for three (3) years thereafter, Licensee shall keep accurate books, records and accounts as are reasonably necessary to verify compliance with this Agreement, and shall, upon reasonable notice, permit FairCom or its representatives to inspect all such books, records and accounts and to make extracts from such books no more than once per calendar year. Any audit conducted pursuant to this Agreement shall be performed during normal business hours, with minimal disruption, and at the auditing party's expense.

20. Severability.

Should a court of competent jurisdiction finally adjudicate any particular provision or provisions of this Agreement or any subsequent amendments thereto to be invalid, void or unenforceable, such final adjudication shall not affect the validity of any other provision set forth in this Agreement or such amendments, if any.

21. Waiver.

No failure by FairCom to exercise and no delay in exercising, any privilege, power or right set forth herein, will operate as a waiver thereof, nor will any single or partial exercise by FairCom of any such privilege, right or power set forth herein preclude further exercise by FairCom of any such privilege, right or power set forth herein.

22. Consent.

If at any time FairCom's consent or action is called for hereunder, it shall be at FairCom's sole and absolute discretion. All implied covenants of good faith and fair dealing are hereby disclaimed.

23. **Amendments.**

To become effective, any and all amendments, modifications, changes, or required consents hereunder obtained from FairCom must be in writing and signed by a duly authorized representative of FairCom.

24. **Survival of Obligations.**

Should this Agreement be terminated for any reason, FairCom's rights and Licensee's obligations under Sections 2, 3, 4, 6, and 9-20 shall survive.

25. **Enhancements.**

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All notices shall be deemed received upon the earlier of receipt or one (1) day after dispatch or in the case of certified mail or overnight courier, the earlier of receipt or five (5) days after deposit in the mail. Notices sent to FairCom shall be sent to its then-current corporate headquarters address to the attention of FairCom's General Counsel. Such address is available at www.faircom.com. Notices sent to Licensee shall be sent to the e-mail address provided by Licensee at the time of accessing the Software or such other address or e-mail address Licensee may designate to FairCom in writing from time to time.

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