

**In order to use the Software, you must first agree to this Agreement. You may not use the Software if you do not accept this Agreement. You can accept this Agreement by clicking to accept or agree to this Agreement, where this option is made available to you by us in the user interface for any service; by executing a purchase order referring to this Agreement; by paying an invoice referring to this Agreement; or by actually using the Software. You understand and agree that we will treat your use of the Software as acceptance of this Agreement from that point onwards.**

**ATALASOFT, INC.**

## **SOFTWARE DEVELOPMENT KIT LICENSE AGREEMENT**

### **1. INTRODUCTION.**

(a) *Use of Software Subject To Agreement.*

Your use of our software (referred to collectively as the “**Software**” in this document and excluding any services provided to you by us under a separate written agreement) is subject to the terms of this legal agreement between you and us, as amended from time to time (the “**Agreement**”).

(b) *Acquisition of Licenses.*

You acquire **Licenses** and related services subject to this **Agreement** by submission of **Purchase Order(s)** and payment of amounts due thereunder or by making a Credit Card payment specifying the type, quantity and term of such software and services, as of result of which you are entitled to the rights and services set forth in this **Agreement**.

(c) *Parties.*

The term “**You**” or “**you**” means the company, entity who is executing or otherwise taking action to be bound by this **Agreement**; “**we**” or “**us**” means Atalasoftware, Inc., a Massachusetts corporation, and “**both of us**” means both you and us. Certain other terms have the meanings given them in Section 15.

### **2. ACCEPTING THIS AGREEMENT.**

(a) *Agreement to Terms.*

Your use of our **Software**, is subject to your acceptance of the terms of the Agreement whether by (a) clicking to accept or agree to this **Agreement**, where this option is made available to you; (b) by executing a **Purchase Order** referring to this Agreement; (c) by paying an invoice referring to this **Agreement**; or (d) by simply using the **Software**.

(b) *Acceptance of Terms by an Organization.*

If you are entering into this **Agreement** on behalf of a company or other organization, you represent that you have the authority to bind your company or organization to this **Agreement**.

### **3. LICENSE FROM US.**

(a) *Grant of License - Usage in General.*

Subject to this **Agreement**, we give you a personal, worldwide, non-exclusive right to use the **Software** in object code form only (except as otherwise specifically set forth below) in the quantity and for the purposes set forth below, depending on the particular **License** you have acquired. You may use the **Software** solely for the purpose of designing, developing and testing your **Application** and (as subject to the provisions below) using such **Applications** internally or distributing them to third parties. In connection with such use, you may modify the source code versions of sample files, if any, included with the **Software** for the purpose of creating your **Application**.

You may distribute the **Application** you make containing our **Software** subject to the limitations of and type of use set forth below under “License Types.”, and subject to the following conditions: (i) you may not permit further redistribution of our **Software** by your **Customers**, (ii) you must distribute your applications under a written agreement that prohibits reverse engineering, decompilation or disassembly of the applications(s) and requires your **Customers** of the **Applications** to abide by the conditions stated in this **Agreement** and (iii) without our consent, or as required in below, you may not use our name, logo or trademarks to market your application.

(b) *License Grant - Length of Term.*

The provisions of this licensing agreement are effective unless terminated. FOLLOWING THE EXPIRATION OF THE APPLICABLE **MAINTENANCE AND DEPLOYMENT TERM**, YOU MAY NO LONGER USE THE **SOFTWARE** TO DEPLOY NEW UNITS OF **APPLICATIONS**. Unless otherwise expressly provided, however, your **Customers** continue to have the right to use **Applications** (including the incorporated **Software**) and you have the right to use the **SDK** to maintain **Applications** (including the incorporated **Software**) supplied to them prior to the expiration of the term of the related **Maintenance and Deployment Term**.

(c) *License Types.*

(i) *SDK License.* Each **Company Department** is required to purchase an **SDK License** for the **Software** that is in use in your **Application**. Each *SDK License* includes one *Developer Build License*. Included in the purchase of each SDK License is one years worth of maintenance as defined in section 6 at 20% of the purchase price and the right to deploy new licenses as defined in 3(b) at 16% of the purchase price. Should you wish to continue to receive maintenance services and deployment rights as further defined in 3(b), a fee of 20% and 16%, respectively, of the license price is required and payable prior to the end of the existing maintenance and deployment term.”

(ii) *Developer Build License.* Use of the **Software** requires one **Developer Build License** per **Developer** or per **Automated Build Machine**. **Licenses** are non-transferable between **Developers**. For example, if a company has two developers that will use the **Software**, the company requires two **Licenses**. This is the case even if the developers will not be working with the **Software** at the same time. This is also the case if a project involving the use of the **Software** is transferred from the original developer to a new developer and if the original developer returns within a one-year period. Included in the purchase of each Developer Build License is one years worth of maintenance as defined in section 6 at 20% of the purchase price and the right to deploy new licenses as defined in 3(b) at 16% of the purchase price.

(iii) *Specialized Deployment Licenses.*

If your **Application** is described by any of the categories below, it requires a specialized license as described in that category; the general deployment licenses described in section 3(c)(iv) are not applicable.

(A) *Client Applet Server License.* Allows **Application** built with Software to be deployed to a single “Client Applet Server”, which are Applications Servers used to directly deploy **Software** to the client to use the **Software** directly from a browser, such as ActiveX components that are deployed via CAB files, and DLL’s that are distributed via Microsoft .NET Web Deploy only when functionality is integrated within a browser. A Standard Server license can be purchased for each **Server**, regardless of the number of CPU’s, to cover this deployment scenario.

(B) *Cloud Application License.* Allows a single **Application** built with Software to be deployed to a cloud environment defined as a group of physical or virtual Servers that can be elastically provisioned to run the **Application**. Contact the Atalasoftware Sales Department to discuss the specifics of deployment licensing and pricing.

(C) *Embedded Hardware License.* Allows **Application** built with Software to be Embedding the Software in a Hardware Device defined as equipment that is not a Single User Client or Multi User Kiosk or Server. Example devices include: mobile devices, scanners, printers, fax machines, digital cameras, hard drives, network devices, and multi-task office machines. Contact the Atalasoftware Sales Department to discuss the specifics of deployment licensing and pricing.

(D) *Hardware Bundled License.* Allows **Application** built with Software to be bundled with Hardware/Devices/Computers. “Bundling” is defined as Software that is sold with a computer or other hardware component as part of a package. Contact the Atalasoftware Sales Department to discuss the specifics of deployment licensing and pricing.

(E) *COM Callable Wrapper License.* Atalasoftware .NET imaging toolkits are designed to be used from other .NET applications. In the understanding that some licensees need to take advantage of the components using unmanaged code the licensor can accommodate by providing a custom license. This custom license will allow a licensee to call Atalasoftware .NET assemblies from non .NET applications by developing a COM Callable Wrapper. Contact the Atalasoftware Sales Department to discuss the specifics of deployment licensing and pricing.

(iv) *General Deployment Licensing.*

If any **Applications** built from **Developer Licenses** are not described by the specialized categories in Section 3(c)(iii), you may deploy it in accordance with the following conditions applicable to the applicable **License** described in this Section 3(c)(iv) as long as the **Maintenance and Deployment Term** is active for each related **SDK** and **Developer Build License**.

(A) *Desktop Client License.* Allows **Application** built with **Software** to be deployed to a “Desktop Client” defined as an “end-user” personal computer (PC) operated by a person that may have Applications installed that directly, or indirectly, utilize the **Software**. **Software** listed in **Exhibit A** may be deployed to an unlimited number of Desktop Client Licenses during the **Maintenance and Deployment Term** for all **Software** used in **Application**.

(B) *Server License.* Allows **Application** built with Software to be deployed to a single **Server** per **License**. Please note that a “**Server**” is defined below as a non-user physical or Virtual computer, configured with the intention of multiple users accessing it as a service, or as a background service run as an automated process for any kind of service that has **Software** loaded into the server’s RAM. Each **Server** license allows a single installation to a Production Server and a single installation to a **Non-Production** server or two installations to a **Non-Production** server. Included in the purchase of each Server License is one years worth of maintenance as defined in section 6 at 25% of the purchase price

(1) A *Standard Server License* is required for each physical or **Virtual Server** where Software is loaded into the **Server**'s RAM with the sum of up to 8 **Cores** or physical CPU's.

(2) An *Unlimited CPU Server License* is required for each physical or **Virtual Server** where Software is loaded into the **Server**'s RAM with the sum of more than 8 **Cores** or physical CPU's.

(C) *Licensee Evaluation License.*

You may supply our **Software** to your licensees under an "Evaluation License", under which you grant the licensee the temporary, non-exclusive, non-transferable right to your **Application** with our **Software** in object form only, solely for evaluation purposes, but not for general production use, during an evaluation period not to exceed thirty (30) days. Unless otherwise specified in an agreement with us no royalty or other payment is due to us for such usage. In no event do we accept responsibility for warranty or support with respect to such usage.

(d) *Evaluation License.*

If your **Software** is designated as supplied under an "Evaluation License", we grant an **Evaluator** the temporary, non-exclusive, non-transferable right to use one copy of the **Software** in object form only, solely for evaluation purposes, but not for general production use, during an evaluation period of thirty (30) days from the date the **Software** is first used by the individual. If an evaluation license extension is needed beyond the initial 30 days, contact Atalasoftware. "**Evaluator**" is defined as a **Developer** engaged in the evaluation of the software developer kit (SDK) to ensure that the **Software** meets the needs of the **Evaluator** prior to a purchase. An application developed with an evaluation license cannot be deployed into production without a Developer Build License for each **Developer** that uses the **SDK**. An **Evaluator** may create only one account at Atalasoftware.com for evaluation purposes.

(e) *U.S. Government End Users.*

The **Software** is a "commercial item", as that term is defined in 48 C.F.R. 12.101 (Oct. 1995), consisting of "commercial computer software" and "commercial computer software documentation", as such terms are used in 48 C.F.R. 12.212 (Sept. 1995). Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4 (June 1995), all U.S. Government End Users acquire the **Software** with only those rights set forth herein.

#### 4. **LIMITATION ON YOUR USE**

(a) *Restrictions on Use.*

You may not (and you may not permit anyone else, on your behalf or otherwise, to) copy, modify, create a derivative work of, reverse engineer, decompile or otherwise attempt to extract the source code of the **Software** or any part thereof, unless this is expressly permitted or required by law, or unless you have been specifically told that you may do so by us, by an authorized representative in writing.

(b) *Restrictions on Access.*

You agree not to access (or attempt to access) any of the **Software** by any means other than through the interface(s) that are provided by us, unless you have been specifically allowed to do so in a separate written agreement executed by us. In particular, this **Agreement** does not allow for exposing of

the application programming interface (API) functionality to non-licensed users. YOU MAY NOT CREATE A DYNAMIC LINK LIBRARY (DLL) THAT EXPOSES OR WRAPS FUNCTIONALITY OF THE SDK TO A NON-LICENSED DEVELOPER.

(c) *Compliance with Law.*

You agree to use the **Software** only for purposes, and in a manner, permitted by (i) this **Agreement** and (ii) any applicable law, regulation or generally accepted practices or guidelines in the relevant jurisdictions including, without limitation, any regulations of the United States Bureau of Export Administration and other applicable governmental agencies (including all applicable US export restrictions). (d) Restrictions on Sublicense or Assignment

. This **Agreement** and any license granted under this **Agreement** are personal to you (and your **Personnel** in the course of their work for you), and do not include the right to sublicense your rights under this **Agreement** to any third party. You may not transfer or assign, by operation of law or otherwise, this **Agreement** or your license to any third party without our prior written consent, which may be withheld in our sole discretion for any reason or for no reason. Notwithstanding the foregoing, you may permit your employees, consultants or other third-party service providers (collectively, "**Personnel**") to access and use the **Software** on your behalf; provided that you shall be responsible for ensuring that your **Personnel** comply with this **Agreement** and any applicable end user license agreement to which they assent. If you acquire a third party entity or acquire substantially all of the assets of a third party entity, or are acquired by a third party, in each case, whether by merger, change of control, sale of assets, consolidation or otherwise, such event shall be considered an assignment of this **Agreement** for this purpose. Any assignment or attempted assignment in violation of this **Agreement** shall be of no effect, and shall constitute a breach of this **Agreement** and result in the immediate and automatic termination of your license rights under this **Agreement**; any renewal of such rights shall, if then available, be at our sole discretion, and will be on terms and conditions applicable at the time of renewal.

(d) *DotImage PDF Reader.* YOU ARE NOT AUTHORIZED TO USE THE DOTIMAGE PDF READER ADD-ON TO INTEGRATE AND REDISTRIBUTE DESKTOP APPLICATIONS THAT COMPETE DIRECTLY WITH FOXIT READER, FOXIT PDF EDITOR, PDF PAGE ORGANIZER, PDF CREATOR, PDF TEXT VIEWER, PDF TEXT CONVERTER, AND/OR PDF IFILTER FROM FOXIT SOFTWARE.

## 5. SUBSEQUENT OR PREVIOUS VERSIONS OF THE SOFTWARE; MULTIPLE PHYSICAL COPIES.

(a) *Future Versions.*

The license granted to you under this **Agreement** is for the current version of the **Software** as of the time we make such version available to you under this **Agreement**. We may release future versions of the **Software** under this **Agreement** or a different agreement. Nothing in this **Agreement** is a commitment to you of compatibility between the **Software** and any future versions of the **Software**. This **Agreement** shall apply to any such updated **Software** made available to you except as otherwise expressly agreed in connection with such updated **Software**.

(b) *Upgrades of Previous Version.*

If the **Software** provided to you is an upgrade or revised version of **Software** previously provided to you under this Agreement or a predecessor agreement, you may not loan, rent, lease, or otherwise transfer the original non-upgraded **Software** to another user or a separate computer. If the **Software** is an

upgrade of a component of a package of software programs that you licensed as a single product, the **Software** may be used and transferred only as part of that single product package and may not be separated for use by another user or on a separate computer.

(c) *Multiple Physical Copies.*

You may receive the **Software** in more than one medium, for example CD-ROM or download. Receipt of more than one copy of the **Software** (either on physical media or by multiple downloads or otherwise) does not entitle you to any additional rights to the **Software**. Your rights to use the software derive from this **Agreement** and the **Licenses** related hereto, not from any rights to ownership of any tangible media, which if provided is only provided for your convenience.

## 6. SUPPORT OBLIGATIONS.

The following provisions set forth your rights concerning maintenance and support regarding the Software. Any such services are provided only during the **Maintenance and Deployment Term** for which you have acquired maintenance services.

(a) *General.*

Our support obligations for **Software** are comprised of the following:

(i) *Maintenance Releases.*

We will make available to you, at no additional charge, all **Maintenance Releases** and **Major Releases** to the **Software** which we make generally available to our customers during your **Maintenance and Deployment Term**.

(ii) *Versions Supported.*

We will not be responsible for support services for any version of the **Software** other than the current and previous **Major Release** of the **Software**, provided that we will support each **Major Release** (and the latest **Maintenance Release** made available with respect thereto) for a period of not less than one year from initial release of the **Major Release**.

(iii) *Problem and Error Resolution.*

We will investigate all potential errors related to the **Software**'s non-conformance to Documentation, provided that you have notified us in writing during the **Maintenance and Deployment Term**. We will make commercially reasonable attempts to substantiate the existence of the problem, evaluate the seriousness of the problem's effect on you and provide a workaround or resolution within the time frame established in the Error Reporting and Priority Guidelines. This does not guarantee that the resolution will include a software update that will resolve or fix the reported issue.

(iv) *Telephone Consultation.*

We will provide reasonable telephone consultation to assist in the implementation and utilization of the **Software** during our Standard Support Hours. We may require that you submit a support request through the web support portal, depending on the classification of assistance required. Telephone consultation for licensing or other sales-related issues may be limited to our Standard Business Hours.

(b) *ERROR REPORTING AND PRIORITY GUIDELINES*

(i) *Contacting Our Support.*

Requests shall be made by telephone or the web to: (413) 572-4443 or <http://www.atalasoft.com/support>.

(ii) *Classification of Errors.*

Upon receipt of requests for support, we classify support calls on the following basis:

<b>Priority</b>	<b>Priorities Assigned Under These Guidelines</b>
1	Licensing issues related to deployment of the user's product.
2	Produces an emergency situation in which the Covered Software is inoperable, or fails catastrophically
3	Produces a detrimental situation in which performance (throughput or response) of the Covered Software degrades substantially under reasonable loads, such that there is a severe impact on use; one or more main functions or commands is inoperable; or the use is otherwise significantly impacted; Licensing issues not related to the deployment of the user's product.
4	Produces an inconvenient situation in which the Covered Software is usable, but does not provide a function in the most convenient or expeditious manner or produces incorrect results, and the user suffers little or no significant impact.
5	Any other support issue, including requests for enhancement or documentation changes.

(iii) *Response Time.*

We shall, after receipt and classification, use commercially reasonable efforts to respond during Standard Support Hours to each notification as indicated below, with a resolution of the issue as indicated below:

<b>Priority</b>	<b>Receipt Acknowledged</b>	<b>Resolution Goal</b>
1	4 Business Hours	1 Business Day – Correction to be issued when tested and available
2	4 Business Hours	2 Business Days – Correction to be issued when tested and available
3	4 Business Hours	Correction to be issued when tested and available
4	4 Business Hours	Correction to be included in a future release, on a business justifiable basis
5	4 Business Hours	Request may or may not be included at our discretion in a future release

• **Receipt Acknowledged** —Time for our operational staff to respond to your notification and resolution commences.

- Resolution Goal —If availability is not restored by this time, the issue will be escalated to a manager.

(c) *CONDITIONS FOR SUPPORT PROVIDED BY US.*

We provide a second level of support for those problems that you cannot reasonably be expected to resolve for yourself. Accordingly, our performance under the above criteria is conditional upon your compliance with the following conditions of support:

- You must provide (or at least disclaim any requirement of ours to provide) first line support to your users (and your customer's users).
- You must ensure that the **Software** is used only in combination with other software, devices or hardware recommended or specified by us as being compatible with the **Software**, and ensure a stable network environment with adequate capacity. In addition, you are expected to provide a technically qualified single point of contact for coordination of support with us.
- You must install (and cause your customers to install) all Updates we make available to you. We are not responsible for support services with respect to a **Software** if you (or the customer) have refused to permit updating of the **Software** by all applicable Maintenance Releases or if you have not ensured that hardware and network services are correctly configured and operating according to specifications, and operating system software and other third party software is current, and has all manufacturer/supplier-recommended updates and patches.
- You must provide us with reasonable access (remote or on-site, as needed by us) to the equipment, the **Software** and all relevant documentation and records relating to a reported issue, and such reasonable assistance as we may request, including sample output and other diagnostic information, in order to assist us in providing support.
- We are not responsible for support services to the extent arising in connection with **Extraordinary Circumstance**.

Failure to comply with the above requirements is not a breach of your agreement with us, but does excuse us from providing related support services.

(d) *Your Customers.*

Customers who acquire our **Software** through a reseller or through an Atalsoft OEM Partner must go to the entity that they acquired the **Software** from for their technical support services. Customers who contact our support directly will be directed back to their supplier for support and we will provide support to or through that entity partner unless (solely at our discretion) our personnel determine that it is necessary or desirable to provide support directly to the end-user customer.

(e) *Services Not Included.*

Support services do not include any of the following: (1) custom programming services; (2) on-site support, including installation of hardware or any software; (3) support of any **Software** not covered by this agreement; or (4) training.

(f) *Time And Materials Services.*



In the event that you notify us of a problem experienced in connection with the operation of the **Software**, we will respond as provided above. If the cause of such problem is not an error, defect or nonconformity in the **Software**, you must compensate us for all work performed by our personnel in connection therewith, on a time and materials basis at our then current standard rates, unless otherwise agreed by the parties in writing at the time, plus expenses. Expenses in excess of \$500 require your prior approval.

(g) *Non-Atalasoftware.*

Upon request and reasonable notice, we may (at our option) provide assistance in the installation or integration of non-Atalasoftware on a time and materials basis, plus expenses. Non-Atalasoftware consists of any software not created or supplied by us, including the following: new releases and updates to operating systems and other system software, and software you or a third party develop (except third party software embedded in the Software).

## **7. PUBLICITY.**

You (meaning your organization) agree to be identified as a customer of ours and agree that we may refer to you by name, trade name and trademark, if applicable, and may briefly describe your business in our marketing materials and website. You hereby grant us a license to your name and any of your trade names and trademarks solely in connection with the rights granted to us pursuant to this section.

## **8. PAYMENT**

(a) *Services; Fees.*

You agree to pay all charges, recurring fees, applicable taxes and other charges (collectively herein "**Charges**") at the rates in effect for the billing period in which those charges are incurred based on the licensing and service agreement for which you have acquired.

(b) *Payment.*

All payments shall be made at our address as indicated in this **Agreement** or at such other address as we may from time to time indicate by proper notice hereunder. All invoices are due and payable within thirty (30) days of our date of invoice. Interest shall be payable at the rate of one and one-half percent (1.5%) per month or at the maximum rate permitted by law, whichever is less, on all overdue and unpaid invoices until paid in full. All fees are denominated and to be paid in United States Dollars and are exclusive of any applicable taxes. You shall pay, indemnify and hold us harmless from all sales, use, value added or other taxes of any nature, other than personal property or taxes on or measured by our net or gross income, including penalties and interest, and all government permit or license fees assessed upon or with respect to any fees.

(c) *Billing Disputes.*

You must inform us of any billing problems or discrepancies within 90 days after they first appear on your account statement or invoice. If you do not bring them to our attention within 90 days, you agree that you waive your right to dispute such problems or discrepancies. Additionally, if any charges are being collected by us on behalf of a supplier, then such supplier shall be an express third party beneficiary of this section.

## **9. PROPRIETARY RIGHTS.**

(a) *Ownership of Intellectual Property.*

We (or our licensors) own all legal right, title and interest in and to the **Software**, including any intellectual property rights that subsist in the **Software** (whether those rights happen to be registered or not, and wherever in the world those rights may exist). The **Software** may contain information that is confidential to us (including without limitation any information so designated) and you shall not disclose such information to any third party without our prior written consent.

(b) *Content.*

We obtain no right, title or interest from you (or your licensors) under this **Agreement** in or to any information (such as data files, written text, computer software, music, audio files or other sounds, photographs, videos or other images) (collectively, "**Content**") that you or your customers transmit or display on, or through, the **Software**, including any intellectual property rights that subsist in that **Content** (whether those rights happen to be registered or not, and wherever in the world those rights may exist). You are responsible for protecting and enforcing those rights and we have no obligation to do so on your behalf.

(c) *Your Service Data.*

We and our affiliates may collect and use technical information you provide us as a part of the support services related to the **Software**. We agree not to use this information in a form that personally identifies individual persons at your organization.

(d) *Suggestions.*

You may voluntarily provide suggestions, comments or other feedback ("**Feedback**") to us with respect to items or information provided by us under this **Agreement**. We are not required to hold your **Feedback** in confidence, and your **Feedback** may be used by us for any purpose without obligation of any kind. Incorporation of your **Feedback** into our materials or products does not affect our exclusive ownership of such materials by us.

(e) *Notices/Protection of Proprietary Rights.*

You may not remove, obscure, or alter any proprietary rights notices (including copyright and trade mark notices) that may be affixed to or contained within the **Software**. In using the **Software**, you will not use any trade mark, service mark, trade name, logo of any company or organization in a way that is likely or intended to cause confusion about the owner or authorized user of such marks, names or logos. Nothing in this **Agreement** gives you a right to use any of our trade names, trade marks, service marks, logos, domain names, and other distinctive brand features without obtaining, in each instance, our prior written consent.

## 10. **TERM.**

(a) *Term.*

This **Agreement** is effective until terminated as set forth in this section.

(b) *Termination for Cause.*

Either party may terminate this **Agreement** for cause upon thirty (30) days written notice in the event the other party breaches a material provision of this **Agreement**, which breach is not cured within such thirty (30) day period.

(c) *Unauthorized Assignment.*

In addition, all of your rights to access the **Software** under this **Agreement** shall automatically terminate in the event of an unauthorized assignment, as described above under “Restrictions on Sublicense or Assignment”.

(d) *Effect of Termination.*

Upon any termination of this **Agreement**, your right to use the **Software** terminates, but the provisions under “Limitation on Your Use”, “Proprietary Rights”, “Exclusion of Warranties”, “Indemnification.”, “Limitation of Liability” and “General “ continue to apply to both of us even after termination.

## 11. EXCLUSION OF WARRANTIES.

THE SOFTWARE IS MADE AVAILABLE “AS IS, AS AVAILABLE”. WE EXPRESSLY DISCLAIM ALL WARRANTIES OF ANY KIND RELATING TO THE SOFTWARE, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. WE DO NOT PROMISE THAT YOUR USE OF THE SOFTWARE WILL BE UNINTERRUPTED, ERROR-FREE OR COMPLETELY SECURE. YOU ALONE SHALL BEAR THE RISK AND YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR OTHER DEVICE OR LOSS OF DATA THAT RESULTS FROM USE OF THE SOFTWARE. NO ADVICE OR INFORMATION, WHETHER ORAL OR WRITTEN, OBTAINED BY YOU FROM US SHALL CREATE ANY WARRANTY NOT EXPRESSLY STATED IN THIS AGREEMENT.

## 12. INDEMNIFICATION.

You agree to indemnify, hold harmless and defend us (and our subsidiaries, affiliates, officers, agents, co-branders or other partners, and employees), at your expense, against any and all third party claims or demands, actions, proceedings and suits and all related liabilities, damages, settlements, penalties, fines costs and expenses (including, without limitation, reasonable attorney's fees and other dispute resolution expenses) incurred by us, due to, arising out of or related to your use of the **Software** as modified in your Application, your or your **Personnel**'s violation of this **Agreement**, or you or your **Personnel**'s violation of any rights of another.

We shall defend or settle any Claim by a third party against You or Your customers that the SDK unmodified and as delivered under this Agreement infringes any patent or copyright of the United States or a contracting state to the European Patent Convention (“Infringement Claim”), provided that you promptly notify Us of such Infringement Claim in writing and gives Us full cooperation, information and sole authority to control the defense and any related settlement of such Infringement Claim. We shall pay the cost of such defense and settlement, and any costs and damages finally awarded by a court of competent jurisdiction against You as a result of, any Infringement Claim. If use of the SDK is enjoined under any final award or settlement of an Infringement Claim, or if We believe such injunction may occur, We may at our option and expense (i) procure the right to continue using the affected portion of the SDK, (ii) modify or replace the affected portion of the SDK so the SDK becomes non-infringing, or (iii)

if none of the foregoing alternatives are commercially feasible, remove the affected portion of the SDK from this Agreement. Sections 9 and 10 set forth Our entire liability to You with respect to infringement.

Exceptions. We shall have no liability or other responsibility for an Infringement Claim to the extent such Infringement Claim arises from (1) any modification of the SDK not made by Us, (ii) any use of the SDK in a way not authorized by this Agreement, (iii) any compilation, combination, or other use of the SDK with products, solutions, or services not supplied by Us, where infringement would have been avoided but for such compilation, combination, or use, or (iv) use of a superseded release of the SDK if the infringement would have been avoided by the use of a current release of the SDK provided by Us to You.

### **13. LIMITATION OF LIABILITY.**

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES AND UNDER NO LEGAL THEORY, WHETHER TORT, CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE, SHALL WE BE LIABLE TO YOU OR ANY OTHER PERSON FOR (A) ANY DAMAGES RELATING TO THIS AGREEMENT, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, COVER, RELIANCE OR CONSEQUENTIAL DAMAGES, EVEN IF WE SHALL HAVE BEEN INFORMED OF THE POSSIBILITY OF SUCH DAMAGES OR (B) FOR ANY CLAIM BY ANY OTHER PARTY. IN THE EVENT THAT NOTWITHSTANDING THE FOREGOING, WE ARE FOUND LIABLE TO YOU FOR DAMAGES FROM ANY CAUSE WHATSOEVER, AND REGARDLESS OF THE FORM OF THE ACTION (WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), PRODUCT LIABILITY OR OTHERWISE), OUR LIABILITY TO YOU WILL BE LIMITED TO THE GREATER OF \$10,000 OR THE AMOUNT YOU PAID FOR THE SOFTWARE ALLEGEDLY CAUSING SUCH DAMAGE. NONE OF OUR (OR OUR SUBSIDIARIES' OR AFFILIATES' OR SUPPLIERS') OFFICERS, DIRECTORS OR EMPLOYEES SHALL HAVE ANY LIABILITY HEREUNDER.

### **14. ACKNOWLEDGEMENT OF ALLOCATION OF RISK.**

As you know, the materials provided to you hereunder are to be incorporated by you into products we have no control over, and sold to third party customer we have no right to evaluate, negotiate with or communicate with. You, and not we, therefore, have essential control over circumstances that will enable you to assess and moderate risk associated with the use of the **Software**. We have included the above provisions to allocate risk consistent with these realities.

**You accordingly acknowledge that you understand that an essential purpose of the exclusion of warranties, the indemnification and the limitation of liability provided in this Agreement is allocation of risks between both of us, which allocation of risks is reflected in the applicable fees and other arrangements between both of us in the Agreement, and that we would not be willing to enter into this Agreement with you and license the Software to you if we were required to bear any additional risk.**

### **15. DEFINITIONS.**

The following terms have specific meanings in this **Agreement**:

“**Application**” is a software application you make which includes the **Software** but adds significant functionality besides that provided by the **Software**.

“**Build Machine**” means a **Server** used to perform automated builds of software application (for example, a separate computer used to automatically create current versions of object based on source code modifications made by a group of **Developers**).

“**Business Days**” means days that occur Monday through Friday, exclusive of observed holidays. If any event occurs during a **Business Day**, and the response is designated in “**Business Days**”, the deadline for such event to occur shall be prior to the end of **Standard Support Hours** on that number of following **Business Days**. For example, an event occurring on Monday (at any time) for which one **Business Day** response is committed is due to be responded to by 7:00pm Eastern Time Tuesday. An event occurring on Monday for which five **Business Days** response is committed is due to be responded to by 7:00pm Eastern time on the subsequent Monday.

“**Business Hours**” has the following meaning: If any event occurs during **Standard Support Hours**, and the response is designated in “**Business Hours**”, such time period shall mean actual hours (even if such period extends beyond the normal end of Standard Support Hours). If any event occurs outside of Standard Support Hours, and the response is designated in “**Business Hours**”, such time period shall mean actual hours commencing upon the opening of business on the next **Business Day**.

“**Company Department**” means (i) with respect to a organization with revenues equal to or less than \$25M per year as reflected in the previous years annual financial statements, the entire organization, and (ii) with respect to a organization with revenues greater than \$25M per year as reflected in the previous years annual financial statements and is separated into distinct business units (either organizationally or by market, each separate business unit. In the event it is unclear whether or not part of an organization constitutes a separate **Company Department** for the purposes of this **Agreement**, please consult the Atalasoftware Sales department for further guidance.

“**Core**” means a separate CPU core, which may be combined together in a single physical CPU.

“**Customer**” means your customer to whom you sell or license the **Application**.

“**Developer**” is defined as an individual person engaged in the development of an Application.

“**Extraordinary Circumstances**” include fire, flood, earthquake, elements of nature or acts of God, acts of war, terrorism, riots, civil disorders, rebellions or revolutions, strikes, lockouts, labor difficulties, generalized internet interruptions (through denial of service, worms, telecommunications problems or the like) or any other cause beyond our reasonable control. We take commercially reasonable efforts to protect against and plan for continued service in such circumstances, but we cannot guarantee support.

“**In Use**” has the following meaning: **Software** is “in-use” on a computer when it is loaded into temporary memory (i.e., RAM) or installed into the permanent memory (i.e., hard disk, CD-ROM, or other storage device) of that computer.

“**License**” means the acquisition (and payment for) the particular use rights and with the rights and responsibilities described under this **Agreement**. Licenses subject to this Agreement are “SDK License”, “Developer Build License”, “Single User Client License”, “Standard Server License”, and “Unlimited CPU Server License”. Each of these has the rights and limitations specified in section 3. The following licenses require contacting the Atalasoftware Sales department for additional specifics and pricing: “Multi-User Kiosk License”, “Client Applet Server License”, “Cloud Application License”, “Embedded Hardware License”, “Hardware Bundled License”, and “COM Callable Wrapper License”.

“**Maintenance and Deployment Term**” means the period for which you have acquired the right to software maintenance and deployment services provided under this **Agreement**.

“**Purchase Order**” means the purchase order or other document specifying the kind and quantity of **Licenses** and the related **Maintenance and Deployment Term** for **Licenses** hereunder.

“**SDK**” means the materials licensed hereunder and referred to, in the Documentation or this Agreement, as comprising or constituting the “software development kit” or “SDK”.

“sale”, “sell” and other similar terms, when used in connection with the marketing and distribution of any of the **Software** shall mean the licensing of such materials, and shall not be deemed for any purpose to mean a transfer of title or other rights of ownership to the **Software**.

“**Server**” is a non-user physical or **Virtual** computer, configured with the intention of multiple users accessing it as a service, or as a background service run as an automated process for any kind of service that has **Software** loaded into the server’s RAM. For example, a computer that is dedicated as a service to run a background automated process (such as a high volume scan station) and not dedicated to a user for day to day personal business activities is considered a Server license.

“**Non Production Server**” is a Server where access to **End Users** is prohibited.

“**End User**” is the intended user for which the Application was built.

“**Standard Support Hours**” means from 8:00am to 7:00pm, Eastern time, Monday through Friday, exclusive of observed holidays.

“**Updates**” means both “**Major Releases**” and “**Maintenance Releases**”. **Maintenance Releases** means: (1) bug fixes, (2) enhancements to the software provided by us to keep current with bug fixes and **Major Updates** that we make, (3) enhancements to keep current with the current hardware vendor’s operating system releases, as available from us, provided that the current hardware vendor’s operating system release is both binary and source-compatible with the operating system release currently supported by us; and (4) performance enhancements to **Products**. **Maintenance Releases** do not include new functions such as (a) new functionality in the product, (b) new applications, and (c) new presentation tools; all Updates which includes such materials are “**Major Releases**.”

“**Virtual**” computer or server means a virtualized computer with separate machine identity (primary computer name or similar unique identifier) or separate administrative rights, and commonly have an operating system and applications running within it. Several virtual computers may concurrently operate on the same physical computer.

## 16. GENERAL TERMS.

(a) *Entire Agreement.*

The **Agreement** constitutes the whole legal agreement between both of us and governs your use of the **Software** (but excluding any services that we may provide to you under a separate written agreement), and completely replace any prior agreements between both of us in relation to the **Software**.

(b) *Waiver.*

You agree that if we do not exercise or enforce any legal right or remedy which is contained in this **Agreement** (or that we have the benefit of under any applicable law), this will not be taken to be a formal waiver of our rights and that those rights or remedies will still be available to us.

(c) *Severability.*

If any court of law, having the jurisdiction to decide on this matter, rules that any provision of this **Agreement** is invalid, then that provision will be removed from this **Agreement** without affecting the rest of this **Agreement**. The remaining provisions of this **Agreement** will continue to be valid and enforceable.

(d) *Third Party Beneficiaries.*

You acknowledge and agree that each member of the group of companies of which we are the parent shall be third party beneficiaries to this **Agreement** and that such other companies shall be entitled to directly enforce, and rely upon, any provision of this **Agreement** that confers a benefit on (or rights in favor of) them. Other than this, and except as expressly provided otherwise in this **Agreement**, no other person or company shall be third party beneficiaries to this **Agreement**.

(e) *Governing Law.* This

**Agreement**, and your relationship with us under this **Agreement**, shall be governed by the laws of the Commonwealth of Massachusetts without regard to its conflict of laws provisions. Both of us agree to submit to the exclusive jurisdiction of the courts located within the Commonwealth of Massachusetts to resolve any legal matter arising from this **Agreement**. Notwithstanding this, you agree that we shall still be allowed to apply for injunctive remedies (or an equivalent type of urgent legal relief) in any jurisdiction.

(f) *Changes to This Agreement.*

We may make changes to this **Agreement** from time to time to update it, for example to add references to additional **License** types or terms or different products and services. Unless otherwise specified, the amended or updated terms will only apply to **Licenses** you acquire after the effective date of such amendment. When these changes are made, we will make a new copy of this Agreement available to you as part of the **Purchase Order** process.

**Exhibit A - Products that can be Deployed to Single User Client Licenses Royalty Free with an Active Maintenance and Deployment Term**

DotImage Document Imaging  
DotImage Photo Pro  
DotImage Photo  
DotImage PDF Reader (all editions)  
DotImage Barcode Reader (all editions)  
DotImage Barcode Writer  
DotImage CAD Reader  
DotImage JPEG2000 Codec (all editions)  
DotImage JBIG2 Codec  
DotImage DICOM Codec  
DotImage OCR Module, Tesseract Engine  
DotImage Forms Processing  
DotTwain  
EZTwain Pro