

ANNOTATION SDK/ACTIVEX DEVELOPMENT LICENSE AGREEMENT

This Software Development 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 limited liability company 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 use by Licensee of **ANNOTATION SDK/ACTIVEX** (the “Software”), developed by the Licensor. Such use by Licensee shall be expressly and solely for the purpose of utilizing the Software for the development of, and the incorporation of the Software into, _____ (the “Application”), a product of the Licensee, which will be developed to _____ (“Brief Description of Application Purpose”).

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 limited, non-exclusive, non-transferable, worldwide license, without the right to sublicense others, to (a) Use the Software for the sole purpose of developing one (1) Application; and (b) reproduce Redistribution Files and Sample Code in object code form only as a component of the Application that adds significant and primary functionality to the Redistribution Files and Sample Code, provided that (i) Licensee distributes such object code under the terms and conditions of an End User License Agreement which does not conflict with this Agreement. As used herein, “End User License Agreement” means a license agreement that Licensee’s third party end user must execute in order to access and use the Application; and (ii) Licensee includes a copyright notice reflecting the copyright ownership of Licensor in the Software. As used herein, “Redistribution Files” shall mean certain object code files provided as a part of the Software designated in the Documentation as “Redistribution Files.” The “Sample Code” shall mean certain source code files provided as a part of the Software designated in the Documentation as “Sample Code.” “Documentation” shall mean the operating, training and reference manuals relating to the use and operation of the Software, and any enhancements, updates or versions related thereto, whether in printed form, electronic form, posted on Licensor’s website, available on-line or in any other format, or otherwise supplied by Licensor to Licensee. Licensor reserves all rights not expressly and unambiguously granted herein.

3. Term and Termination.

a) This Agreement is effective until terminated. Licensee rights with respect to the Software may be terminated, either immediately or after a notice period not exceeding thirty (30) days, at Licensor's sole discretion, should Licensee fails to comply with any term of this agreement. In the event of license termination, all rights and licenses granted by Licensor to Licensee shall cease and Licensee shall immediately cease use of the Software and thereafter destroy all copies of the Software and Documentation, whether or not included in any Application.

b) Either party may terminate this Agreement in the event that the other party makes an assignment for the benefit of creditors, or commences or has commenced against it any proceeding in bankruptcy, insolvency, or reorganization pursuant to bankruptcy laws.

c) Termination of this Agreement for any reason shall not relieve Licensee’s obligations under this Agreement with respect to the payment of all license fees or other fees and expenses that have accrued or that Licensee has agreed to pay. The provisions of sections 3, 5, 6, 8, 9, and 11-24 shall survive any expiration or termination of this Agreement.

4. License Fees. Licensee shall pay to Licensor 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**. All amounts due hereunder are based on United States currency.

5. Restrictions.

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 protectable under applicable trade secret, industrial property and/or unfair competition laws. Licensee may use the Software only in accordance with those rights that 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 specifically permitted herein; 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. Licensee shall not give, sell, rent, lease, timeshare, use as a service bureau, sublicense, disclose, publish, assign, market, transfer or distribute any portion of the Software to any third party.

c) Licensee is strictly prohibited from distributing the Software, whether as a component of the Application or otherwise, as Freeware or Shareware. "Freeware" shall mean computer software that is available for use at no cost (or for an optional fee). "Shareware" shall mean computer software that is provided to users without payment or for nominal payment, computer software that is provided to users on a trial basis or for demo purposes, and so forth. For the avoidance of doubt, Licensee shall have no right to distribute the Software on a stand-alone basis or as part of an Application whose primary purpose is to replicate the functionality of the Software.

d) The following Black Ice Software proprietary Software libraries are bundled with open source software components that are subject to separate software licenses and are neither governed by this Agreement nor considered Black Ice Software's proprietary Software: Little CMS for Annotation SDK for Windows DLL, for ActiveX, and for .NET. Black Ice Software owns no intellectual property rights in or to any open source software components. All open source components are provided by their respective authors "as is."

6. Distribution. The distribution of the Software by the Licensee or its affiliates or resellers in any other form or as a component of the Application is strictly prohibited unless Licensor and Licensee shall execute a separate written Distribution/Runtime License Agreement.

7. Upgrades. 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.

8. WARRANTY. THE SOFTWARE IS LICENSED FOR USE "AS-IS," WITHOUT WARRANTY OF ANY KIND. LICENSOR DISCLAIMS ALL WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, WITH RESPECT TO THIS AGREEMENT, SOFTWARE, AND DOCUMENTATION, INCLUDING WITHOUT LIMITATION, ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, PERFORMANCE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS, OR THEIR EQUIVALENTS UNDER THE LAW OF ANY JURISDICTION. LICENSEE ASSUMES ALL RISKS AS TO THE QUALITY, FUNCTION AND PERFORMANCE OF THE SOFTWARE. LICENSOR DOES NOT WARRANT THAT LICENSEE'S USE OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, THE RESULTS OF ANY PROGRAM OR SERVICE, 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. LICENSOR DISCLAIMS, AND LICENSEE WAIVES, THE BENEFIT OF ANY REPRESENTATIONS AND WARRANTIES NOT EXPRESSLY SET FORTH IN THIS

AGREEMENT. LICENSOR SHALL HAVE NO OBLIGATION TO HONOR ANY WARRANTIES THAT LICENSEE PROVIDES TO THIRD PARTY END USERS OF THE APPLICATION.

9. LIMITATION OF LIABILITY. EXCEPT AS EXPLICITLY STATED IN SECTION 10 (INTELLECTUAL PROPERTY INDEMNIFICATION), IN NO EVENT WILL LICENSOR'S LIABILITY TO LICENSEE, 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 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, EXEMPLARY 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.

10. 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 provision 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 use 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 finally 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 license granted hereunder.

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

11. Compliance with Laws.

(a) Compliance with Laws. Licensee will strictly comply with all applicable laws and regulations in all countries in which the Software and Documentation is licensed and relating in any way to Licensee's performance of its obligations under this Agreement. Licensee shall defend, indemnify, and hold Licensor harmless from and against any and all loss, expense or liability (including reasonable attorney's fees) awarded against, or incurred by Licensor, as a consequence of Licensee's failure to comply with any such laws or regulations. This obligation shall survive termination of this Agreement.

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

12. 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.

13. Assignment; Binding Effect. Neither this Agreement nor any of the rights granted hereunder is assignable or transferable by Licensee without the prior written approval of Licensor, and any such attempted assignment shall be null and void. This Agreement shall be freely assignable by Licensor. This Agreement shall be binding upon and inure to the benefit of the parties, their legal representatives, transferees, successors, and assigns, as permitted by this Agreement.

16. Notices. All notices under this Agreement shall be in writing, shall reference this Agreement, and shall be deemed given: 1) when sent by confirmed facsimile; 2) five days after having been sent by registered or certified mail, postage prepaid, return receipt requested; or 3) 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.

17. Remedies. The parties agree that a material breach of this Agreement adversely affecting Licensor’s proprietary rights in the Software would cause irreparable injury to Licensor for which monetary damages would not be an adequate remedy and therefore, that Licensor shall be entitled to equitable relief, without the need for posting any bond or surety, 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.

18. 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.

19. 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.

20. 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.

21. Entire Agreement. This Agreement, including all attachments, constitutes the entire agreement between the parties with respect to the subject matter hereof. This Agreement 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 other 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.

22. 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.

23. 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.

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

25. Notices. All notices required to be given hereunder shall be given in writing and shall be delivered either by hand, by certified mail with proper postage affixed thereto, or by facsimile (with confirmation copy sent by registered mail) addressed to the signatory at the address set forth on the signature page, or such other person and address as may be designated by the parties from time-to-time in writing. All such communications shall be deemed received by the other party upon the earlier of actual receipt or actual delivery.

The parties hereto 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 _____

MAINTENANCE PLAN:

Licensee has the option to enroll in an annual maintenance plan for \$299 annually. Maintenance plans provide all upgrades (major and minor releases) as well as priority technical support for the length of the contract, and they can be renewed from year to year. In order to extend the contract, the yearly maintenance and upgrade contract must be renewed and paid in full before the term of the then-existing annual maintenance plan expires.

Initial here to enroll in an annual maintenance plan: _____

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.

Licensed Software Program: **Annotation SDK/ActiveX**

Scope of Use: **Development of Application**

Application Title:

Indicate Number of License(s):

License Fee: Please fill in quoted price.

Support and Other Services. Maintenance, installation and training services (collectively, "Services") may be offered by Licensor to Licensee. All Services are provided pursuant to separate agreements detailing the terms and conditions of service, the Services to be provided, and the fee for such Services. Unless Licensee and Licensor enter into such an agreement, Licensor shall be under no obligation to provide any Services to Licensee.