

# POTIX SOFTWARE LICENSE AGREEMENT

## ZK ENTERPRISE PACKAGE ANNUAL, DEVELOPER-BASED

IMPORTANT: ZK SOFTWARE IS LICENSED, NOT SOLD. PLEASE READ THE FOLLOWING AGREEMENT (“Agreement”) CAREFULLY BEFORE CONTINUING. THIS AGREEMENT IS BETWEEN YOU (EITHER AN INDIVIDUAL OR AN ENTITY) (“You” OR “Customer”) AND POTIX CORPORATION (“Potix”). IF YOU DOWNLOAD OR USE THE ZK ENTERPRISE PACKAGE (OR AUTHORIZE ANY OTHER PERSON TO DO SO) OR OTHERWISE INDICATE YOUR CONCURRENCE WITH THIS AGREEMENT, YOU ACCEPT THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN DO NOT ACCEPT THIS AGREEMENT AND DO NOT DOWNLOAD OR USE THE ZK ENTERPRISE PACKAGE.

### **ZK Enterprise Package:**

By purchasing ZK Enterprise Package, You receive rights to the following.

- Software.
- Updates.
- Documentation.
- Support.

### **Agreement Detail:**

- Effective Date: The date of the Customer invoice for ZK Enterprise Package.
- License Fee: Listed on the Customer invoice.
- Total Number of Developers: Listed on the Customer invoice.
- Total Support: Listed on the Customer invoice.
- Initial Term: The one year period beginning upon the Effective Date.
- Renewal Term: The successive one-year period set forth in Article 5.2.
- License Period: The Initial Term or each Renewal Term.

### **1. Definitions**

“ZK Enterprise Package” means the Software, Updates, Documentation, and Support, collectively.

“Software” means the object code and source code of the ZK Enterprise edition, and all Updates made generally available in the official website of Potix during each License Period.

“Updates” means bug fixes, updates and/or upgrade for Software or other software or software tools that may be provided to You by Potix in its sole discretion.

“Documentation” means all online help file or written instruction manuals regarding the use of the Software.

“Support” means E-mail Support and Remote Consulting provided to You by Potix.

“Remote Support” means E-mail Support and Remote Consulting.

“E-mail Support” means the Customer’s email communication to Potix and request for assistance in resolving a technical question.

“Remote Consulting” means remote consulting services provided to You by Potix via Internet tools.

“License Fee” means the non-refundable license fees and any additional fees set forth in this Agreement for ZK Enterprise Package.

“Derivative Software” means the object code Software and/or object code that results from Your compilation of modified or unmodified source code Software.

“Developer Product” means Your own applications that incorporate Derivative Software and do not substantially duplicate the capabilities or compete with the Derivative Software or the Software.

“Recipient” means anyone who uses or acquires Your Developer Products.

“Developer” means an individual who directly or indirectly (including but not limited to, going through a code generator) develops or maintains Developer Product or Derivative Software.

## 2. License Grants

As long as You comply with the terms and conditions of this Agreement, Potix grants You a non-exclusive, non-transferable right to use the Software during the License Period in the manner and for the purposes described in the Agreement, as further set forth below.

- 2.1. You may develop and maintain Developer Products using the Software.
- 2.2. You may use, modify, extend, and compile source code of the Software solely for the purpose of creating Developer Products. However, any modifications or extensions free Potix from any further technical support to You.
- 2.3. You may use and reproduce Derivative Software as a part of a Developer Product.
- 2.4. You may distribute Derivative Software as part of a Developer Product and grant limited rights to any Recipient of the Developer Product, to use the Derivative Software as part of the Developer Product, provided that You meet all of the following conditions:
  - A. You should not permit the Recipients to customize, extend, develop, access, modify, or otherwise tamper with the Derivative Software in any project/product, or further distribute Derivative Software, or use it in another project. In the event that any

Recipient wishes to have any of the aforesaid rights on the Derivative Software, a separate license is needed from Potix to the Recipient.

- B. You should include the restrictions as listed in the aforesaid section in a notice in the Developer Product when distributing.
- C. You should not distribute the Derivative Software alone.
- D. You should not distribute any source code of the Software, with or without modifications, to any third party.

Your rights are limited to the Software, Updates, Documentation, and Support available in Potix's official website during each License Period. After the License Period has expired, You have no further rights to receive any Software, Updates, Documentation, and Support unless the Agreement is renewed. No license to use other versions of ZK software owned by Potix is granted or implied by this Agreement, including but not limited to, new versions of ZK software beyond the License Period. You acquire no rights other than those listed in this Agreement.

### 3. Restriction of Use

- 3.1. You should not assign, lease, rent, loan or sublicense any portion of ZK Enterprise Package to any third party.
- 3.2. You should not use the Software to provide processing services to third parties, commercial timesharing, rental or sharing arrangements, or on a “service bureau” basis.
- 3.3. You should not copy, reproduce or distribute any portion of ZK Enterprise Package except as set forth in Article 2.
- 3.4. You should not disclose, or make available to, permit use of ZK Enterprise Package to persons other than Your employees, temporary help or implementers of the Software.
- 3.5. You should not exceed the number and type of licenses purchased under the Customer invoice. The total number of developers who use ZK Enterprise Package should not exceed the Total Number of Developers listed on the Customer invoice.
- 3.6. You should not remove, alter, or obscure any confidentiality or proprietary notices (including copyright, trademark, and patent notices) of Potix in ZK Enterprise Package.
- 3.7. Your Developer Product and/or Derivative Software should not compete with Potix.
- 3.8. All Developers who develop a same Developer Product should use the same kind of Software version and edition.
- 3.9. You should not reverse engineer, regress, decompile, decipher, disassemble, or otherwise attempt to derive the source code of the Software.

#### 4. Payment

- 4.1. In consideration of the rights granted herein, You agree to pay Potix the License Fee specified in the Customer invoice. Potix expects to receive the full invoiced amount without any deductions, and You are responsible for covering the local and intermediary bank handling fees. The detailed method of payment shall be as specified in the Customer invoice.
- 4.2. Except as otherwise provided in Article 9, all fees are non-cancelable and non-refundable.
- 4.3. All fees and other prices are exclusive of local, state, federal and international sales, value added, excise and other taxes and duties of any kind. You shall be responsible for payment of taxes and duties of any kind payable with respect to the license of ZK Enterprise Package. If Customer has an obligation to withhold any amounts under any law or tax regime, you shall gross up or reimburse the payments so that Potix receives the full amount quoted and invoiced.
- 4.4. If conditional discounts are given and You fail to satisfy the conditions, Potix reserves the right to ask You to complement the balance.

#### 5. Term, Termination, and Renewal

- 5.1. Term: This Agreement shall commence on the Effective Date set forth on the Customer invoice and shall continue for the Initial Term unless a different period is specified in writing by the parties at the time of purchase.
- 5.2. Renewal: At the end of the Initial Term or any Renewal Term, You may elect to renew for another annual period. Potix reserves the right to stop offering license renewals at any time without notice. The Agreement shall renew for a successive one-year Renewal Term unless an alternative period is specified in writing by the parties. During each Renewal Term, all terms and conditions shall remain in full force and effect, with the exception of License Fee. Potix reserves the right to modify License Fee.
- 5.3. Termination:
  - A. Potix may terminate the Agreement immediately upon written notice to You if You fail to comply with any of the terms or conditions in this Agreement.
  - B. You may terminate this Agreement for any or no reason by giving Potix ninety (90) days prior written notice.
- 5.4. Effect of Termination: Upon termination of this Agreement the following terms shall apply.
  - A. All rights granted under this Agreement will immediately terminate. You shall forthwith discontinue any (a) use of ZK Enterprise Package, (b) development, maintenance or distribution of the Derivative Software and Developer Products

or copies thereof.

B. You shall destroy the original and all adaptations or copies of ZK Enterprise Package.

C. Termination will not affect either party's obligations regarding Payment, Proprietary Rights, Confidentiality, Limitation of Liability, Disclaimer of Warranties, Relationship with Third Party, Indemnification, Governing Law, and Jurisdiction, which provisions will survive termination of this Agreement.

D. No termination on the basis of this provision will entitle You to a refund of any portion of the fees paid to Potix.

## 6. Proprietary Rights

Potix owns and retains all right, title, and interest in and to ZK Enterprise Package, including but not limited to all copyrights, patents, trade secret rights, trademarks, know how and other intellectual property rights at any time. The intellectual property and proprietary rights of whatever nature in ZK Enterprise Package, including derivative works, are and shall remain the exclusive property of Potix, and nothing in this Agreement should be construed as transferring any aspects of such rights to You or any third party. Potix reserves any and all rights not expressly granted in this Agreement. Potix, ZK, and ZK Forge are trademarks of Potix Corporation, and shall not be used by Customer without Potix's express authorization.

## 7. Updates

Potix may provide You Updates in its sole discretion during each License Period. Potix has no obligation to provide any Updates for the Software.

## 8. Support

Remote Support is performed via E-mail Support and/or Remote Consulting.

### 8.1. E-mail Support

#### A. Procedure

- a. Request Support: You may request support to Potix by e-mail a support question during each License Period. When the License Period expires, any unused supporting hours are lost and not rolled over. The total number of Remote Support hours that You may use is listed on the Customer invoice. If You use up all the supporting hours, You should not request further support before purchasing additional supporting hours. Please contact [info@zkoss.org](mailto:info@zkoss.org) for information about commercial technical support.
- b. Potix will make commercially reasonable efforts to resolve any support question but does not guarantee that all questions will be resolved.

c. No Fee will be refunded even if a support question is not resolved. Potix, in its sole discretion, will determine if the question is closed. Generally, a question is closed when You receive one of the following.

- (i) information that resolves the problem;
- (ii) information on how to obtain solution that might resolve the problem;
- (iii) notice that the problem is caused by a known, unresolved issue or an incompatibility issue with ZK Enterprise Package;
- (iv) notice that the problem is a hardware issue;
- (v) notice that the problem will be resolved by a newer release of ZK Enterprise Package;
- (vi) notice that Potix has no obligation to support because of Article 8.3.

B.Communication: Potix will make commercially reasonable efforts to communicate with You by e-mail within the response time listed on the Customer invoice. A "response" means Potix' acknowledgment of a support request, and does not necessarily mean that a resolution will be achieved. You should communicate with Potix in English or any other language approved by Potix.

## 8.2. Remote Consulting

A.You may request for Remote Consulting on an hourly basis during each License Period. When the License Period expires, any unused hours are lost and not rolled over. The number of Remote Support hours You may request is listed on the Customer invoice.

B.Remote Consulting will be provided to You via Internet tools such as Skype or any other tool approved by Potix and You.

C.Potix will make commercially reasonable efforts on providing Remote Consulting but does not guarantee that all the issues consulted will be resolved.

## 8.3. Exceptions

Potix, in its sole discretion, has no obligation to support (a) any features not provided by Potix, (b) use of a computer system that is incompatible with ZK Enterprise Package, (c) problems caused by Your negligence, abuse or misapplication or misuse of ZK Enterprise Package, (d) any change, modification or addition to the Software, (e) anything not provided by Potix, including, but not limited to third-party libraries and resources integrated in the Software.

## 8.4. Your obligations

A.Service Prerequisites: You should provide Potix with

- a. the Customer invoice Number;
- b. the Version Number of the Software;
- c. a detailed description of the problems;
- d. a general description of the operating environment.

B.Support Contact: You shall designate one employee as "Support Contact" conferring with Potix regarding support-related issues. The Support Contact must have sufficient technical expertise and/or experience to perform Your obligations under this Agreement and will be responsible for all communications with Potix relating to this Agreement.

C.Backup: You should keep adequate backup copies of Your data and programs. You agree that Potix's support services may result in irreparable data loss if You do not keep adequate backup copies of data.

## 9. LIMITATION OF LIABILITY

9.1. NEITHER POTIX NOR ANY OF ITS EMPLOYEES, OR AGENTS SHALL IN ANY CASE BE LIABLE FOR CONSEQUENTIAL, EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES, INCLUDING BUT NOT LIMITED TO, ANY LOST PROFITS OR LOST SAVINGS (WHETHER RESULTING FROM IMPAIRED OR LOST DATA, SOFTWARE OR COMPUTER FAILURE, SUPPORT FAILURE, OR ANY OTHER CAUSE), EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9.2. EXCEPT AS OTHERWISE RESTRICTED BY LAW, TOTAL LIABILITY OF POTIX ARISING FROM OR RELATING TO YOUR USE OF ZK ENTERPRISE PACKAGE OR ANY ASSOCIATED SERVICES SHALL BE LIMITED TO THE LICENSE FEE PAID BY YOU FOR THE SOFTWARE THAT CAUSED SUCH DAMAGE DURING THE PAST TWELVE (12) MONTHS. THIS LIABILITY DOES NOT APPLY TO DAMAGES RESULTING FROM MISUSE, ABUSE OR NEGLIGENCE.

## 10. DISCLAIMER OF WARRANTIES

10.1. EXCEPT AS SET FORTH IN THE FOREGOING LIMITED LIABILITY, ZK ENTERPRISE PACKAGE IS PROVIDED TO CUSTOMER "AS IS," WITHOUT ANY WARRANTIES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, WARRANTIES CONCERNING THE INSTALLATION, USE OR PERFORMANCE OF THE SOFTWARE.

10.2. POTIX DISCLAIMS AND EXCLUDES ANY AND ALL WARRANTIES, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, NON-INFRINGEMENT, TITLE, RESULTS.

10.3. POTIX DO NOT WARRANT THAT ZK ENTERPRISE PACKAGE WILL MEET CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION THEREOF WILL BE UNINTERRUPTED OR ERROR- FREE, OR THAT ERRORS WILL BE

CORRECTED. YOU ASSUME THE ENTIRE RISK FOR THE RESULTS OBTAINED USING THE PRODUCT. TO THE EXTENT THAT POTIX MAY NOT DISCLAIM ANY WARRANTY AS A MATTER OF APPLICABLE LAW, THE SCOPE AND DURATION OF SUCH WARRANTY WILL BE THE MINIMUM PERMITTED UNDER SUCH LAW.

10.4. WITHOUT LIMITING THE GENERALITY OF THE FORGOING DISCLAIMER, THE SOFTWARE IS NOT SPECIFICALLY DESIGNED, MANUFACTURED OR INTENDED FOR USE IN THE PLANNING, CONSTRUCTION, MAINTENANCE, CONTROL OR DIRECT OPERATION OF NUCLEAR FACILITIES; AIRCRAFT NAVIGATION, CONTROL OR COMMUNICATION SYSTEMS; WEAPONS SYSTEMS; OR DIRECT LIFE SUPPORT SYSTEMS.

#### 11. Relationship with Third Party

11.1. There are no third party beneficiaries to this License. Consequently, Potix provides no warranty at all to any person, other than the limited warranty provided to You ( the original purchaser of ZK Enterprise Package) , as set forth herein, and You shall be solely responsible to the Recipients for support, service, upgrades, or assistance, and the Recipients will have no right to contact Potix for any assistances.

11.2. You shall indemnify, defend and hold Potix, its employees, officers, directors and affiliates, harmless from and against any claims or liabilities arising out of or related to the use, procurement, reproduction or distribution of Your Developer Product by third parties.

#### 12. Audit Rights

Upon reasonable notice, Potix may at its own expense audit Your site(s) to ensure compliance with this Agreement. Potix will notify You in writing of any deficiency in compliance and will provide a recommended plan for resolving outstanding issues. Your failure to cure such deficiencies within thirty (30) days after receipt of the written notification will constitute a material breach and will be grounded for immediate termination of this Agreement.

#### 13. Assignment

You shall not have the right to assign or transfer any of Your right or obligations provided hereunder to any third party, including but not limited to a direct competitor of Potix (for example, an entity providing AJAX products and services), without Potix's prior written content.

#### 14. Confidentiality & Non-Solicitation



- 14.1. You agree that the ZK Enterprise Package, as well as any other confidential information, data, or materials obtained or exchanged during the course of this Agreement, are considered confidential and proprietary to Potix. You agree to hold this information in confidence, not disclose it to any person, and not use it for any purpose other than the use and operation of ZK Enterprise Package as permitted under this License. Potix shall have the right to identify Customer as a commercial Customer, including by making reference thereto on the Potix Website.
- 14.2. You agree that any unauthorized disclosure of ZK Enterprise Package would cause inexpressible harm to Potix. Potix shall be entitled to obtain relief in addition to any other remedy.
- 14.3. You agree not to encourage, solicit or otherwise attempt to recruit or persuade any then-current Potix employee to leave his/her current employment at Potix and work for you, your affiliate, or any other company. The provisions of this section shall remain in full force and effect for 12 months after the termination of this agreement or 12 months after the termination of the employee's employment at Potix, whichever is later. Potix shall be entitled to obtain relief in addition to any other remedy.

## 15. Indemnification

- 15.1. You agree to indemnify, defend and hold Potix harmless from any and all claims, suits, liabilities, damages, losses, costs and expenses (including but not limited to reasonable attorneys fees) incurred by Potix as a result of Your use, marketing, distribution, or sale of Developer Products, including any claims alleging that any Developer Products infringe any third party intellectual property rights.
- 15.2. If Potix receives notice of such a claim, Potix will promptly notify You in writing and allow You sole control of the defense of any such claim or action and all negotiations for its settlement and compromise, provided You give adequate assurances that You will diligently pursue resolution of the claim.

## 16. Severability/Waiver

- 16.1. Severability: If a provision is invalid or unenforceable, the remaining provisions will remain in effect and the parties will amend the Agreement to reflect the original agreement to the maximum extent possible.
- 16.2. Waiver: No waiver of any contractual right will be effective unless in writing by an authorized representative of the waiving party. No waiver of a right arising from any breach or failure to perform will be deemed a waiver of any future right.

## 17. Entire Agreement

17.1. This Agreement shall constitute the entire agreement between You and Potix, and may be amended only in a writing signed by both parties.

17.2. This Agreement will supersede all representations, warranties, terms, conditions, undertakings or oral agreements, express or implied, between the parties other than those set forth in this Agreement.

#### 18. Language

This Agreement is executed in English version, and all correspondence between the parties shall be in English.

#### 19. Modification

This Agreement may be amended, modified, altered or changed only by a written instrument duly executed by the authorized representatives of both parties.

#### 20. Governing Law and Jurisdiction

If You are incorporated, registered or otherwise resides in Taiwan, this Agreement and all related matters will be governed by and construed in accordance with the laws of Taiwan (R.O.C.), without giving effect to any conflicts or choice of laws. Jurisdiction over all disputes arising under this Agreement and all related matters will be exclusively in Taiwan Taipei District Court.

If You are incorporated, registered or otherwise resides in any other country, this Agreement and all related matters will be governed by and construed in accordance with the laws of the State of California, U.S.A, without giving effect to any conflicts or choice of laws. The parties hereby consent to the exclusive jurisdiction and venue in the state courts in Santa Clara County, California or federal court for the Northern District of California.