

## **END-USER LICENSE AGREEMENT**

This End-User License Agreement (this "EULA" or "Agreement") is a legally binding agreement between the person that will be using the "Software" to which this EULA is applicable ("You") and Atlatl Software, Inc., a Delaware company ("Atlatl"). The "Software" is an application designed to operate on Your mobile or other computing device in conjunction with Atlatl's products and services. When you click "Sign Up", "Submit", "I Agree", check a box, or otherwise provide consent to an application screen or user form which references this Agreement during the process of downloading or installing any software or registering for an account, you and we are agreeing to be bound by this Agreement to the same extent as if you and we had manually executed a paper copy of this Agreement, and you understand and intend to enter into this Agreement electronically. By proceeding with the registration process or using the Software, you agree to all the terms and conditions of this Agreement. If you do not agree with the terms and conditions in this Agreement, you should not proceed with the registration process or use the Software

- 1. <u>Current Version of EULA.</u> The terms of this Agreement may be amended from time to time by Atlatl. The most recent version of this Agreement shall always be available on the Atlatl website at <a href="https://www.atlatlsoftware.com">www.atlatlsoftware.com</a> and the most recent version shall supersede any and all other versions of this Agreement. Atlatl reserves the right to change or modify this Agreement or any other Atlatl policies related to use of the Software at any time and at its sole discretion by posting revisions on the Internet at <a href="https://www.atlatlsoftware.com">www.atlatlsoftware.com</a>. Continued use of the Software following the posting of these changes or modifications will constitute acceptance of such changes or modifications. The terms of this Agreement govern any upgrades to the Software, unless such upgrade is accompanied by a separate agreement.
- 2. <u>Acknowledgement.</u> Regardless of the website or App Provider from which the Software is downloaded, this Agreement is entered into by and between Atlatl and You. Atlatl is solely responsible for the Software and any content contained therein.
- 3. Grant of a Limited Use License. Subject to your compliance with the terms and conditions of this Agreement, Atlatl hereby grants You a limited, non-exclusive, non-transferable license to: (a) install the Software on a single device, which must be owned by You or under your legitimate control; and (b) use the Software solely for the purpose of activities relating to sales, quoting and configuration, and the management thereof. All rights to use the Software are granted on the condition that such rights are forfeited if you fail to comply with the terms of this Agreement. You acknowledge that Atlatl is granting You the foregoing license as a result of Your designation as an authorized user by an entity that has entered into a commercial relationship with Atlatl (the "Client"). The Client can remove your authorization to use the Software at any time.
- 4. <u>App Store Terms of Service.</u> The following terms apply to any Apps accessed through or downloaded from any app store or distribution platform (like the Apple App Store or Google Play) where the Software may now or in the future be made available (each an "App Provider"). You acknowledge and agree that:
- This Agreement is concluded between you and Atlatl, and not with the App Provider, and that Atlatl (not the App Provider), is solely responsible for the Software;
- The App Provider has no obligation to furnish any maintenance and support services with respect to the Software;
- In the event of any failure of the Software to conform to any applicable warranty, you may notify the App Provider, and the App Provider will refund the purchase price for the Software to you (if applicable) and to the maximum extent permitted by applicable law, the App Provider will have no other warranty obligation whatsoever with respect to the Software. Any other claims, losses, liabilities,

damages, costs or expenses attributable to any failure to conform to any warranty will be the sole responsibility of Atlatl;

- The App Provider is not responsible for addressing any claims you have or any claims of any third party relating to the Software or your possession and use of the Software, including, but not limited to: (i) product liability claims; (ii) any claim that the Software fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation;
- In the event of any third party claim that the Software or your possession and use of that Software infringes that third party's intellectual property rights, Atlatl will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim to the extent required by this Agreement;
- The App Provider, and its subsidiaries, are third party beneficiaries of this Agreement as related to your license of the Software, and that, upon your acceptance of the terms and conditions of this Agreement, the App Provider will have the right (and will be deemed to have accepted the right) to enforce this Agreement as related to your license of the Software against you as a third party beneficiary thereof; and
  - You must also comply with all applicable third party terms of service when using the Software.
- 5. <u>License Restrictions.</u> The following acts or uses of the Software are not permitted under this Agreement:
  - sublicensing, sale, rent, lease, transfer, modification or distribution of the Software;
  - use of the Software to provide services to third parties;
  - removal or alteration of any copyright, trademark or proprietary notice in the Software;
  - work around of any technical limitations in the Software; and
- reverse engineering, decompiling or disassembling the Software, or otherwise attempting to derive the source code for the software except and solely to the extent permitted by applicable law.
- 6. <u>Acceptable Use.</u> Use of the Software is limited to the intended functionality of the Software. In no event may the Software be used in a manner that:
- harasses, abuses, threatens, defames or otherwise infringes or violates the rights of any other party;
  - is unlawful, fraudulent or deceptive;
  - accesses Atlatl's proprietary information in a manner that is not authorized by Atlatl;
  - uses or launches any automated system to access Atlatl's website or computer systems;
- attempts to introduce viruses or any other malicious computer code that interrupts, destroys or limits the functionality of any computer software, hardware or telecommunications equipment; or
  - attempts to gain unauthorized access to Atlatl's computer network or user accounts.
- 7. <u>Limitation of Liability.</u> IN NO EVENT SHALL ATLATL BE LIABLE TO YOU OR ANY OTHER PERSON OR ENTITY FOR ANY DIRECT, INDIRECT, SPECIAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY OR OTHER DAMAGES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, GOODWILL, LOST SAVINGS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EVEN IF ATLATL HAS BEEN ADVISED OF OR OTHERWISE MIGHT HAVE ANTICIPATED THE POSSIBILITY OF SUCH DAMAGES. SUCH LIMITATIONS SHALL APPLY NOTWITHSTANDING A FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY AND TO THE FULLEST EXTENT PERMITTED BY LAW. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR CERTAIN TYPES OF DAMAGES, SO THE FOREGOING LIMITATION MAY NOT APPLY TO YOU.

- 8. No Warranty. THE SOFTWARE IS PROVIDED "AS IS" AND WITHOUT WARRANTY OF ANY KIND. ATLATL HEREBY DISCLAIMS ALL WARRANTIES AND CONDITIONS WITH RESPECT TO THE SOFTWARE, WHETHER EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, QUIET ENJOYMENT, AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. ATLATL DOES NOT WARRANT THAT THE FUNCTIONS THE SOFTWARE WILL MEET YOUR REQUIREMENTS, THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR-FREE, OR THAT DEFECTS IN THE SOFTWARE WILL BE CORRECTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS SO THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT USE OF THE SOFTWARE IS AT YOUR SOLE RISK.
- 9. <u>Indemnification.</u> You agree to defend, indemnify, and hold harmless Atlatl and its employees, contractors, officers, and directors from any and all claims, suits, damages, costs, lawsuits, fines, penalties, liabilities, expenses (including attorney's fees) that arise from Your use or misuse of the Software, violation of this Agreement or violation of any rights of a third party. Atlatl reserves the right to assume the exclusive defense and control of any matter otherwise subject to indemnification by You, in which event You will cooperate in asserting any available defenses.
- 10. <u>Intellectual Property Rights.</u> You and Atlatl acknowledge that, in the event of any third party claim that the Software or Your use of the Software infringes any third party's intellectual property rights, Atlatl will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim. Should the Software be found to infringe any intellectual property rights of a third party, Your sole remedy shall be either to cease using the Software or to use a non-infringing version of the Software should Atlatl choose to provide you with such a non-infringing version.
- 11. <u>Termination</u>. This Agreement is effective until terminated by You or Atlatl. You may terminate this Agreement by ceasing to use the Software and deleting it from your mobile device. This Agreement will terminate automatically without notice from Atlatl if You fail to comply with any term(s) of this Agreement. Upon termination of the Agreement, You shall cease all use of the Software, and destroy all copies, full or partial, of the Software.
- 12. <u>Contact Information.</u> Should You wish to contact Atlatl with any questions, complaints or claims with respect to the Software, you should visit Atlatl's website at <u>www.atlatl.com</u> or send an email to <u>support@atlatlsoftware.com</u>.
- 13. Proprietary Nature of Software and Marks. You obtain only those rights expressly provided for herein. Atlatl owns the Software and any and all trademarks, service marks, copyrights, patent rights, trade secrets and other proprietary rights included in the Software. The Software may use trademarks, service marks or other content in connection with the services it provides and such trademarks, service marks or other content remains at all times the property of its respective owner. You have no right or license with respect to any trademarks, service marks and other content owned by Atlatl or any third party that is visible on or provided to You through the Software. You acknowledge and agree that Atlatl (and its licensors, where applicable) shall exclusively own all right, title and interest, including all copyrights, patent rights, trademarks, trade secrets and other proprietary rights, in and to any Atlatl technology, the client portal that is accessible by the Software, any feedback regarding the Software that you provide to Atlatl, the service offered by Atlatl that the Software works in conjunction with (the

"Service"), and all content associated with such Service, exclusive of any portion thereof that is Client Input Data or that embodies Client's confidential information or copyrighted or patented materials. "Client Input Data" is defined as any data, materials or information (including without limitation pricing information, decision trees, matrices, rules, freight calculations, specifications, or images) specific to Client's business or products that is provided or submitted by Client to Atlatl in connection with the implementation or use of the Service. For the avoidance of doubt, Atlatl shall own and shall be free to use for any purpose configuration tools and models that it creates and output generated by the Service (collectively, "Materials") even if based, in part, on Client specifications or Client Input Data provided (a) the Materials do not embody Client's copyrighted or patented materials, (b) all Client Input Data has been removed from the Materials, and (c) Client is not identified in any way in connection with the Materials.

- 14. Third Party Materials and Links. The Software may display or make available content, data, information, services, software or materials from third parties ("Third Party Materials") or provide links to certain third party web sites ("Third Party Links"). If You use Third Party Materials or Third Party Links, You acknowledge that Atlatl is not responsible for examining or evaluating the content, accuracy, validity, legality or any other aspect of such Third Party Materials or Third Party Links. Atlatl does not warrant, guarantee or endorse any Third Party Materials or Third Party Links and will not have any liability to You for any Third Party Materials or Third Party Links or to any other party for Your misuse or use of Third Party Materials or Third Party Links.
- 15. <u>No Export.</u> You are not authorized to download or use the Software if: (i) You are located in a country that is subject to a U.S. Government embargo, or that has been designated by the U.S. Government as a "terrorist supporting" country (a "Restricted Country"); (ii) You are a citizen of a Restricted Country regardless of where you are located at any time; or (iii) You are listed on any U.S. Government "watch list" of prohibited or restricted parties, including the Specially Designated Nationals list published by the Office of Foreign Assets Control of the U.S. Treasury or the Denied Persons List published by the U.S. Department of Commerce.
- 16. <u>Governing Law.</u> The laws of the State of South Carolina, excluding its conflicts of law rules, govern this Agreement and Your use of the Software. Venue for any action arising under this Agreement or use of the Software shall be in the federal or state courts located in Charleston County, South Carolina.
- 17. JURY TRIAL WAIVER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, EACH PARTY HEREBY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BETWEEN THE PARTIES DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE TRANSACTIONS CONTEMPLATED HEREBY, OR ANY DISPUTES RELATING HERETO.
- 18. <u>Privacy</u>. Your privacy is important to us. We agree to use your personal information in accordance with our Privacy Policy, and you consent and acknowledge that your personal information may be used in accordance with our Privacy Policy. We reserve the right to store all information transmitted via our Software and to use it in accordance with our Privacy Policy. We reserve the right to modify our Privacy Policy from time to time, effective upon posting the revised version. If you disagree with anything in our Privacy Policy, you not use the Software.

©2015, Atlatl Software, Inc. All rights reserved.