



Software Evaluation Agreement

If Phoenix Software International accepts this agreement (“**Agreement**”), it is an Agreement between the entity or individual entering into this Agreement (“**User**”) and Phoenix Software International, a California corporation located at 831 Parkview Drive North, El Segundo, CA 90245 (“**Phoenix**”). If Phoenix accepts this Agreement, this Agreement is effective on the date it is communicated to User.

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1.2. Installation. Phoenix will furnish Licensee with the then current version of the Evaluation Software in an electronic medium suitable for use at the Designated Installation Site. Licensee will provide all tapes, disk space, and data entry necessary for installation, and will provide all necessary computer time.

1.3. Restrictions. Licensee will not permit any third party to access or use Evaluation Software, except for Licensee’s employees testing and evaluating Evaluation Software according to the Agreement. Licensee will not transfer or use Evaluation Software to or in a country other than that to which Phoenix first provides it. Licensee will not reverse engineer, decompile or disassemble Evaluation Software. Licensee will not exceed the time period for the License. Licensee may use the Evaluation Software solely for its own internal evaluation and testing. Licensee will not infringe or misappropriate Phoenix’s Intellectual Property.

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- 1.4.1. remove any product identification, copyright or proprietary notices, or other restrictions from the Evaluation Software.
- 1.4.2. transfer, sell, assign or otherwise convey the Evaluation Software to another Party;
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- 1.4.4. cause or permit reverse engineering, disassembly, or decompilation of the Evaluation Software;
- 1.4.5. allow anyone other than Licensee or its employees to have access to, use or observe the operation of the Evaluation Software.

2. INTELLECTUAL PROPERTY OWNERSHIP

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3. CONFIDENTIALITY

3.1. Confidential Information. Licensee acknowledges that the Evaluation Software is Phoenix's Confidential Information and may contain Phoenix trade secrets. Licensee must not disclose or make available the Evaluation Software, in whole or in part, to any person, in any form, except in confidence under a non-disclosure agreement and to facilitate Licensee's use. Licensee shall not, and shall not permit any third party to, decompile, disassemble or reverse engineer the Evaluation Software object code. "Confidential Information" means any material, data, or information, in any form or media, that is proprietary or confidential to a party, and is marked as confidential, or not marked, but by its nature or treatment by its owner, should reasonably be considered to be confidential. Confidential Information includes without limitation, the Agreement and Evaluation Software; Phoenix's intellectual property, specifications, manuals, product roadmaps, and results of benchmark tests. Confidential Information does not include information that is (i) publicly available without breach of the Agreement; (ii) reasonably shown to disclosing party's satisfaction to have been known by receiving party, prior to disclosure or independently developed by receiving party, subsequent to disclosure without breach of these terms; or (iii) obtained by receiving party from a third party without confidentiality obligation. Receiving party will promptly notify disclosing party, if it is compelled by a court or legal process, to disclose Confidential Information, and will take any reasonable action requested by disclosing party to maintain the confidentiality of the Confidential Information.

3.2. Confidential Information and Non-disclosure. In the event the Parties have separately executed a non-disclosure agreement ("NDA"), apart from this Agreement, which is intended to encompass disclosures made in the performance of this Agreement, the provisions of such NDA shall prevail over this Section 3.2. Licensee will prevent disclosure to Phoenix of any personally identifiable information (PII) regarding Licensee's employees or customers. Licensee is solely responsible for complying with any

requirements regarding its PII. Receiving party will use disclosing party's Confidential Information solely to perform its obligations under the Agreement. Receiving party will take commercially reasonable steps to safeguard disclosing party's Confidential Information, including no less than the steps taken to protect its own Confidential Information. Receiving party must not disclose disclosing party's Confidential Information except to its employees bound by written confidentiality obligations no less restrictive than these terms. Receiving party must promptly notify disclosing party in writing of unauthorized use or disclosure of Confidential Information. Receiving party, at its expense, must take all reasonable action to recover disclosing party's Confidential Information and prevent further unauthorized use or disclosure, including action for seizure and injunctive relief. If receiving party fails to do so in a timely manner, disclosing party may take reasonable action to do so at receiving party's expense, and receiving party must reasonably cooperate. These provisions will survive with regard to disclosing party's Confidential Information, as long as it is in the possession of receiving party.

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5. LIMITATION OF LIABILITY

Phoenix shall have no liability to Licensee for damages in any way related to the subject matter of this Agreement. This provision shall not apply to claims for personal injury or for damages to real or tangible personal property to the extent caused by Phoenix's fault or negligence.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, SPECIAL, INDIRECT, OR CONSEQUENTIAL DAMAGES (INCLUDING, BUT NOT LIMITED TO, LOSS OF USE, LOSS OF DATA, LOSS OF BUSINESS AND LOSS OF PROFITS (OTHER THAN WITH RESPECT TO THE PAYMENTS OWING TO PHOENIX) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS IN SECTIONS 4 AND 5 APPLY TO ANY DAMAGES, HOWEVER CAUSED UNDER ANY THEORY OF LIABILITY, WHETHER FOR

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6. TERM AND TERMINATION

This Agreement is effective on the Effective Date communicated to User upon Phoenix's Acceptance of this Agreement, and continues until the first to occur: (i) the expiration of the 30 day period specified in this Agreement; (ii) execution of a License Agreement allowing production use by Licensee of Phoenix's commercial release of the Evaluation Software; or (iii) the date of Phoenix's written termination notice. Upon termination, Licensee will immediately return or destroy Evaluation Software and, upon Phoenix's request, provide written certification of such destruction.

7. COMPLIANCE WITH LAWS; EXPORT.

Licensee must comply with U.S., foreign, and international laws and regulations, including without limitation the U.S. Export Administration and Treasury Department's Office of Foreign Assets Control (OFAC) regulations, and other anti-boycott and import regulations. Licensee agrees: (i) that the export, re-export, transfer, re-transfer, sale, supply, access to, or use of Evaluation Software to or in a country other than the country in which the Evaluation Software was first provided to Licensee, or to, by, or for a different end user or end use, may require a U.S. or other government license or other authorization; and (ii) not to, directly or indirectly, export, re-export, transfer, re-transfer, sell, supply, or allow access to or use of Evaluation Software to, in, by, or for sanctioned, embargoed, or prohibited countries, persons, or end uses under U.S. or other applicable law (collectively, "Prohibited Use"). Licensee is responsible for screening for Prohibited Use and obtaining any required licenses or other authorizations and shall indemnify Phoenix for any violation by Licensee of any applicable export controls and/or economic sanctions laws and regulations. Phoenix may terminate the Agreement and License immediately if Phoenix determines, in its sole discretion, that Licensee has breached, intends to breach, or insists upon breaching any of the provisions in this clause.

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9. MISCELLANEOUS.

9.1. Integration. The Agreement sets forth the entire agreement of the parties and supersedes all prior oral and written agreements and understandings with respect to its subject matter. No waiver or modification of any provision of the Agreement is binding, unless in writing, signed by both parties. If a provision of the Agreement is invalid, illegal or unenforceable, it will not affect any other provision of the Agreement. The Agreement may not be assigned by Licensee.

9.2. Notice. Notice or approval must be in writing signed by a party's authorized representative, sent to the address provided above or otherwise specified in writing by a party for notice. Notice must be sent by

mail or overnight courier, with return receipt, and is effective one (1) business day after being sent by overnight courier or three (3) business days after being sent by mail.

9.3. Law. The laws of California, USA, govern the Agreement, excluding conflict of law principles which would require application of the law of any other jurisdiction. Each party waives the right to jury trial for any legal action, in law or equity. The United Nations Convention on Contracts for the International Sale of Goods and the Uniform Computer Information Transaction Act, as adopted, do not apply.

YOU AGREE THAT YOU HAVE READ THIS AGREEMENT AND INTEND TO BE BOUND, AS IF YOU HAD SIGNED THIS AGREEMENT IN WRITING. IF YOU ARE ACTING ON BEHALF OF AN ENTITY, YOU WARRANT THAT YOU HAVE THE AUTHORITY TO ACCEPT THE TERMS OF THIS AGREEMENT FOR SUCH ENTITY.