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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1.3.   **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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1.4.2. transfer, sell, assign or otherwise convey the Evaluation Software to another Party;

1.4.3. disclose results of any benchmark tests of the Evaluation Software to any third party without Phoenix's prior written consent;

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.

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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 LIABLITY, WHETHER FOR BREACH OF CONTRACT, TORT, MISREPRESENTATION, NEGLIGENCE, USE OR PERFORMANCE OF EVALUATION SOFTWARE, OR OTHERWISE, AND REGARDLESS OF WHETHER DAMAGES WERE FORESEEABLE OR UNFORSEEABLE. PHOENIX IS NOT LIABLE FOR ANY CLAIM BROUGHT MORE THAN 12 MONTHS AFTER LICENSEE BECAME AWARE OF THE ISSUE GIVING RISE TO THE CLAIM. PHOENIX'S FAILURE TO

EXERCISE A RIGHT OR REMEDY IS NOT A WAIVER. SECTIONS 4 AND 5 DESCRIBE PHOENIX'S SOLE WARRANTY AND LIABILITY FOR EVALUATION SOFTWARE.

The limitation of liabilities described in this Agreement also apply to the third-party supplier. Such third-party supplier is an intended beneficiary of this Agreement, and any rights of indemnification also apply to any third-party supplier described in this Agreement. A list of such third-party beneficiaries will be provided on written request.

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.

9.4. **Other**

a) The Evaluation Software contain materials licensed from a third party, and Phoenix has assumed responsibility for these materials and their use in the Evaluation Software;

b) The third-party software in the Evaluation Software is licensed, and not sold, and neither the third party nor Phoenix passes any title to such software;

c) Licensee is prohibited from copying any part or portion of the third-party software, from preparing any derivate work thereof, or otherwise modifying the third-party software;

d) Licensee may not use the Evaluation Software outside of the country in which it has been installed by Licensee as provided on the front page of this Agreement;

e) Licensee may not assign, sub-license, distribute, lease, rent, or otherwise transfer the third-party software, except to a transferee who has accepted all of the terms and conditions of this Agreement and provided further, that Licensee destroy or transfer to transferee all copies of the third-party software;

f) Licensee may neither distribute the Evaluation Software nor offer the Evaluation Software as a cloud service or software-as-a-service;

g) Licensee is prohibited from reverse assembling, reverse compiling, translating or otherwise trying to discover the Source Code form of any software provided in Object Code form, except as permitted by the national or regional law of the places where Licensee does business (without the opportunity for contractual waiver), and then only with respect to the particular copy of Object Code incorporated into that particular Product; and

h) Warranties, including any implied warranties, are provided solely by Phoenix and not by third party.

i) The limitation of liabilities described in this Agreement also apply to the third-party. Such third-party is an intended beneficiary of this Agreement, and any rights of indemnification also apply to the third-party. A list of such third-party beneficiaries will be provided on written request.

j) With respect to third party providers, each third party provider represents and warrants to and agrees with Supplier that (a) the Software is part of the Services provided by the third party provider to Customer and the IT services so provided include significant third party provider added value, or other IT managed services, functionality, and services, (b) the Software was not marketed or priced by third party provider outside the scope of its IT services and third party provider's agreement with Customer does not separately identify charges for the Software; (c) the Software is not the primary purpose of the IT services provided by third party provider to Customer and (d) third party provider shall not resell, assign, or otherwise transfer the Software to Customer, a service reseller or any other entity.

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.