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## 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.

### 1. LICENSE; USE OF EVALUATION SOFTWARE

**1.1. Grant.** Phoenix Software International, Inc. (“Phoenix”) will provide Licensee with temporary usage of the Evaluation Software as specified herein. “Evaluation Software” means Phoenix’s software products, and related documentation provided to Licensee, as requested here. Phoenix grants to Licensee, and Licensee accepts, subject to the terms of this Agreement, a temporary, limited, royalty-free, non-transferable, non-exclusive right to use the Evaluation Software for testing and evaluation/non-production purposes only (“License”) and related product documentation at no charge subject to the terms and restrictions set forth in this Software Evaluation Agreement (“Agreement”). You are not permitted to use the Evaluation Software in any manner not expressly authorized by this License. You acknowledge and agree that ownership of the Evaluation Software and all subsequent copies thereof regardless of the form or media are held by Phoenix. Licensee may not use the Evaluation Software at any location other than the Designated Installation Site, except that such use may be transferred temporarily to a backup computer system if the Designated Installation Site is inoperable due to malfunction, preventative maintenance, or engineering changes. Phoenix has no obligation to provide additional versions of Evaluation Software or to make any changes or improvements to Evaluation Software. Phoenix has no obligation to provide maintenance or support for Evaluation Software. Licensee’s License for Evaluation Software is limited to 30 days commencing on the first day Licensee has access to the Evaluation Software; provided, however, either Phoenix or Licensee, by written notice to other may earlier terminate the Length of Evaluation Period at any time for any reason or no reason. Phoenix may, at its option, extend the period in writing. Licensee grants Phoenix a royalty-free, worldwide, perpetual license to use and incorporate into Phoenix products, any suggestion, idea, enhancement, feedback, recommendation or other information Licensee provides relating to Evaluation Software.

**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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corrections, suggested alterations and additions, and consulting with Phoenix in reviewing and analyzing representative data. Licensee will not include Licensee's Confidential Information in test and evaluation information it provides to Phoenix. Licensee shall not:

- 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;
- 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.

## 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.

#### **4. WARRANTY DISCLAIMER**

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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 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;
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- 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.

**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.**