**SOFTWARE EVALUATION LICENSE AGREEMENT**

This Software Evaluation License Agreement (this “***Agreement***”) is by and between [YOUR COMPANY], a [TYPE OF COMPANY] (“***Licensor***”) and the Licensee set forth below (“***Licensee***”). This Agreement is effective as of the day the last party signs (the “***Effective Date***”).

Licensor has developed and owns certain computer programs that [DESCRIBE YOUR PRODUCT]. Licensee would like to obtain a license to evaluate [YOUR PRODUCT]. Therefore, the parties agree as follows:

1. ***DEFINITIONS*.**

**In addition to the terms defined elsewhere in this Agreement, the following terms have the respective meanings set forth below:**

* 1. “***Authorized Purpose***” means Licensee’s internal use of [YOUR PRODUCT] for the sole purpose of evaluating [YOUR PRODUCT] for a license.
  2. “***Delivery Date***” means the date on which Licensor provides the Software and Documentation to Licensee, through a reasonable system of electronic download.
  3. “***Documentation***” means Licensor's standard manual related to use of [YOUR PRODUCT], as updated from time to time.
  4. “***Evaluation Period***” means thirty days after the Delivery Date.
  5. “***Marks****”* means any words, symbols, or logos used to identify Licensor and its products and services, including domain names and trademarks, whether registered or not.
  6. “***Software***” means [YOUR PRODUCT] identified by name, version, and features, solely in [DISTRUBTION TYPE (.exe, dll, source code)] forms as described in Exhibit A, and associated Documentation files.
  7. “***User***” means an individual who uses the Software licensed to Licensee, whether authorized or not, including without limitation employees, consultants, contractors, agents, and third parties with whom Licensee transacts business.

1. ***USE OF THE SOFTWARE AND INTELLECTUAL PROPERTY***
   1. ***Evaluation License to [YOUR PRODUCT]*.** Subject to the terms of this Agreement, Licensor hereby grants Licensee a limited, revocable, nonexclusive, nontransferable, nonsublicensable license to use the Software to the extent necessary by designated employees in a non-production environment during the Evaluation Period solely for the Authorized Purpose.

* 1. ***License Restrictions***. The Software delivered pursuant to this Agreement are licensed, not sold, and Licensee receives no title to or ownership of any copy or of the Software. Without limiting the generality of the foregoing, Licensee shall not:
     1. use the Software in a production environment;
     2. distribute the Software to any third party or to any employees who are not designated to and responsible for evaluating the Software;
     3. reproduce, modify, create derivative works from, distribute, publicly display, publicly perform, or sublicense the Software;
     4. use the Software in any way forbidden by this Agreement; or
     5. reverse engineer, decompile, disassemble, or otherwise attempt to derive any of the Software’s source code.
  2. ***Reservation of Rights***. Licensor retains all right, title, and interest in and to the Software and Marks, including without limitation all software used to provide the Software and all graphics, user interfaces, logos, and trademarks reproduced through the Software. This Agreement does not grant Licensee any intellectual property license or rights in or to the Software, Marks or any of their components, except to the limited extent that this Agreement specifically sets forth Licensee license rights to the Software. Licensee recognizes that the Software, Marks, and their components are protected by copyright and other laws.
  3. ***Documentation***: Licensee may reproduce and use the Documentation solely as necessary to support Licensee’s use of the Software for the Authorized Purpose.
  4. ***Feedback***. Licensor does not agree to treat as confidential any suggestions or ideas for improving or otherwise modifying any of Licensor’s products or services (“***Feedback****”*) that Licensee or other Users provide to Licensor. Nothing in this Agreement or in the parties’ dealings arising out of or related to this Agreement restricts Licensor’s right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Licensee or other User in question. Licensee hereby grants Licensor a perpetual, irrevocable right and license to use and incorporate Feedback in any way.

1. ***LICENSEE’S RESPONSIBILITIES & RESTRICTIONS*.**

* 1. ***Usage Restrictions***. Licensee shall not use the Software for any purpose other than the Authorized Purpose or allow any User or other third parties to do so. Prohibited usage includes:
     1. use of the Software for a service bureau or time-sharing purposes;
     2. sharing non-public features or content with any third party;
     3. providing services to third parties, building a competitive product or service, building a product using similar ideas, features, functions or graphics of the Software, or copying any ideas, features, functions or graphics.

If Licensor suspects any breach by Licensee, including without limitation by Users, Licensor may terminate this Agreement immediately, in addition to such other remedies as Licensor may have. This Agreement does not require that Licensor take any action against Licensee or any User or other third party for violating this Agreement, but Licensor is free to take any such action it sees fit.

* 1. ***Unauthorized Access***. Licensee shall take reasonable steps to prevent unauthorized access to the Software. Licensee shall notify Licensor immediately of any known or suspected unauthorized use of the Software or breach of its security and shall use best efforts to stop said breach.
  2. ***Compliance with Laws***. In its use of the Software, Licensee shall comply with all applicable laws.
  3. ***Other Third Parties***. Licensee is responsible and liable for Users’ use of the Software, including without limitation unauthorized User conduct and any User conduct that would violate the requirements of this Agreement applicable to Licensee.

1. ***CONFIDENTIAL INFORMATION*.**
   1. ***Confidential Information***. “Confidential Information” means any information that a party has disclosed under circumstances that a reasonable person would understand the information to be considered confidential. The disclosing party shall use commercially reasonable efforts to mark all Confidential Information with appropriate confidentiality markers. However, the failure to mark any Confidential Information as confidential does not relieve the receiving party from its confidentiality obligations under this Agreement where the receiving party knows or has reason to know that the information disclosed is Confidential Information. Confidential Information does not, however, include any information that
      1. was or is disclosed generally and without restriction by the disclosing party;
      2. is already in the possession of the receiving party at the time of disclosure, as shown by the receiving party’s files and records;
      3. is obtained by the receiving party from a third party without a breach of the third party’s obligations of confidentiality; or
      4. is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information, as shown by documents and other competent evidence in the receiving party’s possession.

* 1. ***Nondisclosure***. Each party shall protect the other’s Confidential Information from unauthorized dissemination and use with the same degree of care that such party uses to protect its own confidential information (but never less than reasonable care). Neither party shall use the other’s Confidential Information for purposes other than those necessary to directly further the purposes of this Agreement. A receiving party shall not disclose a disclosing party’s Confidential Information to any third party without the prior written consent of the disclosing party.

* 1. ***Disclosure Required by Law***. Notwithstanding Section 4.2 above, the receiving party may disclose Confidential Information in accordance with a judicial or other governmental order or as necessary to comply with any applicable law or regulation governing regulated businesses or the issuance of securities to the public. Prior to making any disclosures pursuant to this Section 4.3, the receiving party shall give reasonable advance written notice to the disclosing party to the extent permitted by law to allow the disclosing party an opportunity to contest the disclosure and to seek any applicable protective order or equivalent.

* 1. ***Authorized Disclosure***. Notwithstanding Section 4.2 above, the receiving party may disclose the other party’s confidential information to its independent contractors, including agents and other representatives. Each party represents that all employees and independent contractors who will need access to or possession of the other party’s Confidential Information is bound by written provisions that are as protective of such Confidential Information as this Section 4. Additionally, as part of Licensor’s sales and marketing efforts, Licensor may publicly identify Licensee by name as a Licensee and may describe the Services provided to Licensee in general without disclosing any of Licensee’s Confidential Information.
  2. ***Injunction***. Breach of this Section 4 would cause irreparable injury, for which monetary damages would not provide adequate compensation. In addition to any other remedy, each party is entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.
  3. ***Termination***. With respect to each item of Confidential Information, the parties’ obligations survive the termination of this Agreement and terminate five (5) years after the date of termination of this Agreement; provided that such obligations related to Confidential Information constituting Licensor’s trade secrets continue so long as such information remains subject to trade secret protection pursuant to applicable law.
  4. ***Return***. Upon the earlier of the disclosing party’s written request, the termination of this Agreement, or when the Confidential Information are no longer needed to exercise the receiving party’s rights under this Agreement, the receiving party shall return or give written certification of the destruction of all Confidential Information and all media containing the Confidential Information in the receiving party’s possession or control or the possession or control of any recipients who received the Confidential Information from the receiving party pursuant to Section 4.4.
  5. ***Retention of Rights***. Except as specified herein, this Agreement does not transfer ownership of Confidential Information or grant a license thereto. Licensor retains all right, title, and interest in and to all Confidential Information.

* 1. ***Exception & Immunity***. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b) (the “***DTSA***”), Licensee is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
     1. *IMMUNITY*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that - (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
     2. *USE OF TRADE SECRET INFORMATION IN ANTI-RETALIATION LAWSUIT*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

1. ***WARRANTIES DISCLAIMERS*.**

LICENSEE ACCEPTS THE SOFTWARE “AS IS” AND AS AVAILABLE, AND LICENSOR PROVIDES NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) LICENSOR DOES NOT REPRESENT OR WARRANT THAT THE SOFTWARE ARE SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT LICENSEE DATA WILL REMAIN PRIVATE OR SECURE.

1. ***LIMITATION OF LIABILITY*.**

REGARDLESS OF THE CAUSE OF ACTION OR LEGAL THEORY PLED, LICENSOR WILL NOT BE LIABLE FOR ANY LOSS OR DAMAGE INCLUDING BUT NOT LIMITED TO ANY SPECIAL, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOST REVENUE, LOST PROFITS, OR LOST INFORMATION) ARISING FROM OR RELATED TO THIS AGREEMENT, EVEN IF LICENSOR HAS BEEN ADVISED (OR KNOWS OR SHOULD KNOW OF) THE POSSIBILITY OF SUCH DAMAGES.

1. ***TERMINATION.***

* 1. ***Termination***. This Agreement terminates when (a) either party receives written notice of termination from the other party during the Evaluation Period or (b) the end of the Evaluation Period if Licensee does not enter into a License Agreement with Licensor.
  2. ***Effects of Termination***. Upon termination of this Agreement, Licensee shall cease all use of the Software and delete, destroy, or return all copies of the Documentation and Software in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) Sections 2 (*Use of the Software and Intellectual Property*), 4 (*Confidential Information*), 5(*Warranty Disclaimers*), 6 (*Limitation of Liability*); and (b) any other provision of this Agreement that must survive to fulfill its essential purpose.
  3. ***Audit***. Licensor may engage an independent and nationally recognized auditor (“***Auditor***”) to inspect and investigate Licensee’s computer systems to determine Licensee’s compliance with this Agreement. Licensee shall keep full, complete, clear and accurate records with respect to Licensee’s use of the Software for a period beginning on the Delivery Date and ending one year after the expiration of the Evaluation Period (“***Audit Period***”). During the Audit Period, within fourteen days after receiving written notice from Licensor, Licensee shall grant the Auditor access during Licensee’s regular business hours to all of Licensee’s equipment, records, and documents that may contain information bearing upon the use of the Software.

1. ***MISCELLANEOUS*.**
   1. ***Independent Contractors***. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other’s behalf. The parties agree that no Licensor employee or contractor is or will be considered an employee of Licensee.
   2. ***Notices***. A party shall send any notice required or permitted to be given under this Agreement in writing by certified mail, return receipt requested, by courier or by personal delivery addressed to the other parties at the address given herein, unless otherwise designated in writing. Electronic mail (e-mail) to the e-mail address provided herein, with confirmed delivery, is considered written notice. Any such notice is deemed to have been received on the day of delivery if it is a business day and otherwise on the next business day.
   3. ***Force Majeure***. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party’s reasonable control.

* 1. ***Assignment & Successors***. Licensee may not assign this Agreement or any of its rights or obligations hereunder without Licensor’s express written consent. Except to the extent forbidden by this Section 8.4, this Agreement will be binding upon and inure to the benefit of the parties’ respective successors and assigns.
  2. ***Severability***. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
  3. ***No Waiver***. A party’s failure to enforce any provision of this Agreement is not a waiver of the future enforcement of that provision or enforcement of any other provision. In order to be binding, a waiver must be in writing and signed by the party giving the waiver.

* 1. ***Choice of Law & Jurisdiction***: This Agreement will be governed solely by the internal laws of the State of Washington, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties’ rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Seattle, Washington. This Section 8.7 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
  2. ***Construction***. This Agreement is not an offer by Licensor and shall not be effective until signed by both parties. The parties agree that the terms of this Agreement result from negotiations between them. This Agreement will not be construed in favor of or against either party by reason of authorship.
  3. ***Technology Export***. Licensee shall not: (a) permit any third party to access or use the Software in violation of any U.S. law or regulation; or (b) export any software provided by Licensor or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Licensee shall not permit any third party to access or use the Software in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Crimea Region of Ukraine, Cuba, Iran, North Korea, Sudan, and Syria).
  4. ***Entire Agreement***. This Agreement sets forth the entire agreement between the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
  5. ***Execution in Counterparts***. This Agreement may be signed in counterparts and signed electronically; each of which is an original, and all of which together form one document. A signed copy of this Agreement delivered by any mean of electronic transmission has the same legal effect as delivery of an original signed copy of this Agreement.

* 1. ***Amendment***. This Agreement may not be amended except through a written agreement by authorized representatives of each party.

This Agreement is effective as of the latest date of execution set forth below

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Licensee: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_** | |  | **Licensor:** | |
| Signature |  |  | Signature |  |
| Name: |  |  | Name |  |
| Title: |  |  | Title: |  |
| Date: |  |  | Date: |  |
| Mailing Address: |  |  | Mailing Address: |  |
| E-mail: |  |  | E-mail: |  |

Exhibit A

Software

1. [YOUR PRODUCT]
   1. Name:
   2. Version: Only the version provided with this Software Evaluation License Agreement.
   3. Features:
   4. Updates: No updates will be provided.