SPEC® SOFTWARE BETA TEST LICENSE

A. Grant. SPEC agrees to grant, and USER agrees to accept a nontransferable and nonexclusive license to use and modify the Materials, subject to the restrictions and conditions set forth below and in any accompanying product specific license.

B. Copies and Use. Licensee may make copies of the original of the Materials for use within Licensee's company only and for its own archival use, without modification or merger with other software. Licensee may not permit any third party to use or copy the original or any copy thereof.

C. Scope of Use. The Materials may be used only for porting and evaluation and feedback purposes.

D. Other Conditions and Restrictions. Licensee agrees without exception to destroy all BETA-TEST copies of the Materials at the end of the Beta Program (at which time this License shall terminate), and to make no public results comparison, statements and not to publish results or data derived from the 'Materials', e.g., trade-press, conferences, seminars, tradeshow booth handouts, computer network electronic conferences or electronic bulletin boards.

E. Promotion. SPEC will not, without the prior written consent of Licensee (i) use in advertising, publicity, marketing or other promotional materials or activities, the name, trade name, trademark, trade device, service mark or symbol, or any abbreviation, contraction or simulation thereof, of Licensee, its affiliates or their respective partners or employees, or (ii) represent, directly or indirectly, that its products have been approved or endorsed by Licensee.

F. Feedback. Licensee is encouraged to provide feedback to SPEC on the Materials on:

    1. Porting and execution experiences:
    2. Run rule suggestions:
    3. Load critique;
    4. Measurement critique;
    5. Bug fixes; and
    6. Any other useful suggestions

The Licensee will be notified if there are any other versions that are to be included in the BETA Test Agreement. Licensee further agrees to the following:

SOFTWARE USAGE GUIDELINE NOTICE

This PRELIMINARY version of the Materials is to be used for porting and evaluation purposes only.

SPEC prohibits PUBLIC comparisons based on the Materials results or derived data, since the tool will change before final SPEC adoption. Thus, final Materials results will differ from BETA results.

THIS NOTICE MUST APPEAR UNALTERED IN ALL BETA RESULTS.

G. Disclaimer of Warranties. SPEC MAKES NO WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, RELATING TO THE SALE, USE OF PERFORMANCE OF THE MATERIALS, INCLUDING WITHOUT LIMITATION, ANY WARRANTIES OF MERCHANTABILITY ORFITNESS FOR A PARTICULAR USE OR PURPOSE, AND ALL SUCH WARRANTIES ARE HEREBY DISCLAIMED AND EXCLUDED BY SPEC. LICENSEE RECOGNIZES THAT THE PRODUCTS ARE THE RESULT OF A COOPERATIVE, NON-PROFIT EFFORT AND THAT SPEC DOES NOT CONDUCT A TYPICAL BUSINESS. LICENSEE ACCEPTS THE MATERIALS "AS IS" AND WITHOUT ANY WARRANTY, EXPRESS OR IMPLIED.

H. Limitation of Liability. SPEC assumes no liability with respect to the Materials, including liability for infringement of intellectual property rights, negligence, or any other liability.

SPEC is not aware of any infringement of copyright or patent that may result from its transfer to Licensee of the Materials. If Licensee receives any notice of infringement, such notice shall be immediately communicated to SPEC who will make immediate action to evaluate the claim and, if practicable, modify the Materials as necessary to avoid infringement. Licensee waives any claim against SPEC in the event of such infringement.

In no event will SPEC be liable for any direct, special, incidental or consequential damages arising out of or in connection with this Agreement, including the transfer, use or performance of the Materials, even if SPEC shall have knowledge of the possibility of such potential.

I. Governing Law. This Agreement shall be construed and governed in accordance with the laws of the State of California. If any term of this Agreement is declared void or not enforceable by any competent court of jurisdiction, all other terms shall remain in effect.

J. No Waiver. The failure of either party to enforce any term herein or to take action in the event of any violation of these terms shall not be deemed a waiver by that party as to the subsequent enforcement of any rights.