

EVALUATION AGREEMENT

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Commercial Purpose means use of the Product to achieve academic or commercial value of any kind, including but not limited to construction, improvement or understanding of any artifacts (including software, documentation or designs), or realization of monies as a consequence of use of the Product.

Documentation means electronic or hardcopy user documentation created by SD relating to the Software.

Effective Date means the date on which the acceptance actions above were taken.

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Product means the Documentation and the Software, but only to the extent provided by SD to Licensee under this Agreement.

Software means the object code computer software programs of SD that Licensee is interested in evaluating..

II. LICENSE

2.1 **Rights Granted.** Subject to the other terms and conditions of this Agreement (e.g. including but not limited to Section 2.2), SD grants to Licensee a revocable (in accordance with Section 3.2), nonexclusive, nontransferable, nonsublicensable license under SD's intellectual property rights to use the Product for Evaluation Purpose. The Product used for Evaluation Purposes, may have limitations on functionality compared to the Product acquired by other means for Commercial Purposes.

2.2 **Limitations on Rights Granted.** Licensee shall retain (i.e. shall not remove, alter, deface, obscure or destroy) any and all proprietary and confidential notices and markings (e.g. including but not limited to the SD's trademark, service mark, tradename and copyright notices) on all originals and permitted copies (if any) of the Product.

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Licensee shall not permit any part of the Product to be reproduced, modified, translated, decompiled, disassembled, adapted, reverse engineered, distributed, displayed, downloaded, stored, published, transferred, or otherwise used, in any form or by any means, without SD's prior written permission, except as might be expressly provided to the contrary in this Agreement or in a separate written agreement between the parties.

Any non-party licensor of material that is, becomes, or becomes embodied in the Product has a proprietary interest and shall be a third party beneficiary under this Agreement.

III. TERM AND TERMINATION

3.1 **Term.** This Agreement shall automatically terminate ninety (90) days after downloading.

3.2 **Effect of Termination.** Upon termination of this Agreement, Licensee's licenses and rights under this Agreement shall automatically terminate, and Licensee shall: (a) destroy all originals and permitted copies (if any) of the Product in Licensee's possession, custody or control; and (b) upon request by SD, certify in writing to SD that all such originals and copies have been so returned or destroyed.

IV. FEES AND PAYMENT

On the Effective Date, Licensee shall pay no fee to SD as consideration for the licenses and rights granted in this Agreement.

V. RESTRICTIONS

Licensee is hereby authorized to disclose and deliver the Product, and to allow access to the Product, only to its employees; subject however to the condition that Licensee has in place with each such employee an agreement sufficient to require such employee to treat the Product in accordance with the provisions of this Agreement.

For a period of five (5) years after the Effective Date, (a) Licensee shall exercise the same care and discretion (but no less than a commercially reasonable degree of care and discretion) to prevent and restrain the unauthorized or inadvertent use, disclosure, delivery, publication, dissemination or reproduction of the Product as Licensee employs with respect to its own information of similar importance that it does not wish to have used, disclosed, delivered, published, disseminated or reproduced, and (b) Licensee shall use the Product only in the performance of activities authorized under this Agreement, and shall refrain from any other use of the Product without SD's prior written consent.

Licensee represents, warrants, agrees and certifies that it shall comply with the United States Foreign Corrupt Practices Act (regarding, among other things, payments to government officials) and all export laws and rules and regulations of the United States Department of Commerce or other United States or foreign agency or authority, as amended now or in the future, and shall not (and shall not knowingly permit any non-party to), directly or indirectly, import, export, re-export, or transship any portion of the Product licensed under this Agreement in violation of any such laws, rules or regulations.

VI. DISCLAIMERS AND LIMITATIONS

TO THE MAXIMUM EXTENT PERMITTED BY LAW, ANYTHING (E.G. INCLUDING BUT NOT LIMITED TO THE PRODUCT) PROVIDED BY SD IN RELATION TO THIS AGREEMENT IS PROVIDED "AS IS", WITHOUT REPRESENTATION OR WARRANTY OF ANY KIND, AND SD HEREBY EXPRESSLY DISCLAIMS ALL WARRANTIES, IRRESPECTIVE OF WHETHER EXPRESS, IMPLIED, STATUTORY, ARISING BY CUSTOM OR TRADE USAGE OR OTHERWISE, INCLUDING FOR EXAMPLE BUT NOT LIMITED TO (A) WARRANTIES OF NON-INFRINGEMENT, (B) IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE, AND (C) WARRANTIES THAT ANY MATERIAL OR SERVICE (E.G. INCLUDING BUT NOT LIMITED TO THE PRODUCT) WILL (I) MEET THE REQUIREMENTS OF LICENSEE, (II) OPERATE IN THE COMBINATIONS WHICH MAY BE SELECTED FOR USE BY LICENSEE, AND (III) OPERATE UNINTERRUPTED OR ERROR FREE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, SD SHALL NOT BE LIABLE UNDER THIS AGREEMENT FOR ANY DIRECT, SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND.

IN NO EVENT SHALL SD'S AGGREGATE LIABILITY UNDER THIS AGREEMENT, OR RELATING TO THE PRODUCT, EXCEED ALL AMOUNTS PAID BY LICENSEE TO SD DURING THE PERIOD IN WHICH EVENTS GIVING RISE TO SUCH LIABILITY OCCURRED, IRRESPECTIVE OF LEGAL THEORY (E.G. TORT, CONTRACT OR OTHERWISE). A REFUND OF SUCH AMOUNTS SHALL BE LICENSEE'S EXCLUSIVE REMEDY UNDER THIS AGREEMENT.

ALL PROVISIONS OF THIS SECTION VI ARE A MATERIAL CONDITION OF (AND CONSIDERATION FOR) THIS AGREEMENT.

VII. GENERAL TERMS

If any portion of this Agreement is determined to be or becomes unenforceable or illegal, then such portion shall be reformed or eliminated to the extent necessary for this Agreement to be enforceable and legal, and the remainder of this Agreement shall remain in effect in accordance with its provisions as modified by such reformation or elimination.

No breach or provision of this Agreement shall be deemed waived, modified or excused, unless such waiver, modification or excuse is in writing and signed by an authorized agent of the waiving, modifying or excusing party. The failure by (or delay of) either party in enforcing (or exercising) any of its rights under this Agreement (a) shall not be deemed a waiver, modification or excuse of such right or of any breach of the same or different provision of this Agreement and (b) shall not prevent a subsequent enforcement (or exercise) of such right.

This Agreement shall be deemed entered into in Texas and shall be governed by and construed and interpreted under the laws of the State of Texas that apply to contracts executed in and performed entirely within the State of Texas, without reference to any rule of choice (or conflict) of laws. With respect to any suit, action or other

proceeding arising from (or relating to the relationship created by) this Agreement, the parties hereby agree to non-exclusive personal jurisdiction and venue of the United States District Court for the Western District of Texas (and any Texas State Court within Travis County, Texas). The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

This Agreement, including its accompanying terms, conditions, Schedules and Exhibits, constitutes the sole and exclusive terms and conditions between the parties relating to the subject matter hereof and supersedes all prior discussions, writings, negotiations, understandings and agreements with respect thereto and shall not be amended except by a written amendment that is completely executed and delivered by authorized agents of both parties. By clicking on the "ACCEPT" button (in order to download the product onto your computer) or by installing the product onto your computer (e.g., from a compact disc containing the product) Licensee acknowledges that it has read, understands and agrees to this Agreement as being effective for all purposes as of the Effective Date, notwithstanding any later date set forth below.