

## PHIRE END USER LICENSE AGREEMENT

### **A. Agreement Definitions**

"You" and "Your" refers to the entity that has executed this agreement ("Agreement") and ordered Phire programs and/or services from Phire, Inc. or an authorized distributor. The term "Programs" refers to the software products owned or distributed by Phire either through itself or an authorized distributor, which You have ordered and the associated Program Documentation. The term "Services" refers to technical support, education, consulting, or other Services, which You have ordered. The term "Program Documentation" refers to the Program user manuals and Program installation manuals. The term "Third Party Programs" refers to Programs designated in an ordering document as a Third Party Program. The term "Materials" refers to any information, designs, specifications, instructions, code, or data provided under this Agreement.

### **B. Applicability of Agreement**

This Agreement is valid for the order to which this Agreement accompanies.

### **C. Rights Granted**

Upon delivery of the Programs and/or Services that You ordered under this Agreement, You have the limited right to use the Programs and receive any Services You ordered solely for Your internal business operations and subject to the terms of this Agreement. You may allow Your agents and contractors to use the Programs for this purpose and You are responsible for their compliance with this Agreement. Upon payment for Services, You will have a non-exclusive, non-assignable, royalty free license to use for Your internal business operations anything developed by Phire and delivered to You under this Agreement. The foregoing license shall specifically include, without limitation, (a) such copying, distribution, performance, display and derivative work creation rights as are required for You to use the Programs and (b) the right for You to make the Programs available for use by Your employees, agents and contractors (each, a "Permitted User") via a computer network, intranet, or Internet; and (c) the right to authorize a third party to do any of the foregoing solely for the purpose of hosting or otherwise making the Program available to You, even if such third parties are not located at Your sites.

### **D. Ownership and Restrictions**

Phire retains all ownership and intellectual property rights to the Phire Programs. Unless developed specifically for You and paid for by You, Phire retains all ownership and intellectual property rights to anything developed by Phire and delivered to You under this Agreement resulting from the Services. You may make sufficient number of copies of each Program for Your licensed use. Nothing herein grants Phire any rights whatsoever in or to Your intellectual or other property.

You may not:

- remove or modify any Program markings or any notice of Phire's or its licensors' proprietary rights;
- make the Programs or Materials resulting from the Services, available in any manner to a third party for use in the third party's business operations, unless such access is expressly permitted for the specific Program license or Materials;
- make more than one production copy of the Programs;

### **E. Warranties, Disclaimers and Exclusive Remedies**

**(i). Warranty** - Phire warrants that Programs licensed to You will operate in all material respects as described in the applicable Program Documentation for one (1) year from delivery. You must notify Phire of any Program warranty deficiency within one (1) year from delivery. Phire also warrants that services will be provided in a professional manner consistent with industry standards. You must notify Phire of any Services warranty deficiencies within thirty (30) days from performance of the deficient services.

**(ii). Licensing Rights** - Phire represents and warrants that it owns all rights, title and interest to the Programs and Program Documentation.

**(iii). Non-Infringement** - Phire warrants that no portion of the Program or Services, or any Permitted User's authorized use thereof, will infringe any right of any third party, including, without limitation, any copyrights, patent rights, trademark rights, trade secret rights or confidentiality rights of any third party.

**(iv). No Claims** – Phire warrants that there are no past or present actions, suits or proceedings which allege that any portion of the Programs or Program Documentation infringe upon or misappropriate any right of a third party.

PHIRE OR THEIR AUTHORIZED DEALERS DO NOT GUARANTEE THAT THE PROGRAMS WILL PERFORM ERROR-FREE OR UNINTERRUPTED OR THAT PHIRE WILL CORRECT ALL PROGRAM ERRORS.

FOR ANY BREACH OF THE WARRANTIES SET FORTH IN SECTION E(i), YOUR EXCLUSIVE REMEDY, AND PHIRE'S ENTIRE LIABILITY SHALL BE: (A) THE CORRECTION OF PROGRAM ERRORS THAT CAUSE BREACH OF THE WARRANTY; OR (B) THE REPERFORMANCE OF THE DEFICIENT SERVICES, OR IF PHIRE OR THEIR AUTHORIZED DEALERS CANNOT SUBSTANTIALLY CORRECT A BREACH IN A COMMERCIALY REASONABLE MANNER, YOU MAY END THE RELEVANT SERVICES AND RECOVER THE FEES PAID TO PHIRE OR THEIR AUTHORIZED DEALER FOR THE DEFICIENT SERVICES.

TO THE EXTENT PERMITTED BY LAW, THESE WARRANTIES ARE EXCLUSIVE AND THERE ARE NO OTHER EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS, INCLUDING WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

#### **F. Indemnification**

If someone makes a claim against You that any program infringes its intellectual property rights based on your authorized use of the Programs in accordance with the terms of this Agreement, Phire will indemnify You against the claim to the extent the claim relate to the following: (a) any negligent act or omission or willful misconduct by Phire, its personnel or any subcontractor engaged by Phire in the performance of Phire's obligations under this Agreement, or (b) any breach in a representation, covenant or obligation of Phire contained in this Agreement, or (c) a claim that the Programs or Services provided by Phire for Your use thereof infringe any patents or copyrights or misappropriate any trade secrets.

If Phire believes or it is determined that any of the Programs and Program Materials may have violated someone else's intellectual property rights, Phire may choose to either modify the Programs and Materials to be non-infringing or obtain a license to allow for continued use, or if these alternatives are not commercially reasonable, Phire may end the license for, and require the return of, the applicable Programs and Program Materials and refund any fees You have paid for it and any unused, prepaid technical support fees You have paid for the Services. Phire will not indemnify You if You alter the Programs or use it outside the scope of use identified or if You use a version of the Programs which is no longer being supported by Phire, if the infringement claim could have been avoided by using an unaltered current version of the Programs which was provided to You. Phire will not indemnify You to the extent that an infringement claim is based upon the combination of any Programs with any products or services not provided by Phire. This section provides the parties' exclusive remedy for any infringement claims or damages.

#### **G. Program Support**

For purposes of this Agreement, technical support Services ("Technical Support Services") consist of annual support Services which includes the annual maintenance You may have ordered for the supportable Programs. The term "Supportable Programs" refers to those Programs for which Phire offers annual support Services.

The term for Technical Support Services shall commence on the Effective Date and continue in full force for one (1) year (the "Initial Support Term").

Phire shall periodically notify You in writing of the availability of new major versions of the Programs that is the subject of this license. As long as the annual support and maintenance fee has been paid in full by You, Phire shall supply You with such new major version of such Programs. Customizations, enhancements, and interfaces to third party software systems made by You during the normal usage of the Programs cannot be confirmed by Phire and are at Your risk during the installation of any new major release.

#### **H. End of Agreement**

If either party breaches a material term of this Agreement and fails to correct the breach within thirty (30) days of written specification of the breach, the other party may terminate this Agreement. If Phire ends this Agreement as specified in the preceding sentence, all amounts which have accrued must be paid within thirty (30) days after Your receipt of a final invoice that shall include all sums remaining unpaid for Programs ordered and/or Services received under this Agreement. If You end this Agreement as specified in the initial sentence of this provision, You may end Your Program license and recover the fees paid to Phire for the Program license and any unused, prepaid Technical Support Services fees You have paid for the Program license. Provisions that survive termination or expiration include those relating to limitation of liability, indemnity, payment, and others which by their nature are intended to survive.

**I. Nondisclosure**

By virtue of this Agreement, the parties may have access to information that is confidential to one another ("Confidential Information"). In order to maintain the confidentiality of the Confidential Information, all parties agree to keep such information confidential and to disclose or permit disclosure of the information only (i) to employees, directors, legal counsel, and other advisors with a need to know such information in connection with the Programs and Services; (ii) in response to a subpoena or other order requiring production of the Confidential Information, or as otherwise required by law, regulation, statute or order, provided that, to the extent practicable, the party receiving the disclosure request ("receiving party") shall provide the party whose confidential information is at issue ("disclosing party") with prompt notice of any such anticipated disclosure (so as to give the disclosing party opportunity to seek to protect the Confidential Information from disclosure), or (iii) if the disclosing party consents to such disclosure in writing. A party's Confidential Information shall not include information that: (a) is or becomes a part of the public domain through no act or omission of the other party; (b) was in the other party's lawful possession prior to the disclosure and had not been obtained by the other party either directly or indirectly from the disclosing party; (c) is lawfully disclosed to the other party by a third party without restriction on the disclosure; or (d) is independently developed by the other party.

**J. Entire Agreement**

This Agreement, including any attachments, constitutes the entire Agreement between the parties relating to this subject matter and supersedes all prior or simultaneous representations, discussions, negotiations, and agreements, whether written or oral, regarding such Programs and/or Services. If any term of this Agreement is found to be invalid or unenforceable, the remaining provisions will remain effective. This Agreement may not be modified and the rights and restrictions may not be altered or waived except in writing signed by authorized representatives of both parties.

**K. Governing Law**

This Agreement shall be governed by the laws of the Commonwealth of Virginia without giving effect to any principles that may provide for the application of the law of another jurisdiction.

**L. Limitation of Liability**

NEITHER PARTY SHALL BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR ANY LOSS OF PROFITS, REVENUE, DATA, OR DATA USE. THE MAXIMUM LIABILITY OF PHIRE FOR ANY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR YOUR ORDER, WHETHER IN CONTRACT OR TORT, OR OTHERWISE, SHALL BE LIMITED TO THE AMOUNT OF THE FEES YOU PAID PHIRE UNDER THIS AGREEMENT, AND IF SUCH DAMAGES RESULT FROM YOUR USE OF PROGRAMS OR SERVICES, SUCH LIABILITY SHALL BE LIMITED TO THE FEES YOU PAID PHIRE FOR THE DEFICIENT PROGRAM OR SERVICES GIVING RISE TO THE LIABILITY.

**M. Export**

Export laws and regulations of the United States and any other relevant local export laws and regulations apply to the Programs. You agree that such export control laws govern Your use of the Programs (including technical data) and any Services deliverables provided under this Agreement, and You agree to comply with all such export laws and regulations (including "deemed export" and "deemed re-export" regulations). You agree that no Programs and/or Materials resulting from Services (or direct product thereof) will be exported, directly or indirectly, in violation of these laws, or will be used for any purpose prohibited by these laws.

**N. Force Majeure**

Neither party shall be responsible for failure or delay of performance if caused by an act of war, hostility, or sabotage; act of God; electrical, internet, or telecommunication outage that is not caused by the obligated party; government restrictions (including the denial or cancellation of any export or other license); other event outside the reasonable control of the obligated party. All parties will use reasonable efforts to mitigate the effect of a force majeure event. If such event continues for more than ninety (90) days, either party may cancel unperformed Services upon written notice. This section does not excuse either party's obligation to take reasonable steps to follow its normal disaster recovery procedures or Your obligation to pay for Services provided under this Agreement.

**O. Assignment**

You may not assign this Agreement or give or transfer the Programs and/or any Services or an interest in them to another individual or entity without the prior written consent of Phire. If You grant a security interest in the Programs and/or any Services deliverables, the secured party has no right to use or transfer the Programs and/or any Services deliverables.