Appendix 1B

PRODUCT EVALUATION AGREEMENT

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This Product Evaluation Agreement (this “Agreement”) is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_ (the “Effective Date”), between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, a [state] [corporation/limited liability company/etc.] with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Vendor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, [state] [corporation/limited liability company/etc.] with a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Customer”) (each of Vendor and Customer, a “Party”; together, the “Parties”).

1. Evaluation of Products

1.1 Software License. Subject to all the terms and conditions of this Agreement, Customer has the right to use the Software identified on Exhibit A for a period of 60 days beginning on the day the Customer receives the Product from Vendor (the “Evaluation Period”) for the sole purpose of evaluating purchase of a license. Customer shall destroy or return the Software, including all copies in the possession or control of Customer, on or before completion of the Evaluation Period unless Customer licenses the Software during this period.

1.2 IP Ownership and Restrictions. Title to all patents, copyrights, trade secrets, and other proprietary rights in or related to the Software and related documentation (including all of their component parts) are and will remain the exclusive property of Vendor. Customer shall not copy, use, modify, or distribute the Software except as expressly licensed in this Agreement. Customer shall not cause or permit the modification, distribution, reverse-engineering, decompilation, disassembly, or other translation of the Software. Customer shall not alter, change, or remove from the Software any identification, including copyright and trademark notices.

1.3 Feedback. Vendor welcomes the Customer’s ideas, suggestions, or recommendations regarding a Product (“Feedback”). Vendor is free to use and incorporate the Feedback without any payment to Supplier, and Customer hereby assigns to Vendor all right, title and interest in any intellectual property rights it may have or obtain in the Feedback.

2. Disclaimers and Limitation of Liability

2.1 THE SOFTWARE AND ANY RELATED SERVICES ARE PROVIDED “AS IS,” AND VENDOR MAKES NO WARRANTIES, EXPRESS, IMPLIED, ARISING FROM COURSE OF DEALING OR USAGE OF TRADE, OR STATUTORY, AS TO ANY SOFTWARE OR SERVICES PROVIDED UNDER THIS AGREEMENT, OR ANY MATTER WHATSOEVER. THE PARTIES DISCLAIM ALL IMPLIED WARRANTIES, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, TITLE AND NON-INFRINGEMENT.

2.2 EXCEPT WITH REGARD TO CLAIMS BASED UPON CUSTOMER’S BREACH OF SECTION 1.2, NEITHER PARTY WILL BE LIABLE FOR ANY SPECIAL OR CONSEQUENTIAL DAMAGES (INCLUDING FOR LOSS OF PROFITS, SAVINGS, REVENUE, OR USE, DAMAGED OR LOST FILES OR DATA, OR BUSINESS INTERRUPTION) IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES, EVEN IF THE PARTY SOUGHT TO BE HELD LIABLE HAS BEEN ADVISED OF THE POSSIBILITY OF THESE DAMAGES. VENDOR WILL NOT BE LIABLE FOR ANY DAMAGES FOR THE COST OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR FOR ANY LIABILITY TO CUSTOMER RELATING TO THIS AGREEMENT EXCEEDING IN THE AGGREGATE US$100, REGARDLESS OF THE CAUSE OF ACTION OR CHARACTERIZATION OF THE DAMAGES.

2.3 CUSTOMER ACKNOWLEDGES THAT THE PROVISIONS FOR LIMITATION OF LIABILITY DESCRIBED IN THIS AGREEMENT FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES AND THAT VENDOR WOULD NOT BE WILLING TO ENTER THIS PRODUCT EVALUATION AGREEMENT WITHOUT THEM. THEREFORE, CUSTOMER AGREES TO THIS ALLOCATION OF RISK AND HEREBY WAIVES ANY RIGHT, THROUGH EQUITABLE RELIEF OR OTHERWISE, TO SUBSEQUENTLY SEEK A MODIFICATION OF THESE PROVISIONS OR ALLOCATION OF RISK.

3. General

3.1 Governing Law. This Agreement is governed by the laws of the State of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, without regard to its conflict of laws principles. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

3.2 Assignment. Neither Party may assign or transfer, by merger, operation of law, or otherwise, this Agreement or any right or duty under this Agreement to a third party without the other Party’s prior written consent. Any purported assignment or transfer in violation of this Section is void.

3.3 Entire Agreement. This Agreement contains all the agreements, representations, and understandings of the Parties and supersedes any previous understandings, commitments, representations, or agreements, oral or written, with respect to the subject matter of this Agreement.

3.4 Modification. This Agreement may not be modified or amended except in a written document signed by a duly authorized representative of each Party that expressly states the sections of this Agreement to be modified; no other act, usage, or custom will be deemed to amend or modify this Agreement. The Parties agree that any terms or conditions on any Vendor invoice or Customer purchase order in any way different from or in addition to the terms and conditions of this Agreement will have no effect and the Parties hereby reject those terms and conditions. Each Party hereby waives any right it may have to claim that this Agreement was subsequently modified other than in accordance with this Section.

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| --- | --- |
| [VENDOR] | [CUSTOMER LEGAL NAME] |
| SignatureNameTitle | SignatureNameTitle |

Exhibit A

Software

The following is the Software to be evaluated under this Agreement: