



EMODE PHOTONIX  
"AS IS" TEMPORARY EVALUATION LICENSE AGREEMENT  
(NON PRODUCTION LICENSE)

UNLESS YOU (THE "CUSTOMER") HAVE OBTAINED PERMISSION TO USE THE LICENSED PRODUCT UNDER A SEPARATE, DULY SIGNED LICENSE AGREEMENT OR A EVALUATION LICENSE WITH EMODE OR AN AUTHORIZED DISTRIBUTOR, THE ACCOMPANYING LICENSED PRODUCT IS PROVIDED UNDER THE FOLLOWING TERMS AND CONDITIONS AND ANY SUPPLEMENTAL TERMS REFERENCED BELOW AND YOUR RIGHT TO USE THE LICENSED PRODUCT IS CONDITIONED UPON THE YOUR ACCEPTANCE OF THIS AGREEMENT (THE "eEULA" or "Agreement").

IF YOU DO NOT ACCEPT THESE TERMS AND CONDITIONS AND YOU DO NOT HAVE A SEPARATE LICENSE AGREEMENT AS REFERENCED ABOVE, YOU MAY NOT USE OR COPY THE LICENSED PRODUCT AND YOU MUST DELETE ANY COPIES OF IT FROM YOUR SYSTEMS.

## Article 1. **INTRODUCTION**

1.1 **SCOPE AND KEY TERMS.** This Evaluation License Agreement (the "**eEULA**" or "**Agreement**") is a legal agreement and governs the products and services you (the "**Customer**", "**Licensee**", or "**you**") use from EMode Photonix, LLC, a Colorado limited liability company ("**EMode**", "**we**", "**our**", or "**us**"). EMode and Customer may also be referred to individually as a "Party" or collectively as "Parties." The Licensed Product is the proprietary information of EMode or its suppliers who retain exclusive title to their intellectual property rights in the Licensed Product. Customer's rights to the Licensed Product are limited to those expressly granted below and EMode reserves all rights not expressly granted in this Agreement.

## Article 2. **DEFINITIONS**

As used in this Agreement, the following terms shall have the indicated meanings:

2.1 "**Acceptance**" means your acceptance of the terms and conditions of this Agreement. By clicking on an "Accept" or similar button of this agreement, or by downloading, installing or using the EMode products or services, the Customer consents to the terms and conditions of this Agreement on behalf of the Customer and the organization on whose behalf the Customer will use the EMode products and services provided under this agreement. The effective date of this agreement is the date the Customer first downloads, installs or uses the EMode products or services. If the Customer does not agree to the terms and conditions of this agreement or if the Customer does not have the power and authority to accept the terms and conditions of this agreement on behalf of the



Customer's organization, the Customer may not use the EMode products and services and EMode is unwilling to provide the Customer with them.

- 2.2 **"Affiliate"** of a party to this Agreement means another person, company, or entity that, directly or indirectly, controls, is controlled by or is under common control with such party. For the purposes of this definition, "control" means owning a beneficial interest (either directly or indirectly) in more than 50% of the outstanding shares or securities or other ownership interest entitled to vote for the election of directors or similar managing authority. An entity shall be deemed to be an Affiliate under this Agreement for only so long as such requisite conditions are maintained.
- 2.3 **"Authorized User"** means a parties', and its wholly owned subsidiaries', employees or authorized contractors (a) whose duties require access to or use of the Licensed Product or Confidential Information for the benefit of that party; and (b) whose legal obligations to protect confidential and proprietary information require protection of the Licensed Produce and Confidential Information to at least the same extent as set out in this EULA. For clarity, Customer shall now appoint a third party licensor of portions of the code based reviewed during the Evaluation Period as an Authorized User.
- 2.4 **"Background Invention"** means any Invention of either Party conceived outside of this Agreement.
- 2.5 **"Confidential Information"** of EMode means (a) the Licensed Products (in any form), the Documentation, the License Keys; (b) Design Techniques and all ideas and information (such as algorithms, design rules, and design techniques) contained or embodied in the Licensed Products, Documentation, License Keys; (c) the prices, discounts, payment terms, and other information in the Purchasing Agreements; (d) EMode Training Services materials including without limitation presentations, demonstrations, software and course handouts, and (e) any other confidential or proprietary information that EMode provides to Customer in connection with this agreement. The Customer's Confidential Information is any confidential or proprietary information in (i) written form that Customer provide to EMode in order for EMode to fulfill the Customer's orders and provide products and services to Customer under this agreement, and (ii) oral form that Customer provides to EMode in order to receive Maintenance Services; as long as you notify EMode at the time of disclosure that such information is to be treated as confidential under this agreement. However, Feedback is not the Customer's Confidential Information. Also, Confidential Information does not include any of the following:
1. information that has become generally available to the public, through no fault of the Customer's (in the case of EMode Confidential Information) or EMode (in the case of the Customer's Confidential Information) and that is not still regarded as a trade secret under laws governing information that was negligently or maliciously distributed;

2. information that the receiving party had already obtained in a tangible form, through lawful means, before obtaining it under this agreement;
  3. information that the receiving party developed independently, without the use of any materials or information obtained from the other party in connection with this agreement;
  4. information that the receiving party has lawfully obtained, in a tangible form, from a third party that had the right to provide it to the receiving party; or
  5. information that the disclosing party releases for publication in writing.
- 2.6 **“Customer”** (and variations thereof) means the entity that signs or agrees to this Agreement as the Customer.
- 2.7 **“Design”** means a representation of an electronic circuit or device that the Customer creates through the use of one or more Licensed Products. The representation may exist in various formats including, but not limited to, equations, truth tables, schematic diagrams, textual descriptions, hardware description languages, executable software source code and netlists.
- 2.8 **“Design Database”** means a design database for the Customer’s Design that incorporates EMode in any format (except unencrypted source code for Implementation IP), along with all copyright and other proprietary legends for such EMode software.
- 2.9 **“Design Techniques”** means EMode-supplied algorithms, data, circuit and logic elements, libraries, rule bases, search strategies, and other technical information used in the process of creating Designs.
- 2.10 **“Documentation”** means any user manuals, reference manuals, release, application and methodology notes, written utility programs, and other materials in any form provided by EMode for use with a Licensed Product.
- 2.11 **“End User”** means an individual who works for Customer as an employee or independent contractor and whom Customer designates and authorizes to access and use a Licensed Product as permitted by this agreement.
- 2.12 **“Error”** means a defect in a Licensed Product that causes it to deviate substantially from the specifications in the corresponding Documentation.
- 2.13 **“Evaluation Period”** means the period of days, EMode authorizes Customer to run the Licensed Product for evaluation (or testing) purposes. Under no circumstances will the Evaluation Period under these Terms and Conditions exceed one (1) year without EMode’s prior written consent.

- 2.14 **“Feedback”** means any ideas or suggestions Customer voluntarily provides to EMode (in any manner, whether in writing or orally or otherwise) regarding the Licensed Products, Documentation, or Design Techniques, including possible enhancements or improvements.
- 2.15 **“Fees”** means the amounts Customer must pay when Customer purchases products and services from EMode under this agreement, as identified in each Purchasing Agreement.
- 2.16 **“FTP Server”** means an EMode server that you can access via the Internet in order to download Licensed Products you have ordered.
- 2.17 **“Intellectual Property Rights”** means all patent rights, copyrights, trade secret rights, mask works, and trademark rights (including service marks and trade names), and any applications for these rights, in all countries.
- 2.18 **“License Key”** means a document (in physical or electronic format) provided by EMode that identifies: (a) the Licensed Product, including version number, licensed to Customer; (b) the Key Server; (c) the number of permitted Clients; and (d) the codes that initialize use of the Key Server.
- 2.19 **“Licensed Product(s)”** means any EMode software product including:
- a. the software, scripts, checkers and other files comprising the EMode software package;
  - b. any authorization or encryption keys and passwords that EMode may deliver to Customer from time to time in order to operate such software and carry out Customer’s use of it;
  - c. all related user documentation, in written, electronic or other format, which describes the Licensed Product and its operation and which EMode make generally available to its licensed customer for use with Licensed Product (**“Documentation”**); and
  - d. all updates, modifications, and maintenance services (including Licensed Product Updates) to the foregoing items.
- 2.20 **“Licensed Product Updates”** means features and functionalities of Licensed Products which may be updated from time to time.
- 2.21 **“License Term”** means the period of time during which Customer may use a Licensed Product under a particular license.
- 2.22 **“License Type”** means the usage rights purchased under the applicable Purchasing Agreement.

- 2.23 **“Open Source Software”** has the meaning given in section 5.4 of the Terms and Conditions.
- 2.24 **“Plug-In”** means additional functionality or features available to an end user through a standalone component used in conjunction with a Licensed Product.
- 2.25 **“Purchasing Agreement(s).”** The terms and conditions in this End User Software License and the Purchasing Agreement(s) accepted by both Customer and EMode contain all terms and conditions applicable to Customer’s use of the Licensed Product (collectively, the “Agreement”). A “Purchasing Agreement” is a document that references this Agreement and identifies the specific Licensed Product and rights being licensed hereunder, including the applicable License Type, quantity, license term, Territory, Code Base, or other license constraint, and the fees and payment terms for the Licensed Product licenses (the “License Transaction”). An Affiliate of Customer may purchase licenses to the Licensed Product by executing a Purchasing Agreement referencing this Agreement provided that this Agreement governs all such licenses and such Affiliate complies with all Customer obligations referenced in this Agreement and the Purchasing Agreement. Customer agrees that it shall be responsible for the acts and omissions of its Affiliates with respect to any Licensed Product licensed under an applicable Purchasing Agreement. Customer agrees that Customer purchases under this Agreement and any Purchasing Agreement incorporated herein by reference are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by EMode regarding future functionality or features.
- 2.26 **“Territory”** means the specific country(ies) or geographical areas identified in the applicable Purchasing Agreement to which Customer’s usage of the Licensed Product is limited.
- 2.27 **“Use and Technical Data”** means all recorded information, including computer software, produced in the performance of this Agreement.
- 2.28 **“Verification IP”** means test benches (including software models, test suites, and monitors) that simulate, test, and verify the functionality of certain electronic circuits or devices.
- 2.29 **“Written Notice”** means signed and dated communication delivered by one Party to the other Party’s Contact for Written Notices found on the signature page, via electronic mail, facsimile, or common carrier.

### Article 3. **TREATMENT OF CONFIDENTIAL OR PROPRIETARY INFORMATION**

- 3.1 **Confidential or Proprietary Information.** Confidential or Proprietary Information means: (a) each Party’s software products, in byte code or source code form; (b) any

authorization and encryption keys and passwords delivered to operate such products; (c) Documentation, product road maps and development plans, and product pricing information; (d) any results of operations of Licensed Product; and (e) any business, technical and training information.

3.2 **Protection.** Each Party, if disclosed in writing, shall place a “confidential” or “proprietary” information notice on all Confidential or Proprietary Information that is delivered under this Agreement. If disclosed orally, Confidential or Proprietary Information shall be identified as “confidential” or “proprietary” at the time of disclosure, and is summarized in a writing sent by the disclosing Party to the other Party within thirty (30) days of such disclosure. EMode agrees that Proprietary Information shall be used only for the purposes of advancing the Licensed Product’s functionality. Except where EMode is legally obligated to release information pursuant to the Freedom of Information Act (5 U.S.C. 522), or other requirement of law, Confidential or Proprietary Information shall not be disclosed or otherwise made available in any form to any other person, firm, corporation, partnership, association or other entity without the written consent of Customer. EMode agrees to use its best efforts to maintain the confidentiality of Confidential or Proprietary Information. EMode will promptly notify Customer of requests for Customer’s Confidential or Proprietary Information. Customer agrees that EMode is not liable for the disclosure of information designated as proprietary which, after notice to and consultation with Customer, EMode determines may not lawfully be withheld of which a court of competent jurisdiction requires to be disclosed.

3.3 **Exclusions.** Confidential or Proprietary Information does not include information that: (a) is or becomes generally known or available to the public through no act or omission of the party receiving Confidential or Proprietary Information (“**Receiving Party**”); (b) is rightfully known by the Receiving Party prior to receiving such information from the other party (“**Disclosing Party**”) and without restriction as to use or disclosure; (c) is independently developed by the Receiving Party without use of the Disclosing Party’s Confidential or Proprietary Information and without breach of this Agreement; or (d) is rightfully received by the Receiving Party from a third party without restriction on use or disclosure. The existence of this Agreement and the nature of the business relationship between the parties are not considered Confidential or Proprietary Information.

3.4 **Use and Disclosure Restrictions.** Receiving Party will not use the Disclosing Party’s Confidential or Proprietary Information except as necessary to exercise the rights granted under this Agreement or to evaluate opportunities to license additional Licensed Product from EMode pursuant to the applicable Agreement, and will not disclose such Confidential or Proprietary Information to any person or entity except to its employees or Authorized Users. Without limiting the generality of the foregoing, Customer agrees that it will protect the Licensed Product, Documentation, or other Confidential or Proprietary Information from unauthorized dissemination in the same manner as that party protects its own Confidential or Proprietary Information, and in any event with reasonable

precautions. The foregoing obligations will not restrict either party from disclosing Confidential or Proprietary Information of the other party: (a) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; and (b) on a confidential basis to its legal or financial advisors that need to know in order to provide business advice to such party. In addition, each party may disclose terms and conditions of this Agreement: (i) as required under applicable securities regulations; and (ii) on a confidential basis to present or future providers of venture capital and potential private investors in or acquirers of such party.

**3.5 Right of Equitable Relief.** The parties acknowledge that violations of the covenants and obligations of this Agreement may cause the non-breaching party irreparable injury for which an adequate remedy at law may not be available. Therefore, the non-breaching party shall be entitled to seek all remedies available under equity, including immediate injunctive relief, in addition to whatever other remedies may be available at law.

#### Article 4. **INTELLECTUAL PROPERTY**

**4.1 Rights to Background Inventions.** No rights to Background Inventions are conveyed by this Agreement.

**4.2 Ownership of Original Copies of Use and Technical Data.** Customer agrees to exchange all Use and Technical Data. EMode and Customer shall each have the right to use all Use and Technical Data for their own purposes, consistent with their obligations under this Agreement.

**4.3 Publication.** Before either Party submits a paper or abstract for publication, or intends to publicly disclose information relating to an Invention, Use Data, or Technical Data stemming from their collaborative efforts and use of EMode's Licensed Product, both Customer and EMode are obliged to appropriately recognize and cite the scientific and technical contributions made by each Party respectively.

#### Article 5. **LICENSING.**

**5.1 Limited Rights.** Subject to Customer's compliance with the terms and conditions of this Agreement, EMode grants Customer a nonexclusive, non-transferable license, solely during Evaluation Period, to use and operate the Licensed Product solely for the purpose of evaluating the Licensed Product's capabilities for potential purchase of a Licensed Product license. The license granted under this Agreement shall be limited as follows: (a) Customer may use the Licensed Product on no more than twenty (20) computers owned or controlled by Customer for analyzing, building or testing Customer developed or licensed software code only; (b) Customer shall not use the results of analysis of Customer

software code by the Licensed Product or any documentation provided therewith for any purpose other than Customer's internal evaluation purposes and the provision of feedback to EMode; such results may not be used in connection with the development of any Customer software code or any other commercial use including, without limitation, for the benefit of the Customer's customers; (c) Customer may share the results of the operation of the Licensed Product only with Customer's employees, if any, who need to know for the purpose of evaluating the Licensed Product for potential purchase as described above; and (d) Customer is required to obtain written consent from EMode prior to publicly disseminating any evaluation or results of EMode's operations, whether through scientific journals or any other medium, with the intent of contributing to peer reviews or enhancing public knowledge; provided that such sharing does not disclose proprietary or confidential information of EMode or violate any other terms of this Agreement.

5.2 **Conditions.** The rights granted to Customer are conditional upon Customer's compliance with the following obligations:

- a. Customer will not copy EMode's Licensed Products or Documentation, in whole or in part, except as expressly authorized in this Agreement.
- b. Customer will not transfer, assign, lease, lend or rent EMode's Licensed Products or Documentation, use them to provide service bureau, time-sharing or other services, or otherwise provide or make the functionality thereof available to third parties (including, without limitation, use of a Licensed Product or its output to create, modify, or simulate Designs for third parties) except as expressly authorized in this Agreement.
- c. Customer will not disassemble, decompile, reverse engineer, modify or create derivative works of EMode's Licensed Products or Documentation nor permit any third party to do so, except to the extent such restrictions are prohibited by applicable mandatory local law.
- d. Customer will not delete or in any manner alter the copyright, trademark or other proprietary rights notices appearing on the Licensed Product as delivered by EMode. Customer will reproduce such notices on all copies Customer is authorized to make of the Licensed Product.
- e. Customer will not allow access or use of the Licensed Product to anyone other than the Authorized Users, without EMode's prior express written consent.
- f. Customer will not disclose to any third party any comparison of the results of operation of EMode's products with other products.
- g. Customer will not run or operate the Licensed Products or try to access the Results once the Evaluation Period expires.



- h. When the Evaluation Period expires, Customer will delete from its systems all copies of the Licensed Product in all forms and types of media.
- i. Customer will ensure that any of its employees with whom Customer shares information about the Licensed Product and results all comply with the obligations set out in this Agreement.
- j. Customer's use of the Licensed Product is time-limited to the Evaluation Period, and such use and access may be monitored and regulated through a license management tool (a "**License Manager**"). The License Manager will report such data (collectively, "**License Manager Data**") to EMode.
- k. Customer will not install or use the Licensed Product in a manner that circumvents or interferes with the operation of the License Manager or any other technological measure that controls access to the Licensed Product. Some configurations may require the License Manager to be installed only on designated servers.
- l. Customer may not use the results of operating the Licensed Product to correct any bugs or defects in Customer's Code Base ("**Production Use**"). If Customer engages in Production Use, Customer shall be deemed to have consented to purchase twelve (12) month term license to the Licensed Product at EMode's then-current list price for the total capacity of the Code Base that the Licensed Product was used on. Such license shall be granted pursuant to the terms of the current version of EMode's End User Software License Agreement ("EULA"), and EMode shall invoice Customer for such amount without receipt of a Customer purchase order, and all amounts owed shall be due and payable Net 30 days from EMode's invoice. The EULA is available at: <https://emodephotonix.com/legal>.

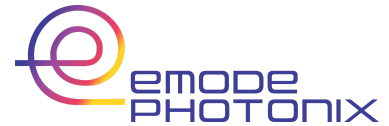
**5.3 Pre-Released Licensed Product.** Customer acknowledges and agrees that: (a) the Licensed Product may not be an official product and may have been commercially released by EMode; (b) the Licensed Product may not be in final form or fully functional; (c) the Licensed Product may contain errors, design flaws or other problems; (d) it may not be possible to make the Licensed Product fully functional; (e) use of the Licensed Product may result in unexpected results, loss of data or communications, project delays or other unpredictable damage or loss; (f) EMode is under no obligation to release a commercial version of the Licensed Product; and (g) EMode has the right to abandon development of the Licensed Product at any time and without liability to Customer.

**5.4 Third Party Software.** The Licensed Product may contain open source or community source software ("**Open Source Software**") provided under separate licensing terms ("**Third Party License Terms**") which are available at <https://emodephotonix.com/legal>. Customer agrees that all Open Source Software shall be and shall remain subject to the terms and conditions under which it is provided. The Open Source Software is provided "AS IS," WITHOUT ANY WARRANTY OF ANY KIND, AND EMODE FURTHER DISCLAIMS ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO OPEN SOURCE SOFTWARE, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF

NONINFRINGEMENT, MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. NEITHER EMODE NOR THE LICENSORS OF OPEN SOURCE SOFTWARE SHALL HAVE ANY LIABILITY FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR CONSEQUENTIAL DAMAGES (INCLUDING WITHOUT LIMITATION LOST PROFITS), HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY, WHETHER IN CONTRACT, STRICT LIABILITY, OR TORT (INCLUDING NEGLIGENCE OR OTHERWISE) ARISING IN ANY WAY OUT OF THE USE OR DISTRIBUTION OF THE OPEN SOURCE SOFTWARE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Copyrights to the Open Source Software are held by the copyright holders indicated in the copyright notices in the corresponding source files.

**5.5 Plug-Ins.** For Customers with valid licenses to the Licensed Products, Customer is hereby granted the right to use, in conjunction with the Licensed Products, Plug-Ins made available for use with the Licensed Products. No additional Purchasing Agreements are required in connection with the use of such Plug-Ins. Customer's right to use such Plug-Ins is provided under the terms of this Agreement, including the license grant set forth in Section 5.1 of this Agreement. Any obligation of EMode under Sections 7.1 and 9.1 hereof, and its obligations to provide Maintenance Services regarding Plug-Ins, shall apply only to the extent that such Plug-In has been developed by EMode or implemented for Customer by EMode and shall not extend to any conditions arising from Customer's environment or changes made by any third party programs that such Plug-In is used in conjunction with ("Modified Plug-Ins"). ALL MODIFIED PLUG-INS ARE PROVIDED AS-IS", WITHOUT ANY WARRANTY OF ANY KIND. SYNOPSIS AND ITS PARTNERS, SUPPLIERS AND DISTRIBUTORS DISCLAIM ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, WITH RESPECT TO SUCH MODIFIED PLUG-IN, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF NONINFRINGEMENT, MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE. SYNOPSIS AND ITS PARTNERS, SUPPLIERS AND DISTRIBUTORS DISCLAIM ALL LIABILITY UNDER THIS AGREEMENT WITH RESPECT TO ANY MODIFIED PLUG-IN.

**5.6 Feedback and Analytics.** Customer may provide feedback, suggestions, data and other information to EMode, its subcontractors or authorized distributors regarding possible improvements in the operation, functionality or use of EModes' Licensed Products. Customer hereby grants to EMode and its subcontractors and authorized distributors, without charge, the right to use, copy, modify and create derivative works of any such feedback and other information solely for the purpose of (a) improving the operation, functionality or use of its existing and future product offerings and commercializing such offerings; and (b) publishing aggregated statistics about software quality, provided that no data in any such publication can be used to specifically identify Customer or Customer's software code. Customer hereby irrevocably transfers and assigns to EMode and agrees to irrevocably assign and transfer to EMode all of Customer's right, title, and interest in and to all feedback including all intellectual property rights therein (collectively, "**Intellectual Property Rights**"). Customer will not earn or acquire any rights or licenses in the Software or in any EMode Intellectual Property Rights on account



of this Agreement or Customer's performance under this Agreement, even if EMode incorporates any feedback into the Software.

5.7 **Delivery and Installation.** Where practical, EMode will deliver the Licensed Products electronically and delivery will be deemed to occur upon the Licensed Products being available for electronic download. Customer will be responsible for installing the Licensed Product. Delivery of any tangible media will be made F.O.B. point of shipment.

5.8 **Keys and Access.** EMode agrees to provide Customer those authorization keys and/or passwords, which are necessary to permit Customer to gain access to the Licensed Product made available to Customer for the Licensed Product which has been properly licensed to Customer in accordance with this Agreement. Notwithstanding anything to the contrary in this Agreement, Customer hereby acknowledges that Customer shall have no right or license to any software made available to Customer which has not been properly licensed to Customer pursuant to this Agreement or the applicable Purchasing Agreement, or that has been included therein solely as a matter of convenience, and that Customer agrees not to attempt to gain access to, or permit any third party to attempt to gain access to, such software.

## Article 6. **WARRANTY.**

6.1 **Warranty Disclaimer.** EMODE PROVIDES THE LICENSED PRODUCT SOFTWARE, DOCUMENTATION, AND SUPPORT SERVICES "AS IS," WITHOUT ANY WARRANTY OF ANY KIND. EMODE AND ITS SUPPLIERS MAKE NO EXPRESS OR IMPLIED WARRANTY AS TO ANY MATTER WHATSOEVER, INCLUDING, WITHOUT LIMITATIONS, THE CONDITIONS OF THE RESEARCH OR ANY INVENTION OR PRODUCT, WHETHER TANGIBLE OR INTANGIBLE, MADE OR DEVELOPED UNDER THIS AGREEMENT, OR THE OWNERSHIP, MERCHANTABILITY, SATISFACTORY QUALITY, ACCURACY OR COMPLETENESS OF RESULTS, CONFORMANCE WITH DESCRIPTION, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE OF THE RESEARCH OR ANY INVENTION OR PRODUCT. EMODE AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ALL IMPLIED WARRANTIES, CONDITIONS AND REPRESENTATIONS ARISING OUT OF COURSE OF DEALING, USAGE OR TRADE, AND CUSTOMER HEREBY EXPRESSLY WAIVE ANY AND ALL SUCH WARRANTIES. CUSTOMER ASSUMES THE ENTIRE RISK AS TO SUITABILITY, RESULTS, AND PERFORMANCE OF THE SOFTWARE, DOCUMENTATION OR SUPPORT SERVICES. EMODE DOES NOT WARRANT THAT CUSTOMERS USE OF THE SOFTWARE OR ANY PORTION THEREOF WILL BE UNINTERRUPTED OR ERROR FREE, WILL DISCOVER ALL OPEN SOURCE OR THIRD-PARTY CODE, POTENTIAL LICENSE CONFLICTS, WILL MEET CUSTOMER REQUIREMENTS OR ANY PERFORMANCE OR RELIABILITY STANDARDS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, HARDWARE, APPLICATIONS, SYSTEMS, OR SERVICES, BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED. EMode has no obligation to provide maintenance or support services in connection with the Licensed Product.

Article 7. **LIABILITY.**

7.1 **Limitation of Liability.** TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW AND NOTWITHSTANDING ANY OTHER PROVISION HEREIN, IN NO EVENT WILL EMODE OR ITS SUPPLIERS BE LIABLE TO CUSTOMER OR TO ANY THIRD PARTY FOR DAMAGES OF ANY KIND, INCLUDING, BUT NOT LIMITED TO, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF USE, DATA, BUSINESS OR PROFITS, REVENUE, GOODWILL, ANTICIPATED SAVINGS) OR FOR THE COST OF PROCURING SUBSTITUTE PRODUCTS OR SERVICES ARISING OUT OF THIS AGREEMENT, WHETHER BASED UPON CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE), FAILURE OF A REMEDY TO ACCOMPLISH ITS PURPOSE, STRICT LIABILITY OR OTHERWISE, AND EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. Customer acknowledges that EMode would not be able to provide the Licensed Product without the limitations set forth in Section 5 herein. Customer may have other rights under applicable mandatory local laws. This Agreement does not change Customer's rights under applicable mandatory local laws if such laws do not permit it to do so.

Article 9. **INDEMNIFICATION.**

9.1 **Indemnity.** Customer shall defend, indemnify and hold harmless EMode and its subsidiaries, agents, licensors, managers, and other affiliated companies, and their employees, contractors, agents, officers and directors, from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to attorney's fees) arising from: (i) Customer or Customer's Authorized Users' use of and access to the Services, including any data or content transmitted or received by Customer or Customer's Authorized Users; (ii) Customer or Customer's Authorized Users' violation of any term of this Agreement, including without limitation Customer or Customer's Authorized Users' breach of any of the representations and warranties above; (iii) Customer or Customer's Authorized Users' violation of any third-party right, including without limitation any right of privacy or Intellectual Property Rights; (iv) Customer or Customer's Authorized Users' violation of any applicable law, rule or regulation; (v) Customer Content or any content that is submitted via Customer or Customer's Authorized Users' User Account including without limitation misleading, false, or inaccurate information; (vi) Customer or Customer's Authorized Users' willful misconduct; or (vii) any other party's access and use of the Services with Customer or Customer's Authorized Users' unique username, password or other appropriate security code.

Article 9. **TERM AND TERMINATION.**

9.1 **Term of Agreement.** The term of this agreement shall commence on the effective date that the Customer first uses the goods, software, Licensed Product, and technology subject to this Agreement and will terminate on expiration of the Evaluation Period,

unless this agreement is terminated sooner by either party in accordance with this Section 9.

9.2 **Right to Terminate.** Each party has the right to terminate this Agreement, by giving written notice of termination to the other party, if (a) the other party breaches this Agreement or any Purchasing Agreement and (b) either the breach cannot be cured or, if the breach can be cured, it is not cured by the breaching party within thirty (30) days after receiving written notice of the breach from the non-breaching party. A substantial deviation of a Licensed Product from the specifications in the corresponding Documentation will not be considered a breach of this Agreement that allows Customer to terminate the agreement. Either party will have the right to terminate this Agreement if the other becomes insolvent or makes an assignment for the benefit of creditors, or a trustee or receiver is appointed for such other party or for a substantial part of its assets, or bankruptcy, reorganization or insolvency proceedings shall be instituted by or against such other party. Termination of this Agreement under this Section 9 terminates all Purchasing Agreements and Licensed Product licenses granted hereunder.

9.3 **Consequences of Termination.** If either the Customer or EMode terminates this Agreement or an individual license to a Licensed Product expires or is terminated all Licensed Product licenses and rights to use Confidential Information that are granted thereunder shall terminate. Upon termination of this Agreement or expiration of the License Term in any Purchasing Agreement, Customer will: (a) promptly return to EMode or destroy the applicable Licensed Products and Confidential Information in the Customer's possession or control and all copies and portions thereof, in all forms and types of media; and (b) promptly pay all fees owing up to the date of termination.

9.4 **Survival.** The provisions of Articles 1 (Scope and Key Terms), 3 (Treatment of Confidential or Proprietary Information), 8 (Liability), 9 (Indemnification), 11 (Exports), 12 (General) and Sections 5.2 (Conditions), 5.5 (Feedback and Analytics), 7.3 (Warranty Disclaimer), 10.2 (Right to Terminate), 10.3 (Consequences of Termination), and 10.4 (Survival), shall survive the expiration or termination of this Agreement or of any Purchasing Agreement.

## Article 10. **EXPORTS.**

10.1 **Export Controls.** Customer agrees that the goods, software, Licensed Product, and technology subject to this Agreement are subject to the export control laws and regulations of the United States, including but not limited to the Export Administration Regulations ("EAR"), and sanctions regulations of the U.S. Department of Treasury, Office of Foreign Asset Controls and that Customer will comply with these laws and regulations. Without limiting the foregoing, if any technology, software or source code governed by this agreement, or the direct product of any such technology, Licensed Product, software or source code (each is a "Controlled Product"), is subject to the national security controls as identified on the Commerce Control List (the "Controlled Products"), Customer will not, without a U.S. Bureau of Industry and Security license or license exception, export,

re-export, or transfer a Controlled Product, either directly or indirectly, to any national of any country identified in Country Groups D:1 or E:1 as defined in the EARs. In addition, goods, software, Licensed Product, and any technology subject to this Agreement may not be exported, reexported, or transferred to (a) any person or entity listed on the "Entity List", "Denied Persons List" or the list of "Specifically Designated Nationals and Blocked Persons" as such lists are maintained by the U.S. Government, or (b) an end-user engaged in activities related to weapons of mass destruction. Such activities include but are not necessarily limited to activities related to: (i) the design, development, production, or use of nuclear materials, nuclear facilities, or nuclear weapons; (ii) the design, development, production, or use of missiles or support of missiles projects; and (iii) the design, development, production, or use of chemical or biological weapons.

## Article 11. **GENERAL.**

11.1 **Ownership of IP Rights.** EMode and its licensors own all Intellectual Property Rights in the goods, software, Licensed Product, technology, documentation, and design techniques. The Customer's only rights in the goods, software, Licensed Product, technology, documentation, and design techniques are the rights expressly granted in this Agreement; all other rights are reserved by EMode. EMode's licensors are third-party beneficiaries of, and thus may enforce against Customer, the license restrictions and confidentiality obligations in this Agreement with respect to their intellectual property and proprietary information. Customer will own all Intellectual Property Rights in the designs Customer creates using the goods, software, Licensed Product, technology, documentation, and design techniques, subject to EMode's (and its licensors') ownership of the Intellectual Property Rights in the goods, software, Licensed Product, technology, documentation, and design techniques.

11.2 **Automatic Updates.** Licensed Products communicate with EMode servers for the purpose of providing updates, detecting software piracy and verifying that Customers are using Licensed Products in conformity with the applicable License Key for such Licensed Products. EMode will use information gathered in connection with this process to deliver software updates and pursue software pirates and infringers.

11.3 **Governing Law.** The construction validity, performance and effect of this Agreement for all purposes shall be governed by the laws of the State of Colorado (excluding its body of law controlling conflicts of law). The federal and state courts located in Boulder County, Colorado have exclusive jurisdiction over any disputes arising from or relating to this agreement, and each party consents to such jurisdiction and venue. The parties expressly agree that the United Nations Convention on Contracts for the International Sale of Goods will not apply.

11.4 **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties concerning the subject matter hereof and supersedes any prior understanding or written or oral agreement relative to said matter.

- 11.5 **Headings.** Titles and headings of the sections and subsections of this Agreement are for convenience the of references only and do not form a part of this Agreement, and shall in no way affect the interpretation thereof. only. The word "including" (and variations thereof) is not intended to be limiting. No rule of strict construction is to be used when interpreting this Agreement.
- 11.6 **Amendments.** If either party desires a modification to this Agreement, the parties shall, upon reasonable notice of the proposed modification by the party desiring the change, confer in good faith to determine the desirability of such modification. Such modification shall not be effective until a written amendment is signed by all the parties hereto by their representatives duly authorized to execute such amendment.
- 11.7 **Assignment.** Neither this Agreement nor any rights or obligations of any Party hereunder shall be assignable or otherwise transferred by either Party without the prior written consent of the other Party. Customer has no right to assign or otherwise transfer, by operation of law or otherwise, any of its rights under this Agreement. For purposes of this section 11.7, a transfer or assignment of Customer's license rights will be deemed to have occurred (a) if a third party (or group of third parties acting in concert) acquires beneficial ownership of fifty percent (50%) or more of either (i) the Customer or a Afilliate's assets or (ii) the stock or other equity interests entitled to vote for Customer's or a Afilliate's directors or equivalent managing authority, or (b) in the event of a merger, consolidation or other business combination between the Customer or a Afilliate and one or more third parties where the Customer or a Afilliate's stockholders immediately before that transaction own (directly or indirectly), after that transaction, less than fifty percent (50%) of the stock or other equity interests entitled to vote for the directors or equivalent managing authority of the surviving entity.
- 11.8 **Notices.** All notices pertained to or required by this Agreement shall be Written Notices, and shall be directed by Customer to EMode Photonix General Counsel, or by EMode Photonix to Customer's signatory.
- 11.9 **Independent Parties.** The relationship of the Parties to this Agreement is that of independent parties and not as agents of each other or as joint venturers or partners. Each Party shall maintain sole and exclusive control over its personnel and operations.
- 11.10 **The Use of Name or Endorsements.** Each Party agrees to work together to prepare and publish a mutually acceptable news release concerning this Agreement.
- 11.11 **Severability.** If any provision in this Agreement is found to be invalid or unenforceable as written, the remaining provisions will remain in full force and effect and the invalid or unenforceable provision is to be construed (and, if necessary, modified) so that it is valid and enforceable to the greatest extent possible.
- 11.12 **Waivers.** The waiver of any breach or default will not constitute a waiver of any other right hereunder or of any subsequent breach or default. Either Party's failure to enforce



any provision of this Agreement will not be deemed a waiver of the future enforcement of that provision or enforcement of any other provision.

**11.13 Government Users.** If Customer are a branch or agency of the United States Government, or are acquiring any Licensed Product on behalf of any branch or agency of the United States Government, then the following provision applies. The Licensed Product and documentation is "Commercial Computer Software" and "Commercial Computer Software Documentation" as defined under FAR 252.227-7014. For Customers subject to the Defense Federal Acquisition Resolutions (DFAR), the Commercial Computer Software and associated documentation are sold pursuant to EModes' standard commercial license pursuant to DFARS 227.7202-1.Commerical Products. For all other government customers, use, duplication, or disclosure by the U.S. Government is subject to restrictions set forth in subparagraph (b)(2) of Commercial Computer Software License 48 CFR 52.227-19, as applicable. Customer agrees that the Uniform Computer Information Transaction Act or any version thereof, adopted by any state, in any form ("UCITA"), shall not apply to this Agreement. To the extent that UCITA is applicable, the parties agree to opt out of the applicability of UCITA pursuant to the opt-out provisions(s) contained therein.

**11.14 Attorneys' Fees.** The prevailing party in any action to enforce this Agreement will be entitled to recover costs and expenses including reasonable attorneys' fees.

**11.15 Remedies.** Except where this Agreement expressly provides exclusive remedies, all rights and remedies of either Party (including termination rights) are cumulative. Customer agrees that monetary damages alone would not be an adequate remedy, and therefore EMode will be entitled to injunctive relief if Customer materially breaches the license restrictions or confidentiality provisions in this agreement.

**11.16 Force Majeure.** Neither party shall be liable for an unforeseeable event beyond its reasonable control not caused by the fault or negligence of such party, which causes such Party to be unable to perform its obligations under this Agreement (and which it has been unable to overcome by the exercise of due diligence), including, without limitation, flood, drought, earthquake, storm, fire, pestilence, lightning and other natural catastrophes, epidemic, war, riot, civic disturbance or disobedience, strikes, labor dispute, or failure, threat of failure, or sabotage of facility of equipment, or any order or injunction made by a court of public agency. In the event of the occurrence of such a force majeure event, the party unable to perform shall promptly notify the other party. It shall further use its best efforts to resume performance as quickly as possible and shall suspend performance only for such period of time as is necessary as a result of the force majeure event.

END OF TERMS