

**LEVI, RAY & SHOUP, INC.**  
**PARTNER EVALUATION AND TEST LICENSE AGREEMENT**  
**Version X2.0**

This Partner Evaluation License Agreement (“**Evaluation Agreement**”) is an agreement by which Levi, Ray & Shoup, Inc., an Illinois Corporation, will license Software to the Licensee subject to the terms and conditions set forth herein. In consideration of the Licensee requesting software for evaluation and test purposes pursuant to the Partner Agreement and having agreed to be bound to the terms and conditions of this Evaluation Agreement by signing the Partner Agreement, the parties agree to the following.

**1.0 Definitions.**

- 1.1 **Documentation** means the technical information and user manuals pertaining to the Software which are made available to Licensee pursuant to this Evaluation Agreement.
- 1.2 **Enhancement** means generally available improvements, fixes, modifications, changes, filters or new releases or versions of the Software and any accompanying Documentation.
- 1.3 **Installation Location** means the address requested by the Licensee for installation of Software and agreed by Licensor. ( Definition not needed if the Software is made available by remote access via application program interface.) The Installation Location may not be changed without Licensor’s prior consent.
- 1.4 **Licensee** means the entity other than the Licensor who has signed the parties’ Partner Agreement
- 1.5 **Licensor** or **LRS** means Levi, Ray & Shoup, Inc.
- 1.6 **Partner Agreement** means one of the following types of agreements: distributor, reseller, sublicensor, or OEM agreements, that has been entered into by LRS and Licensee and under which the Licensee has requested evaluation software and agreed to the terms and conditions of this Evaluation Agreement.
- 1.7 **Software** or **Products** means all software made available to the Licensee by the Licensor for evaluation and test purposes in response to Licensee’s request pursuant to the Partner Agreement. Such terms shall also include the Documentation and Enhancements and all other prerequisite products and other software made available with the requested software.
- 1.8 **Term** means the period designated as such in the Partner Agreement and which for the purposes of this Evaluation Agreement may be extended pursuant to Section 8.1 of this Evaluation Agreement.

**2.0 License Fee.** The license fee, if any, will be agreed between the parties and set forth in the Partner Agreement.

**3.0 Grant of License/Restriction on Use.** Subject to the terms and conditions of this Evaluation Agreement and until terminated pursuant to the terms of this Evaluation Agreement, Licensor hereby grants, and Licensee hereby accepts, a limited, non-exclusive, nontransferable, revocable license to use the Software for the Term. At Licensor’s option, Licensee will either be granted remote access to the Software or will receive object code via electronic delivery, in which case the Software must be installed at the Installation Location on a single server. Licensee shall use the Software only for the following permitted purposes: 1) evaluating and testing the Software, 2) demonstrating the Software to employees and potential customers, and 3) if applicable, providing support in accordance with the Partner Agreement. Licensee agrees not to use the Software for production use or to design, develop, provide, or market any product or service that would compete with any product or service of Licensor.

**4.0 Protection of Software and Licensee’s Confidential Information.**

- 4.1 **Acknowledgment of Trade Secrets.** This Evaluation Agreement does not transfer any ownership or title in the Software or the Documentation to Licensee and all such ownership rights will remain in Licensor or its suppliers. Licensee acknowledges Licensor's representation that the Software and its Documentation contain valuable trade secrets and are protected by United States and international copyright laws and treaties. Licensee may not disclose or make available to third parties the Software, its Documentation, or any portion thereof without Licensor’s prior written approval. Licensor has the exclusive right to modify and enhance the Software and its Documentation, and the Licensee hereby agrees that it will make no effort to reverse engineer, reverse assemble, decompile or otherwise attempt to derive source code (collectively “reverse engineer”) from the Software. If

applicable law permits reverse engineering for purposes of interoperability despite the contractual prohibition, Licensee shall provide Licensor notice of its intent to reverse engineer the Software and provide an opportunity for Licensor to provide Licensee such information as may be needed to achieve interoperability. If Licensor provides the necessary information to achieve interoperability, Licensee agrees not to reverse engineer the Software unless, despite the requirements of this Section, such reverse engineering is specifically allowed by applicable law. Licensee shall not make any attempt to circumvent the technological measures that control access to, or use of, the Software.

4.2 **Delete Copies.** Upon termination of this Evaluation Agreement, Licensee shall immediately delete or otherwise destroy all copies of the applicable Software and Documentation other than copies which have been created pursuant to automatic archiving or back-up processes that cannot reasonably be deleted. Upon request, Licensee shall certify in writing to Licensor its compliance with this paragraph within five (5) days after such request.

4.3 **Proprietary Notices.** In no event may Licensee copy in whole or in part the Software or the Documentation without the Licensor's prior written consent.

4.4 **Audit.** No more than annually, as a material term of this Evaluation Agreement, Licensor may require Licensee to provide either 1) a statement which describes how and where the Software licensed hereunder is being used and the number of copies of the Software in Licensee's possession, or 2) reports or records generated by programs that are a part of the operating system and/or the Software which will be used to determine the number of printers the Software is supporting. Any such statement, reports, and/or records must be certified by Licensee. Further, no more than annually, upon prior written notice, Licensor may visit Licensee's place(s) of business in order to determine compliance with this Evaluation Agreement.

## **5.0 Warranties, Disclaimers, Remedy.**

LICENSEE ASSUMES ALL RISK OF USING THE SOFTWARE. THE SOFTWARE AND ANY SUPPORT FROM LICENSOR UNDER THIS EVALUATION AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY EXPRESS OR IMPLIED.

## **6.0 LIMITATION OF LIABILITY AND CONSEQUENTIAL DAMAGES/INDEPENDENT CLAUSES.**

6.1 IN NO EVENT, EXCEPT FOR A CLAIM UNDER SECTION 9.5, SHALL LICENSOR BE LIABLE TO LICENSEE FOR ANY DIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR INDIRECT DAMAGES OF ANY KIND (INCLUDING, WITHOUT LIMITATION, LOST PROFITS, LOSS OF DATA, LOSS OF USE, OR CLAIMS OF THIRD PARTIES) THAT MIGHT OCCUR AS A RESULT OF THE PERFORMANCE OR BREACH OF THE EVALUATION AGREEMENT OR IN ANY WAY ARISING OUT OF OR IN CONNECTION WITH THE EVALUATION AGREEMENT.

6.2 BOTH PARTIES ACKNOWLEDGE THAT THEY DO NOT EXCLUDE OR LIMIT LIABILITY FOR DEATH OR PERSONAL INJURY OR FOR ANY FRAUDULENT PRECONTRACTUAL MISREPRESENTATION UPON WHICH THE OTHER PARTY CAN BE SHOWN TO HAVE RELIED.

**7.0 Assignment.** Licensee may not assign this Evaluation Agreement without the prior written consent of Licensor which may be withheld for any reason or no reason. Any attempted assignment without prior written consent shall be invalid and void.

## **8.0 Termination.**

8.1 **Termination.** This Evaluation Agreement shall automatically terminate upon expiration of the Term, except that the Term may be extended, at Licensor's discretion, by sending a new key with a new expiration date which, when installed, extends the Term to the new expiration date. Either party may terminate this Evaluation Agreement before the expiration of the Term upon written notice to the other party.

8.2 **Effect of Termination.** Sections 4.0, 5.0, 6.0, and 9.0 shall survive the termination of this Evaluation Agreement and termination of this Evaluation Agreement is without prejudice to the rights and obligations of the parties that have accrued up to and including the date of termination.

## **9.0 Applicable Law, Dispute Resolution.**

9.1 **Applicable Law.** This Evaluation Agreement, all transactions executed hereunder and the legal relations between the parties shall be governed and construed solely in accordance with the laws of

the State of Illinois, United States of America, without reference to its conflict of laws rules, except that the parties hereby agree that this Evaluation Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of Goods. All disputes arising out of or in connection with this Evaluation License shall be subject to the exclusive jurisdiction of the state and federal courts located in the State of Illinois.

- 9.2 Amicable Resolution. It is the intent and desire of the parties that all disputes, claims, and controversies which arise between the parties relating to this Evaluation Agreement be resolved in an amicable manner within thirty (30) days after either party requests a meeting to effect resolution of a dispute. The parties shall in such period consult in good faith to reach a just and equitable solution to such differences. In the event of a dispute, claim, or controversy which is not resolved within such thirty (30) day period by the parties, Executive Officers of the parties shall be asked to mediate the dispute and seek a resolution during the next thirty (30) day period.
- 9.3 Remedies. In the event that the parties are unable to resolve any dispute, claim, or controversy in accordance with Section 9.2, the parties may pursue any remedy available at law as limited by Sections 5.0 and 6.0.
- 9.4 Injunctive Relief. Nothing contained in this Evaluation Agreement shall prohibit Licensor from seeking injunctive relief or specific performance for violation or threatened violation of Section 4.0, as it is understood and agreed that breach of the provisions of Section 4.0 by Licensee may cause Licensor irreparable damage for which the recovery of money damages would be inadequate, and that Licensor is entitled to obtain timely injunctive relief or other similar emergency or equitable relief in any court of competent jurisdiction to protect its rights under this Evaluation Agreement. Any remedy granted by such court shall be in addition to any other remedies to which Licensor may be entitled.
- 9.5 Attorneys' Fees. The parties agree that should there be any litigation arising out of this Evaluation Agreement or to enforce any portion of this Evaluation Agreement, that the losing party agrees to pay the prevailing party any reasonable attorneys' fees and other costs incurred in said litigation.

#### **10.0 General and Miscellaneous Clauses.**

- 10.1 Notice. All notices or demands relating any breach, default, violation or dispute shall be in writing and shall be delivered personally or sent by certified mail with return receipt requested or a nationally recognized overnight courier service.
- 10.2 Severability. If any provision of this Evaluation Agreement or the application of such provision shall be held invalid, the remainder of this Evaluation Agreement, or the application of such provision to companies or circumstances, other than those as to which it is held invalid, shall not be affected.
- 10.3 Parties Bound. This Evaluation Agreement shall be binding upon the parties hereto, their successors, permitted assigns, and legal representatives.
- 10.4 No Intended Third Party Beneficiaries. This Evaluation Agreement is for the sole benefit of the parties hereto and their successors and permitted assigns and this Evaluation Agreement shall not be construed as conferring any rights or remedies on any other company.
- 10.5 Export Compliance. Licensee agrees to comply with all applicable export laws and regulations of the United States, the EU, the UN, and the country of the Installation Location (collectively, "Export Controls"). Licensee will not, directly or indirectly, export, re-export, divert, or transfer the Software to any locations, to any end-user, or for any end-use, without complying with the Export Controls. Without limiting the foregoing, the Licensee specifically agrees that it will not export or re-export the Software (1) to any embargoed country, currently including Cuba, Iran, North Korea, Sudan, and Syria or (2) to any person or company listed on the denied or restricted party list, or (3) for any restricted end-use related to the development, design, production, or use of nuclear, chemical, or biological weapons or missiles.
- 10.6 Headings, Gender. All section headings contained in this Evaluation Agreement are for convenience of reference only, do not form a part of this Evaluation Agreement, and shall not affect in any way the meaning or interpretation of this Evaluation Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number, singular or plural, and any other gender, masculine, feminine, or neuter, as the context requires. Further, reference to a single section number ending in a zero, e.g., 3.0, shall be a reference to all of the sections starting with the same number. For example, a reference to Section 3.0 is a reference to Sections 3.1, 3.2, 3.3, 3.4, and 3.5 as well.

- 10.7 Waiver. A waiver of a breach of any term of this Evaluation Agreement shall not be construed as a waiver of any succeeding breach or as a waiver of the provision itself. A party's performance after the other party's breach shall not be construed as a waiver of that breach.
- 10.8 Final Agreement/Conflicts. This Evaluation Agreement constitutes the complete, final, and exclusive expression of the parties' Agreement, and supersedes all proposals and other communications made between the parties concerning the subject matter hereof. This Evaluation Agreement cannot be modified except by written agreement signed by both parties.

**11.0** BOTH PARTIES HAVE READ THIS EVALUATION AGREEMENT AND UNDERSTAND THAT IT IS A DOCUMENT WHICH HAS LEGAL CONSEQUENCES, INCLUDING THE LIMITING OF LICENSOR'S LIABILITY FOR DAMAGES. AFTER DUE CONSIDERATION, LICENSEE BELIEVES THE LIMITATION OF LIABILITY CLAUSE SET FORTH IN SECTION 6.0 IS REASONABLE UNDER THE CIRCUMSTANCES.