

PHOENIX TECHNOLOGIES LTD.

PHOENIX FREEZE™ END USER LICENSE AGREEMENT

IMPORTANT: PLEASE READ THIS END USER LICENSE AGREEMENT CAREFULLY AS IT CONTAINS THE LEGAL TERMS AND CONDITIONS THAT YOU AGREE TO WHEN USING THE SOFTWARE. BY INSTALLING AND USING THE SOFTWARE, YOU (1) ACKNOWLEDGE THAT YOU HAVE READ, UNDERSTAND, AND AGREE TO BE BOUND BY AND ARE BECOMING A PARTY TO THIS END USER LICENSE AGREEMENT AND (2) YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO ENTER INTO THIS AGREEMENT, PERSONALLY OR ON BEHALF OF THE COMPANY YOU HAVE NAMED AS THE CUSTOMER, AND TO BIND THAT COMPANY TO THESE TERMS. THE TERM “YOU” REFERS TO THE INDIVIDUAL OR A LEGAL ENTITY, AS APPLICABLE, THAT REGISTERS FOR OR USES THE SOFTWARE. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS END USER LICENSE AGREEMENT, OR IF YOU DO NOT HAVE SUCH AUTHORITY, DO NOT INSTALL OR USE THE SOFTWARE.

YOUR ACCESS TO AND USE OF THE SOFTWARE IS CONDITIONED UPON YOUR COMPLIANCE WITH THE TERMS OF THIS END USER LICENSE AGREEMENT. A TRIAL OFFERING OF THE SOFTWARE MAY BE PROVIDED TO YOU FOR YOUR USE ONLY IN ACCORDANCE WITH THIS AGREEMENT.

ANY INFORMATION THAT PHOENIX OBTAINS ABOUT YOU OR OTHER INDIVIDUALS THROUGH YOUR USE OF THE SOFTWARE SHALL BE GOVERNED BY THE PHOENIX PRIVACY POLICY LOCATED AT <http://www.phoenix.com/en/Privacy+Policy/default.htm>, AS MAY BE AMENDED FROM TIME TO TIME. BY USING THE SOFTWARE, YOU CONSENT TO THE COLLECTION AND PROCESSING OF THIS INFORMATION AS DESCRIBED IN THE PRIVACY POLICY.

This Phoenix Freeze End User License Agreement (“**Agreement**”) is an agreement between you (an individual or a corporation or other business entity, as the case may be) and Phoenix Technologies Ltd. (“**Phoenix**”). This Agreement has four sections:

- Section A applies if you have obtained a trial offering of the Software;
- Section B applies if you have purchased a license for the Software;
- Section C applies to both a trial offering and a paid license for the Software; and
- Section D applies to third party software incorporated into or included with the Software.

SECTION A – TERMS AND CONDITIONS APPLICABLE TO A TRIAL OFFERING OF THE SOFTWARE:

- 1.0 GRANT OF LICENSE.** Subject to the terms and conditions of this Agreement, Phoenix grants you a limited, internal-use-only, non-exclusive, non-transferable, non-sub-licensable, limited term and revocable license to install, use, access and run the Software (in object code form) during the Trial Period on one (1) computer. This limited right to use the Software is granted to you for a limited period of time as specified when you register to use the Software (the “**Trial Period**”) to provide you with an opportunity to use and evaluate the Software and determine if you would like to purchase a license for the Software. Any rights not expressly granted to you are reserved by Phoenix and, if applicable, its suppliers. If at the end of the Trial Period you elect not to purchase a license for the Software, you will not be able to continue using the Software until you purchase a license.
- 2.0 RESTRICTIONS ON USE.** Except with the express written authorization of Phoenix, you shall not, and shall not permit any third party to, use the trial offering of the Software for commercial purposes of any kind or engage in any of the restrictions stated in Section B.2.
- 3.0 OBLIGATIONS.** In using the trial offering of the Software, you agree to comply with the obligations stated in Section B.3.

4.0 WARRANTY DISCLAIMER. THE TRIAL OFFERING OF THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY WARRANTIES (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) OF ANY KIND WHATSOEVER, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT OR NON-INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY PARTY IN ANY COUNTRY. PHOENIX DOES NOT WARRANT OR ASSUME RESPONSIBILITY FOR THE ACCURACY OF ANY INFORMATION, TEXT, GRAPHICS, LINKS OR OTHER ITEMS IN USE WITH OR RELATING TO THE SOFTWARE.

SECTION B – TERMS AND CONDITIONS APPLICABLE TO A PAID LICENSE FOR THE SOFTWARE:

1.0 GRANT OF LICENSE. Subject to the terms and conditions of this Agreement and payment of an applicable license fee, Phoenix grants you a limited, internal-use-only, non-exclusive, non-transferable, non-sub-licensable, perpetual and revocable license to install, use, access and run one (1) copy of the the Software (in object code form) on one (1) computer. If you purchase multiple licenses for the Software, you may install and use the Software on multiple computers, but only up to the number of licenses you purchase. Any rights not expressly granted to you in this Agreement are reserved by Phoenix and, if applicable, its suppliers. Phoenix reserves the right, at any time in its sole discretion, to modify the features or functionality of the Software for any reason. In addition, Phoenix may change the provisions of this Agreement from time to time, without notice. However, if Phoenix makes any material change to the Software or this Agreement, Phoenix will notify you through the Software or via email. After notification by Phoenix, your continued use of the Software is your acceptance of the terms of any change(s).

2.0 RESTRICTIONS ON USE. Except with the express written authorization of Phoenix, you shall not, and shall not permit any third party to:

- (a) Provide a false identity or pretend to be another person when you register to use the Software;
- (b) License, sublicense, sell, resell, transfer, assign, distribute, rent, or lease the Software (in whole or in part);
- (c) Alter, remove, disable or suppress the display of any copyright, trademark, trade name, logo or trade dress included as part of the Software;
- (d) Modify, translate, reverse engineer, decompile or disassemble the Software (in whole or in part);
- (e) Copy the Software (in whole or in part) on any media;
- (f) Create any derivative works from the Software (in whole or in part);
- (g) Publish any benchmarking or similar type of analysis without the prior written consent of Phoenix;
- (h) Take part in any action that may breach Phoenix's intellectual property rights in or relating to the Software;
- (i) Install or use the Software on computers owned by other people or businesses; or
- (j) Impede or interrupt the Software in any way.

3.0 USER OBLIGATIONS. In using the Software, you agree to:

- (a) Install any error correction updates provided by Phoenix to ensure up-to-date Software;
- (b) Install and use the Software on only computers that you own and only for non-commercial purposes (for purposes of clarification, using the Software on the computers within your business is permissible);
- (c) Take all reasonable steps to protect the Software from unauthorized reproduction, publication, disclosure, or distribution;
- (d) Regularly back-up the Files that reside on your computer on other storage media; and
- (e) Comply with all applicable laws, including without limitation, all applicable local, state, national and foreign laws, treaties, regulations, ordinances and directives.

4.0 LIMITED WARRANTY AND DISCLAIMER. Phoenix warrants to you that, for ninety (90) days (the "**Warranty Period**"), the Software will perform materially in accordance with Phoenix's specifications for the Software you have purchased, provided that the Software is used in accordance with the terms of this Agreement. If, during the Warranty Period, the Software does not perform materially in accordance with its specifications, Phoenix shall use commercially reasonable efforts to rectify the non-conformity. Notwithstanding any of the foregoing, (a) Phoenix does not warrant or represent that the operation of the Software will be error-free and (b) Phoenix reserves the right, at any time in its sole discretion, to modify the features and specifications of the Software.

THE PROVISIONS OF THIS SECTION B.4 STATE THE SOLE AND EXCLUSIVE REMEDY AVAILABLE TO YOU. PHOENIX DISCLAIMS ALL OTHER WARRANTIES (EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE) REGARDING OR RELATING TO THE SOFTWARE FURNISHED OR PROVIDED TO YOU UNDER THIS AGREEMENT. PHOENIX SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

- 5.0 UPGRADES AND ADDITIONAL FEATURES.** You acknowledge that Phoenix may offer optional upgrades, features, functionality, services and support for or relating to the Software for fees that are in addition to any fees you have paid for the Software. Any such upgrades, features, functionality and services purchased by you shall be subject to the terms and conditions of this Agreement and/or a new end user license agreement.

SECTION C – TERMS AND CONDITIONS APPLICABLE TO BOTH A TRIAL OFFERING AND PAID LICENSE:

- 1.0 OWNERSHIP AND INTELLECTUAL PROPERTY RIGHTS.** Phoenix owns all right, title and interest, including all worldwide copyrights, in the Software, including all copies of the Software. The Software and all related materials are copyrighted and are protected by the laws of the United States and other countries, and by international treaty provisions. Title to all copies of the Software, and all intellectual property rights therein (including but not limited to patents, pending patent applications, trademarks, copyrights, trade secrets or other intellectual property rights), shall remain with Phoenix. Unless expressly authorized in this Agreement, you shall have no right to (nor will allow any third party to) sell, assign, lease, transfer, encumber, or otherwise suffer to exist any lien or security interest on the Software. You acknowledge and agree that this Agreement does not convey on to you any intellectual property or other ownership interests in the Software.
- 2.0 LIMITATION OF LIABILITY.** IN NO EVENT WILL PHOENIX OR ITS SUPPLIERS BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, LOST REVENUE, PROFIT OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL OR PUNITIVE DAMAGES), HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, ARISING OUT OF OR RELATED TO THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF PHOENIX OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT WILL THE CUMULATIVE LIABILITY OF PHOENIX, ITS SUPPLIERS OR THEIR RESPECTIVE SUPPLIERS, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE, EXCEED THE AMOUNT(S) PAID BY YOU FOR THE SOFTWARE LICENSE(S).
- 3.0 TERM AND TERMINATION.** This Agreement shall be effective for the Term (or Trial Period, as the case may be), unless earlier terminated as stated in this Agreement. Either party may terminate this Agreement, at any time, for convenience and with or without cause. In the event Phoenix terminates this Agreement other than for your failure to comply with the terms and conditions of this Agreement, (a) Phoenix will provide notification to you via email and may, in its sole discretion, refund to you a portion of the license fee you paid for the Software and (b) you agree to un-install the Software from your computer. In the event you terminate this Agreement, you agree to un-install the Software from your computer and you shall not be entitled to any refund of fees you paid for the Software. In the event you are not in compliance with any of the terms or conditions of this Agreement, Phoenix shall have the right to terminate this Agreement immediately, and you shall not be entitled to any refund of fees you paid for the Software. Upon termination of this Agreement for any reason, you understand that you will no longer have any right to use the Software.
- 4.0 ASSIGNMENT.** No assignment by you (by operation of law or otherwise) of any of your rights or obligations under this Agreement shall be effective, without the prior written consent of Phoenix. Any assignment without the prior written consent of Phoenix will be null and void. Subject to the foregoing sentence, this Agreement shall be binding upon and inure to the benefit of the parties, their successors and permitted assigns.
- 5.0 GOVERNING LAW.** Any claim arising under or related to this Agreement will be governed by California law (excluding its conflict of law principles) and controlling United States federal law. Any action under or relating to this Agreement brought by you shall be brought solely in the state and federal courts located in California with sole venue in the courts located in Santa Clara County and you hereby submit to the personal jurisdiction of such courts. The United Nations Convention on Contracts for the Sale of Goods does not apply to this Agreement.
- 6.0 EXPORT REGULATIONS.** You may not use or otherwise export or re-export the Software except as authorized by United States law and the laws of the jurisdiction in which the Software was obtained. You agree

to comply strictly with all such laws and regulations and acknowledge that the Software may not be exported or re-exported (i) into (or to a national or resident of) any United States embargoed country or (ii) to anyone on the United States Treasury Department's list of Specially Designated Nationals or the United States Commerce Department's Table of Denial Orders (each, a "**List**"). By using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such List. You shall indemnify and hold Phoenix harmless from any and all claims, losses, liabilities, damages, fines, penalties, costs and expenses (including attorney's fees) arising from or relating to any breach by you of your obligations under this section. Your obligations under this section shall survive the expiration or termination of this Agreement.

- 7.0 UNITED STATES GOVERNMENT RIGHTS.** The Software is commercial in nature and the United States Government's rights in the Software shall be only as set forth in this Agreement pursuant to 48 C.F.R. 227.7201 through 227.7202-4 (for Department of Defense ("**DoD**") acquisitions) and 48 C.F.R. 2.101 and 12.212 (for non-DoD acquisitions).
- 8.0 ENGLISH LANGUAGE.** This Agreement was originally written in English. If this Agreement is translated into any other language, the translation shall be for review purposes only and have no legal effect. The English language version of this Agreement shall control and shall be binding on the parties to this Agreement.
- 9.0 SEVERABILITY.** If any provision of this Agreement is held to be unenforceable, this Agreement will remain in effect with the provision omitted, unless omission of the provision would frustrate the intent of the parties, in which case this Agreement will immediately terminate.
- 10.0 SURVIVAL CLAUSES.** Upon expiration or termination, each party will remain obligated under this Agreement for transactions that have already been completed and to those parts of the Agreement relating to ownership, warranties, limitation of liability, governing law, obligations upon expiration or termination, and any other applicable provisions which by their nature would survive any such expiration or termination of this Agreement.
- 11.0 STATUTE OF LIMITATIONS.** Any cause of action arising out of or related to this Agreement must be brought by you no later than one (1) year after the cause of action has occurred.
- 12.0 ENTIRE AGREEMENT.** This Agreement is the entire agreement relating to its subject matter. It supersedes all prior or contemporaneous oral or written communications, proposals, representations and warranties and prevails over any conflicting or additional terms of any quote, order, acknowledgment, or other communication between the parties relating to its subject matter during the term of this Agreement. No modification of this Agreement will be binding, unless in writing and signed or otherwise accepted by an authorized representative of each party.
- 13.0 DEFINITIONS.** The following defined terms shall have the corresponding meaning when used in this Agreement:
- (a) "**Files**" means the information and data you have stored on your computer (including but not limited to documents, spreadsheets, data and databases, pictures, videos and electronic mail messages).
 - (b) "**Software**" means Phoenix's proximity protection software product (including any error corrections) which locks or unlocks an end user's computer based on proximity to a Bluetooth-enabled mobile phone that has been paired with the computer.
 - (c) "**Term**" means perpetual.

SECTION D –THIRD PARTY SOFTWARE:

- 1.0 GENERAL PUBLIC LICENSE/LESSER GENERAL PUBLIC LICENSE.** Certain components of the Software may be subject to the GNU GPL or LGPL terms and conditions available for viewing at <http://www.gnu.org/copyleft/gpl.html> and <http://www.gnu.org/copyleft/lesser.html> or as otherwise designated. To the extent you receive Software under this Agreement which contains components subject to the GPL or LGPL terms, you agree to be bound by all the terms and restrictions therein including keeping all copyright notices intact for the duration of your use of the Software and modifying and/or redistributing such components only in accordance with the terms of the GNU GPL or LGPL terms. Such components are provided "AS IS" "WITHOUT WARRANTY OF ANY KIND" per the terms of the GPL/LGPL. You can get a copy of the GNU GPL or LGPL by writing to the Free Software Foundation at 59 Temple Place, Ste 330, Boston, MA 02111-

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- 2.0 THIRD PARTY SOFTWARE.** Certain portions of software code provided along with the Software may be subject to “open source” or “free software” licenses (“**Third Party Software**”). The Third Party Software is not subject to the terms and conditions of this Agreement. Instead, each item of Third Party Software is licensed under the terms and conditions of the license that accompanies such Third Party Software. Nothing in this Agreement limits your rights under, or grants you rights that supersede the terms and conditions of, any applicable license for the Third Party Software, including any rights to copy, modify or distribute Third Party Software under the applicable license.
- 3.0 WARRANTY DISCLAIMER.** THIRD PARTY SOFTWARE, IF ANY, IS PROVIDED UNDER THIS AGREEMENT ON AN “AS IS” BASIS, WITHOUT WARRANTY (EXPRESS, IMPLIED, STATUTORY OR OTHERWISE) OF ANY KIND, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, QUIET ENJOYMENT OR NON-INFRINGEMENT OF ANY PATENT, COPYRIGHT, TRADE SECRET, OR OTHER INTELLECTUAL PROPERTY RIGHTS OF ANY PARTY IN ANY COUNTRY. THE ENTIRE RISK AS TO THE QUALITY AND PERFORMANCE OF ANY THIRD PARTY SOFTWARE IS WITH YOU. SHOULD ANY THIRD PARTY SOFTWARE PROVE DEFECTIVE IN ANY RESPECT, YOU (NOT THE INITIAL DEVELOPER OR ANY OTHER CONTRIBUTOR) ASSUME THE COST OF ANY NECESSARY SERVICING, REPAIR OR CORRECTION. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT. NO USE OF ANY THIRD PARTY SOFTWARE IS AUTHORIZED HEREUNDER EXCEPT UNDER THIS DISCLAIMER.

FREEZE EULA v.2., 7-10-09