Evaluation License Agreement for Saxon-EE and/or Saxon-PE

IMPORTANT! READ CAREFULLY: THIS IS A LEGAL AGREEMENT. BY DOWNLOADING, INSTALLING, COPYING, SAVING ON YOUR COMPUTER, OR OTHERWISE USING THIS SOFTWARE (AS DEFINED BELOW), YOU (AS DEFINED BELOW) ARE BECOMING A PARTY TO THIS AGREEMENT AND YOU ARE ACCEPTING AND CONSENTING TO BE BOUND BY ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT.

IF YOU DO NOT AGREE TO THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU SHOULD NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE. IF YOU HAVE ALREADY DOWNLOADED OR INSTALLED THE SOFTWARE YOU SHOULD REMOVE THE SOFTWARE FROM YOUR SYSTEM AND DESTROY ALL COPIES.

This License Agreement applies to any copy of the Software obtained without payment for evaluation purposes.

Upon Your acceptance of this License Agreement (the "Agreement"), Saxonica grants to You a non-exclusive and non-transferable license to use the Software, upon and provided that You agree to the following terms:

1. PARTIES

"Saxonica" means Saxonica Limited, a Company registered in England and Wales with its registered office located at Chiltern Chambers, St Peter's Avenue, Reading, United Kingdom RG4 7DH.

"You" means any individual or legal entity exercising rights or purporting to exercise rights under, and complying with all of the terms of, this Agreement. For legal entities, "You" includes any entity that controls, is controlled by, or is under common control with You. For purposes of this definition, "control" means (a) the power, directly or indirectly, to control the direction or management of such entity, whether by contract or otherwise, and/or (b) ownership of fifty percent (50%) or more of the issued share capital or beneficial ownership of such entity.

2. DEFINITIONS

"Software" means the executable code of Saxon Enterprise Edition (Saxon-EE) or Saxon Professional Edition (Saxon-PE) or Saxon Client Edition (Saxon-CE) as appropriate, together with all data files and documentation files that are distributed by Saxonica to accompany the executable code.

"License Key" means the contents of the license file issued to You by Saxonica for the purpose of activating the Software.

3. GRANT OF LICENSE

The Software and License Key are the property of Saxonica. The Software is licensed, not sold. Title and copyright to the Software and License Key, in whole and in part and all copies thereof, and all modifications, enhancements, derivatives and other alterations of the Software regardless of who made any modifications, if any, are, and will remain, the sole and exclusive property of Saxonica.

The Software and License Key are protected by copyright law in England and by international treaty provisions. Further, the structure, organisation, and code embodied in the Software and License Key are valuable and confidential trade secrets of Saxonica and are protected by intellectual property laws and treaties. You agree to abide by the copyright law and all other applicable laws including, but not limited to, export control laws.

You may:

- i. save and use the Software and License Key on one Computer for a period of thirty days or such other period as agreed in writing between You and Saxonica (the "Evaluation Period") unless terminated under the specific provisions of this Agreement;
- ii. make one copy of the Software and License Key and retain it for the same period for archival purposes.

You must not:

 sell, redistribute, encumber, give, lend, rent, lease, sublicense, make available for download, or otherwise transfer the Software or any License Key or any portion thereof or rights thereto to anyone without the prior written consent of Saxonica; ii. reverse engineer, decompile, disassemble, modify, or translate the Software or any License Key or any portion thereof, or make any attempt to discover the source code thereof, or create derivative works thereof;

Any copies that You make in accordance with these conditions must be complete and unamended copies of the Software as supplied by Saxonica and in particular must retain the digital certificate of origin of any file that carries such a certificate, and must not omit any files containing notices claims or disclaimers associated with the Software or its components.

You are responsible for ensuring that the Software and License Keys and all copies that You make are used in accordance with these conditions, and You agree to provide such information to Saxonica or its agents as may reasonably be required to demonstrate Your compliance with these conditions.

4. RESTRICTED USE DURING EVALUATION PERIOD

You have a non-exclusive, non-transferable, non-renewable license to install and execute an evaluation copy of the Software for the Evaluation Period. This evaluation license allows the Software to be used for evaluation and testing purposes only and not for any commercial use, unless otherwise agreed in writing.

On or before expiry of the Evaluation Period you may pay a license fee to obtain the right to use the Software for extended use. If you do not pay such a fee you must destroy all copies of the software.

You may request an extension of the Evaluation Period but this will not normally be granted unless You can provide an explanation of why it is needed.

Saxonica may refuse to grant or extend an evaluation license at its absolute discretion.

The evaluation copy of the Software contains a feature that will automatically disable the Software at the end of the Evaluation Period. It also contains features designed to prevent continuous use of the software and to ensure that the output produced is not of production quality. Saxonica will have no liability to You if the Software is disabled or produces incorrect results because of these features. You must not disable, destroy, remove or circumvent these features of the Software, and any attempt to do so will terminate Your license and rights under this Agreement.

You agree that on request during or after completion of the Evaluation Period, you will inform Saxonica of the criteria You are or were using to evaluate the Software, and of the outcome of your evaluation of the Software against those criteria.

5. PATENT AND COPYRIGHT INDEMNITY

Saxonica will defend and Indemnify You against all costs (including reasonable attorney's fees) arising from a claim that Software furnished and used within the scope of this Agreement infringes a UK copyright or UK patent provided that:

- i. You notify Saxonica in writing within thirty (30) days of the claim;
- ii. Saxonica has sole control of the defence and all related settlement negotiations
- iii. You provide Saxonica with the assistance, information, and authority necessary to perform the above.

Saxonica will have no liability for any claim of infringement based on:

- i. code contained within the Software which was not created by Saxonica; or
- ii. use of a superseded or altered release of the Software, except for such alteration(s) or modification(s) which have been made by Saxonica or under Saxonica's direction, if such infringement would have been avoided by the use of a current, unaltered release of the Software that Saxonica provides or has offered to You; or
- iii. the combination, operation, or use of any Software furnished under this Agreement with programs or data not furnished by Saxonica if such infringement would have been avoided by the use of the Software without such programs or data.

In the event the Software is held to infringe or is believed by Saxonica to infringe, or Your use of the Software is enjoined, Saxonica will have the option, at its expense, to:

- i. modify the Software to cause it to become non-infringing; or
- ii. obtain for You a license to continue using the Software, or
- iii. substitute the Software with other Software reasonably suitable to You, or
- iv. terminate the evaluation license.

This Section states Saxonica's entire liability for infringement.

6. LIMITED WARRANTY

THE SOFTWARE IS DELIVERED TO YOU "AS IS" AND SAXONICA MAKES NO WARRANTY AS TO ITS USE OR PERFORMANCE. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SAXONICA, AND ITS SUPPLIERS AND RESELLERS, DISCLAIM ALL OTHER WARRANTIES AND CONDITIONS, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE EVEN IF THAT PURPOSE HAS BEEN NOTIFIED BY YOU TO SAXONICA, TITLE, AND NON-INFRINGEMENT, WITH REGARD TO THE SOFTWARE, AND THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES. THIS LIMITED WARRANTY GIVES YOU SPECIFIC LEGAL RIGHTS. YOU MAY HAVE OTHERS, WHICH VARY FROM STATE/JURISDICTION TO STATE/JURISDICTION.

PRODUCT SPECIFICATIONS PUBLISHED BY SAXONICA, INCLUDING STATEMENTS REGARDING THE CONFORMANCE OF THE PRODUCT TO EXTERNALLY PUBLISHED SPECIFICATIONS, ARE MADE IN GOOD FAITH BUT DO NOT CONSTITUTE PART OF ANY CONTRACT.

7. DISCLAIMER OF DAMAGES

IN NO EVENT SHALL SAXONICA OR ITS SUPPLIERS OR RESELLERS BE LIABLE TO YOU UNDER ANY THEORY FOR ANY DAMAGES SUFFERED BY YOU OR ANY USER OF THE SOFTWARE, OR FOR ANY SPECIAL, INCIDENTAL, INDIRECT, CONSEQUENTIAL, OR SIMILAR DAMAGES (INCLUDING WITHOUT LIMITATION, DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF BUSINESS INFORMATION, OR ANY OTHER PECUNIARY LOSS) ARISING OUT OF THE USE OR INABILITY TO USE THE SOFTWARE, OR THE PROVISION OF OR FAILURE TO PROVIDE SUPPORT SERVICES, EVEN IF SAXONICA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND REGARDLESS OF THE LEGAL OR EQUITABLE THEORY (CONTRACT, TORT OR OTHERWISE) UPON WHICH THE CLAIM IS BASED.

IN ANY CASE, SAXONICA'S ENTIRE LIABILITY UNDER ANY PROVISION OF THIS AGREEMENT SHALL BE LIMITED TO THE AMOUNT ACTUALLY PAID BY YOU FOR THE SOFTWARE. BECAUSE SOME STATES AND JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY, THE ABOVE LIMITATION MAY NOT APPLY TO YOU.

8. TERMINATION

If You fail to comply with the terms and conditions of this Agreement, Saxonica may terminate this Agreement and Your right and license to use the Software. You may terminate this Agreement at any time by notifying Saxonica. Upon the termination of this Agreement for any reason You must delete the Software and all License Keys from Your computer and archives.

YOU AGREE THAT UPON TERMINATION OF THIS AGREEMENT FOR ANY REASON, SAXONICA MAY TAKE ACTIONS SO THAT THE SOFTWARE NO LONGER OPERATES.

9. OPEN SOURCE COMPONENTS

The Software includes components that Saxonica uses, copies, modifies, and/or redistributes under the terms and conditions of various licenses. These components and their licenses may vary from one release of the Software to another. Some of these licenses may give You additional rights including for example the right to obtain and make modifications to the source code of the relevant component, subject to specific terms and conditions defined in the relevant license. Details of these components and the licenses that apply to them are included in the product documentation associated with each release of the Software, and the details that apply to the current release of the Software are published on the World Wide Web at http://www.saxonica.com/documentation/index.html#!conditions or at such other location as Saxonica may determine.

10. GENERAL

Saxonica reserves the right at any time to cease the support of the Software and to alter prices, features, specifications, capabilities, functions, licensing terms, release dates, general availability or other characteristics of the Software.

This Agreement constitutes the entire agreement between the parties concerning Your use of the Software, and supersedes any and all prior or contemporaneous oral or written representations, communications, or advertising with respect to the Software. No purchase order, other ordering document or any hand written or typewritten text which purports to modify or supplement the printed text of this Agreement or any schedule will add to or vary the terms of this Agreement unless signed by both You and Saxonica.

A waiver by either party of any term or condition of this Agreement or any breach thereof, in any one instance, shall not waive such term or condition or any subsequent breach. The provisions of this Agreement which require or contemplate performance after the expiration or termination of this Agreement shall be enforceable notwithstanding said expiration or termination.

Titles are inserted for convenience only and shall not affect in any way the meaning or Interpretation of this Agreement. If any provision of this Agreement is held invalid, the remainder of this Agreement will continue in full force and effect.

Either Saxonica or You may assign this Agreement in the case of a merger or sale of substantially all of its respective assets to another entity. This Agreement shall be binding upon and shall inure to the benefit of the parties, their successors and assigns.

This Agreement will be governed by the laws of England. Any disputes arising in relation to this Agreement shall be subject to the exclusive jurisdiction of the English Courts.