

## Mobile Application and Website End User License Agreement

This Mobile Application and Website End User License Agreement (“**Agreement**”) is a binding agreement between you (“**End User**” or “**you**”) and P360 Management Solutions, LLC, a Texas limited liability company (“**Company**”). This Agreement governs your use of the Phoenix DAS application and its platform (including the related Website (as defined below), accessible via web browser and all related documentation, the “**Application**”). The Application is licensed, not sold, to you.

BY CLICKING THE “AGREE” BUTTON OR USING THE APPLICATION OR THE WEBSITE, YOU (A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT; (B) REPRESENT THAT YOU ARE 18 YEARS OF AGE OR OLDER; AND (C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT CLICK THE “AGREE” BUTTON, DOWNLOAD, INSTALL, OR USE THE APPLICATION, AND DELETE IT FROM YOUR MOBILE DEVICE.

1. License Grant. Subject to the terms of this Agreement and the agreement between Company and your employer (or the entity that contracted you to perform the services for which you use the Application) (such agreement, the “**Master Agreement**”), Company grants you a limited, non-exclusive and nontransferable license to:

(a) download, install, register with, access and use the Application solely for your internal business use on a single mobile device owned or otherwise controlled by you (“**Mobile Device**”) strictly in accordance with the Application’s documentation; and

(b) access, view and use on such Mobile Device the Content and Services (as defined in **Section 5**) made available in or otherwise accessible through the Application or via web browser, strictly in accordance with this Agreement and the Privacy Notice applicable to such Content and Services as set forth in **Section 5**.

2. License Restrictions. You shall not:

(a) copy the Application, except as expressly permitted by this Agreement or the Master Agreement;

(b) modify, translate, adapt or otherwise create derivative works or improvements, whether or not patentable, of the Application;

(c) reverse engineer, disassemble, decompile, decode or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;

(d) remove, delete, alter or obscure any trademarks or any copyright, trademark, patent or other intellectual property or proprietary rights notices from the Application, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer or otherwise make available the Application or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time;

(f) remove, disable, circumvent or otherwise create or implement any workaround to any copy protection, rights management or security features in or protecting the Application; or

(g) violate our Acceptable Use Policy.

3. Reservation of Rights. You acknowledge and agree that the Application is provided under license, and not sold, to you. You do not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions and restrictions, under this Agreement. Company, its licensors and service providers reserve and shall retain their entire right, title and interest in and to the Application, including all copyrights, trademarks and other intellectual property rights therein or relating thereto, except as expressly granted to you in this Agreement.

4. Collection and Use of Your Information; Ownership of Data.

(a) Collection and Use of Information. You acknowledge that when you download, install, register with, access or use the Application, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device, your web browser, and about your use of the Application. You also may be required to provide certain information about yourself as a condition to downloading, installing, registering with, accessing or using the Application or certain of its features or functionality. All information we collect through or in connection with this Application is subject to our Privacy Notice located at [www.phoenixdas.com/privacy](http://www.phoenixdas.com/privacy). By downloading, installing, registering with, accessing or using or providing information to or through this Application, you consent to all actions taken by us with respect to your information in compliance with the Privacy Notice.

(b) Ownership of Data. You acknowledge that: (i) your use of the Application is for the benefit of your employer (or the entity that contracted you to perform the services for which you use the Application); (ii) as between you and Company, you do not own the data and information you input into the Application, but rather, ownership and use of such data and information is addressed by the Master Agreement and subject to the terms and conditions therein.

5. Content and Services. The Application may provide you with access to Company's website(s) (the "Websites"), and products and services accessible thereon and certain features, functionality and content accessible on or through the Application may be hosted on the Websites (collectively, "Content and Services"). Your access to and use of such Content and Services are governed by this Agreement, the Acceptable Use Policy (see below) and the Privacy Notice located at [www.phoenixdas.com/privacy](http://www.phoenixdas.com/privacy), which are incorporated herein by this reference. Your access to and use of such Content and Services may require you to acknowledge your acceptance of the Acceptable Use Policy and Privacy Notice and/or to register with the Websites, and your failure to do so may restrict you from accessing or using certain of the Application's features and functionality. Any violation of such Acceptable Use Policy will also be deemed a violation of this Agreement.

6. Geographic Restrictions. The Content and Services are based in the State of Texas in the United States and provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If you access the Content and Services from outside the United States, you are responsible for compliance with local laws.

7. Updates. Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches and other error corrections and/or new features (collectively, including related documentation, "Updates"). Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) you may receive notice of or be prompted to download and install available Updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should you fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

8. Term and Termination.

(a) The term of Agreement commences when you acknowledge your acceptance by clicking the “AGREE” button and will continue in effect until terminated by you or Company as set forth in this **Section 8**.

(b) You may terminate this Agreement by deleting the Application (and discontinuing any use of the Websites) and all copies thereof from your Mobile Device. For the avoidance of doubt, deleting the Application and discontinuing use of the Websites terminates this Agreement only, and shall have no effect on the Master Agreement.

(c) Company may terminate this Agreement at any time without notice if it ceases to support the Application, which Company may do in its sole discretion for any other reason in Company’s sole discretion. In addition, this Agreement will terminate immediately and automatically without any notice if you violate any of the terms and conditions of this Agreement.

(d) Upon termination:

(i) all rights granted to you under this Agreement will also terminate; and

(ii) you must cease all use of the Application and Websites and delete all copies of the Application from your Mobile Device and account.

(e) Termination will not limit any of Company’s rights or remedies at law or in equity.

9. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO YOU “AS IS” AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS OR BE ERROR FREE OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A

CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

10. Limitation of Liability. IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY FOR DAMAGES ARISING FROM OR RELATED TO:

- (a) YOUR USE OF OR INABILITY TO USE THE APPLICATION, THE WEBSITES OR THE CONTENT AND SERVICES FOR:
- (b) THE APPLICATION OR ANY CONTENT OR SERVICE;
- (c) ANY ACTION OR INVESTIGATION BY LAW ENFORCEMENT;
- (d) ANY ERRORS OR OMISSIONS IN THE APPLICATION;
- (e) DAMAGE TO ANY END USER'S COMPUTER OR MOBILE DEVICE;
- (f) ANY ACTION TAKEN IN CONNECTION WITH OWNERS OF COPYRIGHT OR OTHER INTELLECTUAL PROPERTY
- (g) INTERRUPTIONS OR DELAYS IN SERVICE; AND
- (h) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

BY ACCESSING THE APPLICATION, YOU UNDERSTAND THAT YOU MAY BE WAIVING RIGHTS WITH RESPECT TO CLAIMS THAT ARE AT THIS TIME UNKNOWN OR UNSUSPECTED, AND IN ACCORDANCE WITH SUCH WAIVER, YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND, AND HEREBY EXPRESSLY WAIVE, THE BENEFITS OF SECTION 1542 OF THE CIVIL CODE OF CALIFORNIA, AND ANY SIMILAR LAW OF ANY STATE OR TERRITORY, WHICH PROVIDES AS FOLLOWS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

YOU AGREE THAT IN THE EVENT YOU INCUR ANY DAMAGES, LOSSES OR INJURIES THAT ARISE OUT OF COMPANY'S ACTS OR OMISSIONS, THE DAMAGES, IF ANY, CAUSED TO YOU ARE NEITHER IRREPARABLE NOR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION PREVENTING ANY EXPLOITATION OF ANY WEBSITES, SERVICE, PROPERTY, PRODUCT OR OTHER CONTENT OWNED OR CONTROLLED BY THE COMPANY, AND THAT YOU WILL HAVE NO RIGHTS TO

ENJOIN OR RESTRAIN THE DEVELOPMENT, PRODUCTION, DISTRIBUTION, ADVERTISING, EXHIBITION OR EXPLOITATION OF ANY WEBSITES, PROPERTY, PRODUCT, SERVICE, OR OTHER CONTENT OWNED OR CONTROLLED BY THE COMPANY.

11. Indemnification. You agree to indemnify, defend and hold harmless Company and its officers, directors, employees, agents, affiliates, successors and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement.

12. Export Regulation. The Application may be subject to US export control laws, including the US Export Administration Act and its associated regulations. You shall not, directly or indirectly, export, re-export or release the Application to, or make the Application accessible from, any jurisdiction or country to which export, re-export or release is prohibited by law, rule or regulation. You shall comply with all applicable federal laws, regulations and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing or otherwise making the Application available outside the US.

13. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provisions will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

14. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of Texas without giving effect to any choice or conflict of law provision or rule. Any legal suit, action or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the State of Texas in each case located in Harris County Texas. You consent and submit to personal jurisdiction by such courts and to venue in such courts.

15. Limitation of Time to File Claims. ANY CAUSE OF ACTION OR CLAIM YOU MAY HAVE ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE APPLICATION MUST BE COMMENCED WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES; OTHERWISE, SUCH CAUSE OF ACTION OR CLAIM IS PERMANENTLY BARRED.

16. Entire Agreement. This Agreement, the Privacy Notice, and Acceptable Use Policy set forth on the Website and the relevant terms of the Master Agreement (if any) constitute the entire agreement between you and Company with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

17. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.

### **ACCEPTABLE USE POLICY**

In addition to your compliance with the Agreement, you must comply with the following rules in order to download, install, register with, access or use the Application. Failure to abide by the following rules will result in termination of your license to use the Application.

1. You must be at least 18 years old to use the Application.
2. You must not collect, use, or solicit any passwords or other account credentials from other users of the Application.
4. You must not undertake any action that would disrupt or interfere with the Application, or other users' use and enjoyment of the Application (including the servers or networks to which the Application is connected), including transmitting any malicious code, malware, viruses, worms, Trojan horses, or any type of content or code that is destructive or disruptive in any way.
5. You must not use any type of automated bot, scraper, crawler, spider, scanner, or other device that harvests information from the Application. You may not create an account through any such unauthorized means.
6. You must not take any action that would suggest or imply that the Application is associated with you, or any other website or entity.
7. Your use of the Application must comply with all applicable laws, and you are solely responsible for such compliance. This includes, with respect to any data you input into the Application, compliance with copyright law. You may not use the Application for any illegal or unlawful purposes.
8. You are solely responsible for all activity that occurs using your credentials (i.e., your username and password). Use of your credentials by anyone else is prohibited (except in the case of employees authorized to use credentials of a business or a business's customers), however, someone else's use of your credentials does not relieve you of your responsibility. You must keep your credentials secure.
9. Your credentials do not actually belong to you; they are licensed to you by Company. Therefore, you may not transfer (e.g., selling, licensing, or assigning) your credentials to any other person.
10. You are solely responsible for the data you input into the Application, and you represent to Company that all information you provide is true and accurate. You also represent that you have all necessary rights and consents to input such data and provide such information.