

Evaluation Agreement

Unless business partner or end customer ("Company") are otherwise parties to an evaluation agreement or master governing agreement with terms and conditions governing the evaluation of Products, this **EVALUATION AGREEMENT ("Agreement")** shall govern the evaluation of Products. **ALE's acceptance of Company's demo equipment request is conditioned upon Company's acceptance of these terms and conditions irrespective of whether Company accepts them in writing. These terms and conditions are deemed accepted by Company if not objected to in writing within 5 business days from shipment.** This Agreement will be effective on the date of shipment. In consideration of the mutual obligations and promises set forth in this Agreement, the parties agree as follows:

1. SCOPE

1.1. ALE shall provide to Company the following items which are more particularly identified in the quotation, also known as the demo equipment request or "DER": (a) equipment for evaluation and testing ("Equipment"), (b) a license to use software and firmware (which may include third-party software and firmware), excluding source code ("Software"), and (c) a license to use documentation relating to any Equipment or Software ("Documentation"). The "Products" means any or all of the Equipment, Software and Documentation.

1.2. Company shall use the Products for its internal use only at the Company site or sites specified in the quotation (the "Company Site"), for the sole purpose of evaluating the functionality and performance of the Products for possible purchase or license from ALE ("the Trial").

1.3. The term of this Agreement begins on the Effective Date and ends 30 days after the Trial Period (defined below) ends, unless earlier terminated by either party.

1.4. The Trial Period begins on the date ALE completes installation of the Products or on the 10th day following shipment of the Products, whichever occurs first, and continues for 90 days thereafter unless otherwise specified in a written quotation (the "Trial Period"). The Trial Period may be extended as provided in a writing signed by both parties.

2. DELIVERY, INSTALLATION, AND RISK OF LOSS

2.1. ALE will deliver the Products to the Company Site and will pay all shipping charges for the Products to Company Site. Company shall not move the Products from the Company Site without ALE's prior written approval.

2.2. At no charge to ALE, Company will install and, if required, de-install the Products at the Company Site in accordance with ALE's standard procedures. Company will deliver the Products to ALE and will pay all shipping charges for the Products to ALE.

2.3. Upon completion of Product installation, Company will be responsible for any and all loss and damage to the Products until returned to ALE.

3. TITLE

Title to the Equipment will remain with ALE unless Company purchases the Equipment and pays ALE in full as provided in the Section entitled "Option to Purchase". Title to all Software, Documentation, and intellectual property embodied in the Products will remain vested solely in ALE, its suppliers and licensors.

4. OPTION TO PURCHASE

4.1. Prior to de-installation and return of the Equipment, Company may, at its option, send ALE a written purchase order for the purchase of the Equipment and license of the Software and Documentation at a mutually agreed price, except for Products that are not generally available. The terms and conditions applicable to any such purchase and license will be: (a) those then in effect in a written and executed agreement between ALE and Company, or, if no such agreement exists, (b) ALE's standard terms and conditions of sale and license.

4.2. If Company does not make the Products available to ALE for de-installation and return within 30 days after the Trial Period ends, Company will be deemed to have agreed to purchase and license the Products as provided in Section 4.1.

Evaluation Agreement

5. CONFIDENTIAL INFORMATION

5.1. "Confidential Information" means information, whether written or oral, regarding the Products, the Trial (including the terms of this Agreement), and ALE (including its affiliates), its customers, suppliers and products, which Company may obtain or to which Company may have access during the term of this Agreement, including the Documentation and ALE's Background IP and Foreground IP (defined in the next Section).

5.2. ALE grants Company the right to use the Confidential Information solely for the purpose of the Trial. Company may make a reasonable number of copies of the Documentation as needed to conduct the Trial.

5.3. Company (a) shall hold and treat the Confidential Information in confidence; (b) shall not, without the prior written consent of ALE, disclose the Confidential Information in any manner whatsoever, in whole or in part, other than to those of its employees having a need to know for the Trial; (c) shall not use the Confidential Information for any purpose other than the Trial; and (d) shall return the Confidential Information immediately upon request by ALE and in any event upon expiration or termination of this Agreement. Company's obligations under this Section survive the expiration or termination of this Agreement.

5.4. Confidential Information does not include any information which: (a) is or becomes publicly known through no act or omission of Company; (b) is already known to Company at the time of disclosure and is not subject to a duty of confidentiality; (c) is rightfully received by Company from a third party without obligation of confidentiality; or (d) is independently developed by Company without any reference to the Confidential Information or breach of this Agreement.

5.5. Company may disclose Confidential Information if required or requested (by deposition, interrogatory, subpoena, civil investigative demand or other similar legal process) by law, provided however, that Company shall: (a) give ALE prompt written notice of such request or disclosure requirement and before the disclosure is made; (b) take reasonable actions and provide reasonable assistance to ALE to secure confidential treatment of the Confidential Information at Company's cost; and (c) disclose only such Confidential Information as required by law.

5.6. ALE (and its supplier and licensors) own all Confidential Information, Software and the intellectual property rights therein. Other than (a) the limited rights to use and copy the Confidential Information solely for the purpose of the Trial as provided above, and (b) the limited rights to use and copy the Software solely for the purpose of the Trial as provided in the next Section, ALE does not grant any rights, title or interest, explicitly or implicitly, under any patent, copyright, mask work protection right, trade secret or any other intellectual property right.

6. INTELLECTUAL PROPERTY AND SOFTWARE LICENSE

6.1. Each party is and will remain the sole and exclusive owner of its Background IP. "Background IP" means inventions, processes, formulae, designs, trade secrets, information, ideas, technical drawings, specifications, documentation, manuals, engineering data, individual designs, copyrighted material and other commercial information and any other intellectual property, however embodied, which are either (a) owned by a party prior to the Effective Date or (b) developed or generated by such party other than as a result of or in connection with this Agreement.

6.2. ALE will be the sole owner of any Foreground IP, excluding Company's Background IP. "Foreground IP" means all inventions, processes, formulae, designs, trade secrets, information, ideas (including oral suggestions or feedback), technical drawings, specifications, documentation, manuals, engineering data, individual designs, copyrighted material and other commercial information and any other intellectual property, however embodied, which are developed or generated individually or jointly by the parties in connection with or as a result of this Agreement.

6.3. Company shall (a) ensure that all rights necessary are acquired from its creators of Foreground IP, (b) notify ALE of any Foreground IP generated under this Agreement whether generated solely by Company or jointly by the parties and (c) reasonably cooperate with ALE (at ALE's expense) so that ALE may perfect its rights in any Foreground IP.

6.4. Upon delivery of the Software to the Company Sites and during the Trial Period, ALE grants to Company, and Company accepts, a nonexclusive, nontransferable license to use (with no right to sublicense), solely for the Trial, the portions of the Software for which activation has been authorized by ALE, solely on or with a single unit or arrangement of Equipment for which the Software was delivered. Company may make one copy of any Software for backup and archival purposes if the copy contains all of the ALE proprietary notices contained in the original Software. The Software and all copies of it are Confidential Information.

Evaluation Agreement

7. WARRANTY, DISCLAIMER, AND ACKNOWLEDGMENT

7.1. ALE warrants to Company that it has the right to grant company temporary use of the Products as provided in this Agreement. ALE makes no further warranty. The Products are provided "AS-IS".

7.2. The foregoing warranty is non-transferable and is provided in lieu of, and ALE and its suppliers and licensors expressly disclaim, all other warranties, whether express or implied, including the implied warranties of merchantability, fitness for intended or particular purpose, and non-infringement.

8. INDEMNIFICATION; LIMITATION OF LIABILITY

8.1. Each party (the "Indemnitor") hereby indemnifies and holds harmless the other party and its affiliates and their respective directors, officers, agents, and employees against any and all claims, losses, settlement payment, award, judgment, interest, damages, liabilities, and expenses (including reasonable attorney's fees and other litigation costs) for injury to or death of any person or for loss or damage to any and all tangible property arising out of or relating to any act or omission by the Indemnitor, its employees, contractors, agents or representatives.

8.2. Except as provided in the preceding paragraph, neither ALE nor any of ALE's affiliates, suppliers or licensors will have any liability to Company for any damages, including but not limited to direct, indirect, special, incidental or consequential damages (including lost revenues and lost profits) arising out of or relating to this Agreement.

9. TERMINATION

9.1. This Agreement may be terminated by either party at any time upon written notice from the terminating party.

9.2. Upon expiration or termination of this Agreement, Company (a) shall promptly make available and deliver the Product to ALE; (b) shall cease all further use of the Products; (c) shall return to ALE all written and printed material containing any of the Confidential Information; and (d) shall erase all Confidential Information from any electronic, magnetic or storage device.

9.3. Upon expiration or termination of this Agreement, the Sections entitled "Confidential Information," "Intellectual Property and Software License," "Indemnification; Limitation of Liability," "Termination," "Export Control," and "General" will survive.

10. EXPORT CONTROL

The parties acknowledge that Products, Software, Documentation and Confidential Information provided under this Agreement may be subject to the export laws and regulations of the United States, Canada, France and/or other countries (collectively, "Export Laws"). Company shall not use distribute, export, re-export, transfer, or transmit the Products, Software, Documentation or Confidential Information (even if incorporated into other items) in violation of the Export Laws. If requested by ALE, Company shall sign written assurances and other export-related documents as may be required for ALE to comply with the Export Laws.

11. GENERAL

11.1. Neither party may assign or transfer this Agreement or any rights or obligations hereunder without the prior written consent of other the other party; however, ALE may assign it rights to an affiliate and may delegate performance to a subcontractor or an affiliate without Company's consent. Any purported assignment of rights or delegation of performance in violation of this paragraph is void.

11.2. This Agreement, including any quotation with itemized Products constitutes the final agreement, and supersedes any and all prior negotiations and understandings (both written and oral), between the parties with respect to the subject matter hereof. In the event of any conflict between any provision of this Agreement and a quotation, the provisions of this Agreement take precedence.

Evaluation Agreement

11.3. The parties may not amend or waive any provision of this Agreement, except pursuant to a writing executed by the party against whom any amendment or waiver is sought to be enforced. No failure or delay in exercising any right or remedy or requiring the satisfaction of any condition under this Agreement, and no course of dealing between the parties, operates as a waiver or estoppel of any right, remedy or condition. A waiver made in writing on one occasion is effective only in that instance and only for the purpose that it is given and is not to be construed as a waiver on any future occasion or against any other person.

11.4. Neither party shall release or publish news releases, announcements, advertising or other publicity relating to the Products or the Trial or mentioning or implying the name, trademarks, logos, service marks or other identification of the other party or its affiliates or their respective personnel without the prior review and written consent of the other party.

11.5. The laws of the State of California (without giving effect to conflicts of law principles) govern all matters arising out of or relating to this Agreement, including, without limitation, its construction, interpretation, performance and enforcement.

11.6. If any provision of this Agreement is determined to be invalid, illegal or unenforceable, then the remaining provisions of this Agreement remain in full force and effect, if the essential terms and conditions of this Agreement for both parties remain valid, legal and enforceable. In such event, the parties shall negotiate in good faith so as to replace each invalid, illegal or unenforceable provision with a valid, legal and enforceable provision which will, in effect, from an economic viewpoint, most nearly and fairly approach the effect of the invalid, illegal or unenforceable provision and the intent of the parties in entering into this Agreement.

11.7. Intentionally left blank

11.8. Any notice required or permitted under this Agreement will be in writing, addressed to the Parties on the quotation, and (a) transmitted by personal delivery or courier, (b) posted by first class mail with postage pre-paid, or (c) transmitted by facsimile transmission. Any such notice will be effective on the earlier of confirmation of receipt or 3 days after the date of posting or transmission. All such notices will be addressed as indicated below. A party may change its designated representative or address by giving notice to the other as provided above.

11.9. THIS AGREEMENT IS EFFECTIVE UPON SHIPMENT OF THE PRODUCTS