



Network Chemistry Product Evaluation Agreement

TERMS AND CONDITIONS:

This PRODUCT EVALUATION AGREEMENT is entered into between Network Chemistry, Inc. ("NETWORK CHEMISTRY"), a Delaware Corporation and COMPANY requesting evaluation products. The purpose of the agreement is to set forth the terms under which Network Chemistry may provide products on a temporary or loan basis to customers, development partners or resellers, subject to Network Chemistry's acceptance of Customer's application.

1. **PRODUCT(S); LICENSE:** Subject to the terms of this Agreement, NETWORK CHEMISTRY shall provide NETWORK CHEMISTRY product(s) and related software as described in the evaluation request form (the "PRODUCT") to COMPANY for the sole purpose of enabling COMPANY to internally test and/or evaluate the PRODUCT. NETWORK CHEMISTRY hereby grants COMPANY a limited, nontransferable, royalty-free license to internally use the PRODUCT, subject to its terms of use, solely for the purpose described above and only during the evaluation period. No other intellectual property right or license of any kind is granted, and CUSTOMER agrees that NETWORK CHEMISTRY owns, and will continue to own, all right, title and interest in the intellectual property associated with the PRODUCT including, without limitation, any patents, trademarks, trade names, inventions, copyrights, know-how and trade secrets relating to the design, manufacture, operation and service of the PRODUCT. COMPANY shall not reverse engineer, disassemble, or decompile any portion of the PRODUCT or alter the hardware portion of the PRODUCT(S) in any way. Further, COMPANY certifies that it will not transfer or export any product process or service that is the direct product of NETWORK CHEMISTRY.

2. **TITLE:** All right, title and interest to the PRODUCT remains with NETWORK CHEMISTRY until such time as title has been explicitly transferred to COMPANY. COMPANY shall clearly identify all PRODUCTS as the property of NETWORK CHEMISTRY. The PRODUCT shall remain personal property and shall not become part of any real property by annexation or otherwise. COMPANY shall not offer, loan, encumber, sell or otherwise transfer the PRODUCT to any third party.

3. **TERM:** COMPANY agrees to return the PRODUCT in its original package and condition at the end of the evaluation period from the date of receiving the PRODUCT (or upon termination of this Agreement, if earlier), and to uninstall the software from all installations. If COMPANY fails to return the PRODUCT within ten (10) business days following the end of evaluation period (or termination of this Agreement, if earlier), or if the PRODUCT is returned to NETWORK CHEMISTRY in a damaged condition, NETWORK CHEMISTRY shall reserve the right to invoice COMPANY at the then current list price of the PRODUCT, and COMPANY agrees to pay the invoiced amount within thirty (30) days following the receipt of such invoice.

4. **DELIVERY:** COMPANY assumes responsibility for payment of all duties, taxes and custom's fees associated with the shipment of the PRODUCT by NETWORK CHEMISTRY to COMPANY and with the return of the PRODUCT to NETWORK CHEMISTRY at the end of the evaluation period.

5. **SUPPORT:** During the evaluation period, NETWORK CHEMISTRY will provide free technical support for the PRODUCT during regular business hours.

6. **Confidential Information:**

a. COMPANY acknowledges that as an evaluator of the PRODUCT, COMPANY will be given confidential trade secret information of NETWORK CHEMISTRY. Specifically, COMPANY agrees that the characteristics, performance, and features of the PRODUCT, the PRODUCT itself (including all software and any documentation) and this Agreement are all confidential information and constitute trade secrets of NETWORK CHEMISTRY. (This information is referred to as "Confidential Information".) Confidential Information shall also include any and all other information, whether written or oral, disclosed by NETWORK CHEMISTRY to COMPANY which is either designated as proprietary and/or confidential, or by the nature of the circumstances surrounding disclosure, should reasonably be understood to be confidential. COMPANY acknowledges that disclosure of Confidential Information could cause serious harm to the NETWORK CHEMISTRY and, as an essential term and condition of participating in the evaluation, agrees not to disclose Confidential Information to any third party. COMPANY agrees not to disseminate, publish, or otherwise communicate any review, account, description or other information concerning the PRODUCT, except directly to NETWORK CHEMISTRY or with the express prior written consent of NETWORK CHEMISTRY. NETWORK CHEMISTRY shall be free to use for any purpose and without payment of any royalty or other amount, any and all reviews, accounts, descriptions or other information concerning the PRODUCT provided by COMPANY to NETWORK CHEMISTRY.

COMPANY agrees to (a) refrain from using the Confidential Information except as contemplated herein; and (b) not disclose the Confidential Information to any third party except to employees as reasonably required in connection with the exercise of its rights and obligations under this Agreement (and only subject to binding use and disclosure restrictions at least as protective as those set forth herein executed in writing by such employees). Without limiting any other provision of this Agreement, COMPANY agrees to take all reasonable

steps to see that its employees, officers, and agents guard against and prevent disclosure of Confidential Information and to act in accordance with the confidentiality provisions of this Agreement.

b. COMPANY agrees not to decompile or reverse engineer the PRODUCT at any time during or after the term of this Agreement, nor permit others to do so.

c. The confidentiality obligations of this Section 6 shall survive the termination of this Agreement for a period of five (5) years.

7. **DISCLAIMER OF WARRANTIES:** COMPANY ACCEPTS THE PRODUCT "AS IS" WITH ANY ERRORS OR DEFECTS. NETWORK CHEMISTRY MAKES NO EXPRESS OR IMPLIED WARRANTY OF ANY KIND WITH RESPECT TO THE PRODUCT AND SPECIFICALLY DISCLAIMS THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND ANY WARRANTIES OF NONINFRINGEMENT AND CORRESPONDENCE WITH DESCRIPTION. CUSTOMER HEREBY ACKNOWLEDGES THAT ITS ONLY REMEDY FOR THE FAILURE OF THE PRODUCT TO OPERATE IN ANY MANNER IS TO CHOOSE NOT TO PURCHASE THE PRODUCT HEREUNDER.

8. **LIMITATION OF LIABILITY:** NETWORK CHEMISTRY SHALL NOT BE RESPONSIBLE FOR ANY LOSS OR DAMAGE TO COMPANY, ITS CUSTOMERS, OR ANY THIRD PARTIES CAUSED BY THE PRODUCT. NETWORK CHEMISTRY SHALL NOT BE LIABLE FOR ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, WHETHER BASED ON CONTRACT, TORT, OR ANY OTHER LEGAL THEORY, ARISING OUT OF ANY USE OF THE PRODUCT(S) OR ANY PERFORMANCE OF THIS AGREEMENT.

9. **INDEMNIFICATION:** COMPANY shall defend, indemnify and hold harmless NETWORK CHEMISTRY from all claims, losses, costs, damages, expenses (including attorneys' fees) and other liabilities arising out of COMPANY'S use, operation, or possession of the PRODUCT. NETWORK CHEMISTRY agrees it will at its sole cost and expense, defend, indemnify, and hold harmless COMPANY and its personnel, officers, directors, affiliates, agents, successors, and assigns ("Indemnified Parties") from and against all claims, cause of actions, and judgments, including investigation costs and expenses, settlement costs, and attorney fees and expenses ("Claims"), to the extent such Claims arise out of the actual or alleged infringement or misappropriation of any patent, copyright, trade secret, trademark, or confidential information of any third party by NETWORK CHEMISTRY or its employees, subcontractors, consultants, representatives, and agents; provided, however, that COMPANY gives NETWORK CHEMISTRY (i) prompt notice in writing of the Claims, (ii) sole and exclusive control of the defense and settlement of the Claims and (iii) reasonable assistance with respect to the Claims.

10. **ASSIGNMENT:** COMPANY shall not assign or otherwise transfer any rights or obligations under this Agreement. Any attempted assignment or transfer without NETWORK CHEMISTRY'S prior written consent shall be void.

11. **TERMINATION:** In the event that COMPANY breaches any provision of this Agreement, NETWORK CHEMISTRY may terminate this Agreement immediately upon written notice to COMPANY. COMPANY or NETWORK CHEMISTRY may terminate this agreement at any point.

12. **COMPLIANCE WITH LAWS:** In conformity with the United States Export Administration Act and regulations promulgated thereunder, COMPANY and its employees and agents shall not disclose, export or re-export, directly or indirectly, any PRODUCT or technical data (or direct products thereof) provided under this Agreement to destinations in Country Groups Q, S, W, Y and Z as modified from time to time by the U.S. Department of Commerce, or that are otherwise controlled under said Act and regulations.

13. **GOVERNING LAW:** This Agreement shall be governed and interpreted in accordance with the laws of the State of California except its rules in regard to choice and conflict of law principles. Any dispute hereunder will be adjudicated in the state or federal courts located in Santa Clara County, California, and COMPANY hereby submits to the sole personal jurisdiction and venue thereof.

14. **ENTIRE AGREEMENT:** This Agreement contains the entire agreement of the parties relating to the subject matter hereof. Any representation, promise, or condition not explicitly set forth in this Agreement shall not be binding on either party. Any amendments to this Agreement shall be in writing and signed by the authorized representatives of each party.