EVALUATION LICENSE AGREEMENT

This Evaluation License Agreement ("Agreement") is made as of \_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the "Effective Date") by and between TangoMe, Inc. (“Licensor”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“Licensee”) having a place of business at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (the “Site”).

1. Definitions.

"Evaluation Period" means the period commencing on the Effective Date of this Agreement and continuing for a period of [\_\_\_\_\_\_\_\_\_\_\_\_\_ (\_\_)] days thereafter unless sooner terminated by Licensor.

"Licensed Software" means the object code version of Licensor’s Software Development Kit, consisting of a set of application programming interfaces (API) and tools, together with any associated documentation relating thereto and any future updates, releases or modifications thereof that may be provided by Licensor to Licensee during the Evaluation Period.

2. License. Subject to compliance with the terms of this Agreement, Licensor grants Licensee a personal, limited, non-exclusive, non-transferable, non-sublicensable, revocable license to download, install and use the Licensed Software, in object code form only, during the Evaluation Period at the Site solely for internal evaluation of the Licensed Software.

3. Restrictions. Without the express prior written consent of Licensor, Licensee will not:

(a) copy, in whole or in part, the Licensed Software, except for normal back-up and archive purposes;

(b) modify, reverse compile, reverse engineer or reverse assemble all or any portion of the Licensed Software;

1. distribute, disclose, market, rent, lease, transfer, assign or sublicense the Licensed Software to third parties;
2. export the Licensed Software;

(e) perform or release benchmarks or other comparisons of the Licensed Software;

(f) transfer the Licensed Software to any location, or permit use of the Licensed Software, outside the Site;

(g) use the Licensed Software for application development, production purposes, development purposes or any other commercial purpose; or

(i) use the Licensed Software for any purpose or in any manner except as expressly permitted by this Agreement.

4. No Support. Licensor may, but shall be under no obligation to, provide any support or maintenance services, including without limitation error corrections, updates and/or new releases of the Licensed Software to Licensee. Any such materials provided to Licensee shall be subject to the terms of this Agreement.

5. Term. Licensee shall return the Licensed Software (including all copies) to Licensor upon the earlier of the end of the Evaluation Period, Licensor’s termination of this Agreement or Licensor’s request. Within five (5) days after the end of the Evaluation Period, Licensee shall certify in writing that it has returned all Licensed Software to Licensor and deleted it from its storage devices and computer software libraries. Notwithstanding anything else, Licensor may terminate this Agreement at any time for any reason upon written notice to Licensee. Licensee’s obligations under Sections 3 (Restrictions) and 8 (Confidentiality) shall survive any termination of this Agreement.

6. Title; Markings. The Licensed Software is a trade secret of Licensor and Confidential Information (as defined below). Title to the Licensed Software and all changes, modifications and derivative works thereto shall remain with Licensor and its licensors. Licensee is granted no right or interest to the trademarks, marks or trade names of Licensor.

7. Bug Reports. Licensee shall promptly provide Licensor with a report of any errors and bugs Licensee may discover in the Licensed Software from time to time. To the extent that Licensee provides any such information to Licensor, Licensor shall be free to use any such information for any purpose whatsoever and without any accounting to Licensee. Licensor may, at its option and in its sole discretion, correct any Licensed Software errors or bugs confirmed by Licensor.

8. Confidentiality. “Confidential Information” means the Licensed Software, related documentation, technology, specifications, trade secrets, source code, software, and any other materials or business information supplied to Licensee by Licensor and any information delivered to Licensor pursuant to Section 7 above. Licensor will endeavor to mark such information as confidential if in tangible form, but information need not be so marked or so identified if, under the circumstances of disclosure, such information is, or ought to be, reasonably understood to be Confidential Information. Licensee agrees to keep the Licensed Software strictly confidential and not to disclose the Licensed Software nor allow anyone to have access to the Licensed Software other than its authorized employees who are bound by confidentiality and restricted use obligations no less protective of the Confidential Information than this Agreement. Licensee shall be liable for any acts of its employees in contravention of this Agreement. Licensee agrees to protect the Confidential Information with the same degree of care as it accords its own confidential information of a similar nature, and in any event not less than reasonable care. Licensee’s confidentiality obligations with respect to the Confidential Information will terminate if it can establish that such information: (a) is or becomes generally available to the public through no fault of Licensee; (b) was already in Licensee’s lawful possession prior to disclosure by Licensor, without any confidentiality restrictions, and was not obtained by Licensee from Licensor; or (c) is independently developed by Licensee without reference to or use of any Confidential Information. Licensee shall not remove nor delete any of Licensor’s (or its licensors’) marks, proprietary notices or copyright notices from the Licensed Software.

9. No Warranty; Limitations on Liability.

9.1 THE LICENSED SOFTWARE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THE BARGAIN OF THIS AGREEMENT AND NO USE OF THE LICENSED SOFTWARE IS AUTHORIZED HEREUNDER EXCEPT PURSUANT TO THIS DISCLAIMER.

9.2 IN NO EVENT SHALL LICENSOR HAVE ANY LIABILITY, WHETHER BASED IN CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL THEORY, FOR ANY LOSSES, LIABILITIES, CLAIMS OR DAMAGES OF ANY KIND, WHETHER DIRECT, INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL OR PUNITIVE, OR FOR LOSS OF REVENUE OR PROFITS, LOSS OF BUSINESS, OR ANY OTHER DAMAGES, ARISING OUT OF OR IN CONNECTION WITH THE LICENSED SOFTWARE OR THIS AGREEMENT, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY THEREOF. Each party agrees and acknowledges that the foregoing limitations set forth in this Article 9 are an essential element of this Agreement.

10. Governing Law. This Agreement shall be construed in accordance with the laws of the State of California, excluding its conflict of law principles. The parties hereto consent to the personal and exclusive jurisdiction and venue of the federal and state courts located in Santa Clara County, California. The parties agree that the UN Convention on Contracts for the International Sale of Goods shall not apply to this Agreement nor to any dispute or transaction arising out of this Agreement. Licensee agrees that the obligations made hereunder to Licensor are of a unique and irreplaceable nature, the loss of which shall irreparably harm Licensor and which cannot be replaced by monetary damages alone so that Licensor shall be entitled to injunctive or other equitable relief (without the obligations of posting any bond or surety) in the event of any breach or anticipatory breach by Licensee.  Licensee hereby irrevocably waives all rights to seek injunctive or other equitable relief.

11. General Terms.

11.1 Assignment. Licensee may not assign or transfer its rights or delegate its duties under this Agreement without Licensor’s prior written consent. Any change of control of 51% of the ownership or interest or transfer to a successor corporation of Licensee, without Licensor’s prior written consent, shall terminate this Agreement. Any prohibited assignment shall be null and void.

11.2 Entire Agreement. This Agreement constitutes the entire agreement between the parties concerning Licensee’s use of the Licensed Software. This Agreement supersedes any verbal or written understandings related to its subject matter and any Licensee purchase order or ordering document and may only be modified or amended by a written amendment executed by authorized officers of both parties. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

11.3 Export; Restricted Rights. Licensee shall not export the Licensed Software in violation of US Department of Commerce regulations or other regulations or statutes. The Licensed Software provided under this Agreement is commercial computer software developed exclusively at private expense, and in all respects are proprietary data belonging solely to Licensor. Use, duplication or disclosure by the U.S. Government or a U.S. Government subcontractor is subject to the restrictions set forth in the license agreement under which Licensed Software was obtained pursuant to DFARS 227.7202-3(a) or as set forth in subparagraphs (c)(1) and (2) of the Commercial Computer Licensed Software - Restricted Rights clause at FAR 52.227-19, as applicable. Contractor/manufacturer is TangoMe, Inc.

11.4 Interpretation. Regardless of which party may have drafted this Agreement, no rule of strict construction will be applied against either party. If a court of competent jurisdiction finds any provision of the Agreement to be unenforceable, that provision will be enforced to the maximum extent possible to effectuate the intent of the parties, and the remainder of the Agreement will continue in full force and effect.

11.5 Waiver. Failure of either party to enforce any term of this Agreement shall not be deemed or considered a waiver of future enforcement of that or any other term in this Agreement. The parties agree that no term of this Agreement may be considered waived and no breach excused by either party unless made in writing by the other party. No consent, waiver, or excuse by either party, express or implied, constitutes a subsequent consent, waiver or excuse.

11.6 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original and both of which together shall be construed as one and the same instrument.

11.7 Notices. All notices required or permitted to be given hereunder shall be in writing, shall make reference to this Agreement, and shall be delivered by email (if receipt is confirmed), by hand or dispatched by prepaid air courier or by registered or certified airmail, postage prepaid, sent to address set forth on the signature page hereto (or such other address as a party hereto may provide to the other party in writing from time to time).

**IN WITNESS WHEREOF**, Licensor and Licensee have caused this Evaluation Agreement to be executed by their duly authorized representatives.

**TANGOME, INC. (“LICENSOR”) \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (“LICENSEE”)**

By: By:

Name: \_\_\_\_\_\_\_\_\_\_\_\_\_ \_\_\_\_\_\_ Name:\_\_\_\_\_\_\_\_\_\_

Title: Title:

*[Signature Page to Evaluation License Agreement]*