

**PRODUCT LICENSE AND MAINTENANCE AGREEMENT**

**Company:** \_\_\_\_\_

**Address:** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

This Product License and Maintenance Agreement (“**Agreement**”), effective as of the date indicated above (the “**Effective Date**”) is made by and between EVE-USA Inc., a Delaware corporation, with its principal offices at 2518 Mission College Blvd., Suite 101, Santa Clara, CA 95054, USA (“**EVE**”), and the company (“**Company**”) listed above. EVE and Company may sometimes hereinafter be referred to individually as a “**Party**” and collectively as the “**Parties**.”

This Agreement sets forth the terms and conditions under which EVE will grant Company a license for using the products distributed by EVE and provide Maintenance Services to Company.

EVE and Company hereby agree as follows:

**DEFINITIONS**

“**Derivative Works**” means a revision, enhancement, modification, translation, abridgment, condensation, expansion or any other form in which the Licensed Software may be recast, transferred or adapted, which, if used without the consent of EVE, would constitute a copyright infringement.

“**Documentation**” means the user’s manuals and any other materials in any form or medium customarily provided by EVE to the users of the Hardware or Licensed Software, which will provide sufficient information to Company to operate the Hardware and Licensed Software properly.

“**Hardware**” means EVE’s emulator/prototype products, as amended or supplemented from time to time.

“**Licensed Software**” means the software code that is licensed to Company either on a term or perpetual license, as provided in the EVE invoice to the Company, and any updates and related documentation, as amended or supplemented from time to time, including all copies thereof.

“**Perpetual License**” means a license granted by EVE to Company that allows Company to use the

Licensed Software in accordance with the License Grant in this Agreement beginning on the date of delivery of the Licensed Software and continuing for a period of ninety-nine (99) years thereafter.

**“Product”** means a software package (**“Licensed Software”**) in the form of executable codes, hardware components (**“Hardware”**) in the form of electronics boards and systems (which may contain embedded firmware and other components), and documentation (**“Documentation”**), including user manuals, reference manuals, release notes and application notes.

**“Term-Based License”** means a license granted by EVE to Company that allows Company to use the Licensed Software in accordance with the License Grant in this Agreement beginning on the date of delivery of the Licensed Software and continuing through the term set forth in the EVE invoice to the Company.

1. License Grant: Subject to the terms and conditions of this Agreement, EVE hereby grants Company a non-exclusive, worldwide, non-transferable and non-refundable license, without right of sublicense, to use the Product for which all applicable fees have been paid, solely for Company's internal use. Licensed Software shall be either licensed under a Perpetual License or a Term-Based License, as defined herein.
2. Product Fees:
  - a. **Hardware Purchase**: In consideration for any Hardware purchased by Company pursuant to a Purchase Order, Company shall pay to EVE the applicable price for such Hardware as stated on the EVE invoice(s) to the Company (**“Hardware Fees”**). Company's purchase of Hardware and use of related Documentation pursuant to this Agreement shall be in accordance with the terms herein.
  - b. **Software License Fees**: In consideration for Company's use of EVE's Licensed Software and of the license granted to Company by EVE under Section 1 herein, including Perpetual and Term-Based Licenses, Company shall pay Company the license fees as stated on the EVE invoice(s) to the Company (**“License Fees”**).
  - c. **Maintenance Fees**: For any initial Hardware or Perpetual License for Licensed Software, Company shall purchase a full year of Maintenance Services. After the first full year of Maintenance Services, Company may purchase renewal terms of Maintenance Services, in accordance with the maintenance terms herein, and subject to the fees as stated on the EVE invoice(s) to the Company (**“Maintenance Fees”**). Maintenance Fees shall be paid by Company in advance for twelve (12) month increments.
3. Payment Terms:
  - a. Company shall pay all invoices under this Agreement, within thirty (30) days of the date of invoice (net 30) at EVE's address on the EVE invoice to the Company.
  - b. Late payments are subject to interest at the lesser of one and one-half percent (1 ½%) per month or the maximum allowed by applicable law, which interest will be immediately due and payable.
  - c. Company may not setoff or offset against EVE's invoices amounts that Company claims are due to it. If a dispute arises in connection with an invoice, EVE and Company shall use their commercially reasonable efforts to resolve the dispute in a timely manner through good faith negotiations. If the dispute is not resolved through negotiations, Company will bring any claims it may have in a separate action and waives any right it may have to offset, setoff or withhold payment for Products under this Agreement.
4. Purchase Orders: The Parties agree that Company shall submit purchase orders to EVE which shall refer to this Agreement and the terms of this Agreement shall be incorporated in all such purchase orders (**“Purchase Order(s)”**). In the event of any ambiguity or conflict between this Agreement and

an associated Purchase Order, this Agreement shall prevail.

5. **Third Party Software:** Company understands and agrees that, although provided to Company by EVE, Company's use of portions of the Licensed Software utilizing or comprising third party software and other copyrighted material ("**Third Party Software**"), such Third Party Software shall be governed by the respective terms and conditions of the third party's license agreement as well as this Agreement.
6. **Proprietary Rights:** Company agrees that the Licensed Software is the sole property of EVE and its parent entity and that EVE and its parent entity own and retain all right, title and interest in and to the Licensed Software (including any copies), any derivative work, including all intellectual property rights embodied herein. EVE reserves all rights not expressly granted to Company. This license is not a sale of the original Licensed Software or of any copy.
7. **License Restrictions:** The Licensed Software is licensed to Company for internal use only. Company shall not (and shall not allow any third party to):
  - a. Decompile, disassemble, reverse engineer or attempt to reconstruct, identify or discover any source code, underlying ideas, or algorithms of the Licensed Software by any means whatever, or disclose any of the foregoing;
  - b. Provide, lease, lend, or use the Licensed Software in any way to circumvent the internal use restrictions;
  - c. Modify, incorporate into or with other software to create Derivative Work of any part of the Licensed Software;
  - d. Disclose the results of any benchmarking of the Licensed Software (whether or not obtained with EVE's assistance), or use such results for its own competing software development activities;
  - e. Attempt to circumvent any user limits set by the number of software license keys for which all applicable fees have been paid to EVE.
  - f. In addition, Company may make one archival copy ("**Archival Copy**") of the object code of the Licensed Software provided Company affixes to such copy all copyright, confidentiality, and proprietary notices that appear on the original. Except for the Archival Copy, Company shall not copy, in whole or in part, Licensed Software or Documentation.
  - g. Violation of any of the above shall result in EVE's right to terminate this Agreement immediately.
8. **Relocation:** Company shall not transfer the Product from its original location without the prior written consent of EVE. The Product, including technical data, may be subject to export and import control laws and regulations in various countries. Company agrees to comply with all such regulations and acknowledges that it has the responsibility to obtain licenses to export, re-export, or import when transferring the Product.
9. **Maintenance:** Support and maintenance services for the Product shall be available from EVE in accordance with the terms and conditions herein ("**Maintenance Services**").
  - a. Company shall purchase Maintenance Services for an initial one (1) year period starting on the date of delivery of the Product to Company and which shall terminate at the end of the initial year, unless renewed by Company.
  - b. Company shall renew the Maintenance Services for additional one (1) year or longer period(s), at least ten (10) days prior to the expiration of the term.
  - c. If Company does not timely renew Maintenance Services, when Company reinstates Maintenance Services, Company shall pay EVE for Maintenance Services from the date when Maintenance Services lapsed in addition to the renewed Maintenance Services period.
  - d. Maintenance Services shall include bug fix software releases ("**Updates**") for the current embodiment of the Product which EVE shall provide upon release, if and when available.

Updates may also include one copy of revisions to the Documentation applicable to such Updates (i.e. release notes). No Updates shall be provided to Company unless it purchases Maintenance Services.

- e. EVE will provide assistance relating to the installation and the use of the Product during between 8:30am and 5:30pm local time, Monday through Friday, excluding EVE's scheduled holidays.
  - f. EVE may suspend, terminate or not renew the Maintenance Services if: (i) Company fails to timely pay Maintenance Fees as provided in EVE's invoice(s); (ii) Company breaches any provision of this Agreement; or (iii) EVE declines to renew Maintenance Services and notifies Company in writing of such election at least three (3) months prior to the expiration of Maintenance Services for the Product. Maintenance Services shall automatically terminate upon termination of this Agreement.
10. Damaged Hardware Replacement: EVE shall replace the Hardware of the Product if the Hardware becomes damaged ("**Damaged Hardware**") under normal use. Before sending the Damaged Hardware to EVE, a Replacement Request Form (see Addendum 1 hereto) must be fully completed and sent by regular mail or facsimile to EVE. The Replacement Request Form must be accompanied by the binary configuration files used when the Hardware has failed. If the binary configuration files used are not provided to EVE, EVE may reject the replacement request. EVE shall have five (5) business days after the receipt of such form and binary configuration files to contest the validity of such replacement request.
11. Damaged Hardware Replacement Limitations: EVE shall not replace Hardware in the following cases:
- a. Damage during shipment other than original shipment from EVE to Company;
  - b. Damage caused by accidents such as objects dropping, board falling to the ground, spilled liquid, or immersion in liquid;
  - c. Damage caused by failure to provide a suitable installation environment for the Hardware;
  - d. Damage caused by installation of the Hardware that is not compliant with the Documentation;
  - e. Damage caused by an overheat due to the use of the hardware in a room exceeding the normal operating temperature range indicated in the documentation
  - f. Damage caused by power failure or power surges;
  - g. Damage caused by use of the Product for purposes other than those for which it was designed;
  - h. Damage caused by short-circuit coming from a target system or produced by Company on an in circuit emulation connector;
  - i. Hardware configuration has been modified by Company;
  - j. Any minor hardware malfunction that would not alter the functionalities or that would not significantly impact the level of performance of the Product.
12. Hardware Modification: Any modification of the configuration of the Hardware shall be performed by EVE. No support or replacement will be performed on Hardware configuration altered by Company.
13. Confidentiality: Company agrees that the Product contains trade secret or confidential information of EVE and its licensors (collectively, the "**Proprietary Information**"), that the Proprietary Information is critical to the business of EVE, and that EVE would not enter into this Agreement without assurance from Company that the Proprietary Information and the value thereof will be protected as provided in this Section 13 and elsewhere in this Agreement. Company shall not make the Proprietary Information or any information derived therefrom available in any form or disclose or permit disclosure of same to third parties. Company shall hold the Proprietary Information in confidence and take all reasonable precautions to protect the confidentiality of the Proprietary Information (including, without limitation, all precautions that Company employs with respect to its own confidential and/or proprietary information), and shall not reverse-assemble, reverse-compile, or otherwise reverse-engineer the Product, in whole or in part. Access to the Proprietary Information shall be limited to

those employees who need to know such information to enable Company to perform its obligations and who are bound, in writing, to protect the confidentiality of such Proprietary Information as set forth herein. Immediately upon termination of this Agreement, Company shall return to EVE all information, documents or media containing EVE's Proprietary Information and any and all copies or extracts thereof. Company shall notify EVE in writing immediately upon the occurrence of any unauthorized release or other breach of this Section 13. Any breach of this Section 13 shall constitute a material breach of this Agreement.

14. Termination: EVE may terminate this Agreement immediately upon thirty (30) days prior written notice if Company breaches or is in default of any obligation hereunder and Company fails to cure that breach within thirty (30) days after EVE's written notice hereof.
15. Effect of Termination: Upon termination of this Agreement pursuant to Section 14, Company shall immediately cease all use of the Licensed Software and return to EVE or destroy all copies of the Licensed Software and Documentation, at EVE's discretion, and shall certify such destruction in writing to EVE. Such destruction and/or return of EVE's Licensed Software shall occur not later than five (5) days from the date of termination. In the event of termination by EVE, Company shall pay EVE for any outstanding Fees.
16. Shipping, Acceptance and Title:
  - a. The Product shall be shipped Free Carrier, Supplier's Dock (FCA: Supplier's Dock, Incoterms 2000). Unless otherwise specified, the Hardware Fee is exclusive of all delivery charges, insurance costs, handling charges and charges resulting from changes in any taxes, duties or similar levies and any applicable purchase or sales taxes, levies or duties from time to time in force including but not limited to sales tax. All such charges will be paid by the Company in addition to, and simultaneously with, the Hardware Fee provided herein, unless otherwise agreed in writing by the Parties.
  - b. Subject to the limited warranty provided in Section 17 below, the Hardware shall be conclusively presumed to be in good operating condition and as specified in the Purchase Order and shall be deemed accepted by the Company, unless Company rejects the Hardware in writing within 24 hours after delivery of the Hardware to Company.
  - c. Title to the Hardware shall pass to Company upon payment in full of the Hardware Fees as provided for in this Agreement.
17. Limited Warranty: EVE warrants for a period of sixty (60) days from the date of shipment that the Product, when properly installed, will substantially conform to the functional specifications set forth in the Documentation. EVE does not warrant that Licensed Software will be error free. If, during this warranty period, the Product is non-conforming, EVE will use commercially reasonable effort to correct any substantial non-conformity within a reasonable time after notification. The foregoing limited warranty will only apply if Company has notified EVE in writing of the alleged non-conformity within the warranty period and provided EVE with documentation and test-case with respect to the alleged failure. EVE shall have no obligation under this Limited Warranty if and to the extent that such claim arises from:
  - a. Improper installation by Company or use of the Product that deviates from any operating procedures established by EVE;
  - b. Software that does not incorporate all Updates;
  - c. Modification, alteration or addition or attempted modification, alteration or addition of the Product undertaken by persons other than EVE or EVE's authorized representatives; and
  - d. Use of software or technology of any third party other than EVE;
  - e. EVE shall also not have any obligation with respect to a claim if it has provided Company with changes that would have avoided the problem and the changes are not fully implemented by Company.

18. Disclaimer: EXCEPT FOR THE LIMITED WARRANTY IN SECTION 17 ABOVE, THE LICENSED SOFTWARE IS LICENSED "AS IS," AND WITHOUT WARRANTY. EVE DISCLAIMS ALL OTHER WARRANTIES EXPRESS, IMPLIED, STATUTORY OR OTHERWISE REGARDING THE PRODUCT. EVE SPECIFICALLY DISCLAIMS ANY IMPLIED WARRANTIES OF SATISFACTORY QUALITY, NONINFRINGEMENT, DESIGN AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING OR USAGE OF TRADE.
19. Intellectual Property Indemnity: EVE agrees to defend or, at its option, to settle, any claim or action brought against Company to the extent it is based on a claim that the Product as used within the scope of this Agreement infringes or violates any patent, copyright, trademark, trade secret or other proprietary right of a third party, and EVE will indemnify and hold Company harmless from and against any damages, costs and fees reasonably incurred (including reasonable attorneys' fees) that are attributable to such claim or action and which are assessed against Company in a final judgment, provided that Company provides EVE with (i) prompt written notification of the claim or action; (ii) sole control and authority over the defense or settlement thereof (including all negotiations); and (iii) at EVE's expense, all available information, assistance and authority to settle and/or defend any such claim or action. EVE's obligations under this section do not apply to the extent that (i) such claim or action would have been avoided but for modifications of the Licensed Software, or portions thereof, other than modifications made by EVE after delivery to Company; (ii) such claim or action would have been avoided but for the combination or use of the Licensed Software, or portions thereof, with other products, processes or materials not supplied or specified in writing by EVE; (iii) Company continues allegedly infringing activity after being notified thereof or after being informed of modifications that would have avoided the alleged infringement; or (iv) Company's use of the Licensed Software is not strictly in accordance with the terms of this Agreement.
20. Remedies in Event of Infringement: If any Licensed Software becomes, or in the opinion of EVE is likely to become, the subject of an infringement claim or action, EVE may at its sole option, replace or modify the Licensed Software to render it non-infringing, provided there is no material loss of functionality, or terminate the license and refund the amounts Company paid for such Licensed Software as depreciated on a straight-line thirty six (36) month basis.
21. Limitation of Liability: EVE'S TOTAL LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT WILL NOT EXCEED THE FEES RECEIVED BY EVE FROM COMPANY FOR THE PARTICULAR ITEM OF PRODUCT INVOLVED. EVE SHALL NOT BE LIABLE FOR ANY PROPERTY DAMAGE, LOSS OF PROFITS, INTERRUPTION OF BUSINESS, OR FOR ANY OTHER SPECIAL, CONSEQUENTIAL OR INCIDENTAL DAMAGES, HOWEVER CAUSED, WHETHER FOR BREACH OF WARRANTY, CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. NO ACTION ARISING IN CONNECTION WITH THE PRODUCT OR THIS AGREEMENT MAY BE BROUGHT BY COMPANY MORE THAN ONE YEAR AFTER THE DATE ON WHICH THE EVENT GIVING RISE TO SUCH ACTION FIRST OCCURRED.
22. Equitable Relief. The parties hereto agree that either party's breach or noncompliance with any of the provisions within this Agreement may cause the other party irreparable damages or harm for which recovery of money damages may be inadequate, and that such party will therefore be entitled to seek timely injunctive relief in addition to any and all other remedies available at law or in equity. Except as otherwise expressly stated in this Agreement, the rights and remedies of a party set forth herein with respect to failure of the other to comply with the terms of this Agreement (including, without limitation, rights of full termination of this Agreement) are not exclusive, the exercise thereof shall not constitute an election of remedies and the aggrieved party shall in all events be entitled to seek whatever additional remedies may be available in law or in equity.

23. Relationship of Parties: The relationship of the parties during the term of this Agreement will be that of independent contractors. Neither party will have, and will not represent that it has, any power, right or authority to bind, or to assume or create any obligation or responsibility, express or implied, on behalf of the other or in its name, except as herein provided.
24. Publicity: Each Party consents to the issuance of press releases regarding this Agreement and Company consents to EVE's use of the Company's name and logo, in accordance with Company's written logo instructions, to identify Company as a customer of EVE. Notwithstanding the aforementioned, neither Party may disclose the terms and conditions and/or subject matter of this Agreement.
25. Assignment: Company may not assign, delegate, or otherwise transfer any of its rights, interests, or obligations under this Agreement without the written consent of EVE. EVE may assign all or a portion of its rights, duties, and obligations under this Agreement to any entity (i) with which EVE is affiliated, including but not limited to its parent company, (ii) into which EVE may be merged or reorganized, or (iii) to which all or a portion of EVE's capital stock or assets may be sold or assigned.
26. Governing Law and Legal Actions: This Agreement will be governed by and construed in accordance with the laws of the state of California and the United States without regard to conflicts of laws provisions thereof and without regard to the United Nations Convention on Contracts for the International Sale of Goods. The sole jurisdiction and venue for actions related to the subject matter hereof shall be the U.S. federal court or state court located in the state of California County of Santa Clara. Both parties consent to the jurisdiction and venue of such courts and agree that process may be served in the manner allowed by California or federal law.
27. Attorneys Fees: Each Party agrees that any dispute between the Parties relating to this Agreement will first be submitted in writing to one senior executive at EVE and Company. In the event that the executives are unable to resolve a dispute within thirty (30) days after submission to them, either Party may refer such dispute to the courts subject to the choice of forum above. The prevailing party shall be entitled to recover its reasonable attorneys' fees and costs incurred in connection with any action or proceeding between EVE and Company arising from or related to this Agreement.
28. Notices: Any notice, report, approval or consent required or permitted hereunder shall be in writing. Any notice will be deemed to have been duly served, if delivered personally when delivered, by facsimile when dispatched, or mailed by first-class, registered or certified mail, postage prepaid to the respective addresses of the parties as set forth in this Agreement, when delivered.
29. No Waiver: Failure by either party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provisions.
30. Severability: Should any provisions of this Agreement be found void or unenforceable, the remainder of this Agreement shall continue in full force and effect.
31. Entire Agreement: This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements or representations, oral or written, regarding such subject matter. This Agreement may not be modified or amended except in writing signed by a duly authorized representative of both parties.
32. Survival: All sections of this Agreement that expressly or by their nature would continue beyond expiration or termination will survive expiration or termination of this Agreement including but not limited to the accrued rights to payment, Section 1 (License Grant), Section 13 (Confidentiality), Section 17 (Limited Warranty), Section 18 (Disclaimer), Section 21 (Limitation of Liability), Section 22 (Equitable Relief) and, except as otherwise expressly provided herein, any right of action for breach

of this Agreement prior to termination.

33. Headings: Headings and captions are for convenience only and are not to be used in the interpretation of this Agreement.
34. Force Majeure: No liability or loss of rights hereunder shall result to either party from delay or failure in performance (other than payment) caused by force majeure, that is, circumstances beyond the reasonable control of the party affected thereby, including, without limitation, acts of God, fire flood, war, terrorism, government action, compliance with laws or regulations (including, without limitation, those related to infringement), strikes, lockouts or other serious labor disputes, or shortage of or inability to obtain material or equipment.
35. Further Assurances: Each party hereto agrees that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each party hereto will execute and deliver any further legal instruments which are or may become reasonably necessary to effectuate the purposes of this Agreement.
36. Counterparts: This Agreement may be executed in any number of counterparts (including facsimile copies), each of which shall be an original, but all of which together shall constitute one instrument.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives:

**Company****EVE**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**ADDENDUM I  
REPLACEMENT REQUEST FORM**

**Company:** \_\_\_\_\_

**Address:** \_\_\_\_\_

**Phone Number:** \_\_\_\_\_

**Fax Number:** \_\_\_\_\_

**Effective Date:** \_\_\_\_\_

This form must be fully filled and sent by regular mail or facsimile to EVE. EVE shall have five (5) business days after the receipt of this form and binary configuration files<sup>1</sup> to contest the validity of such replacement request.

1. Faulty board and system Serial Number: \_\_\_\_\_

2. Invoice Number for Maintenance fees related to the Faulty board and system: \_\_\_\_\_

3. Specify the date when the board and system has been plugged in the PC for the last time:

\_\_\_\_\_

4. Describe the conditions under which the board and system failed:

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

5. Describe why you assume the board and system is defective:

\_\_\_\_\_

<sup>1</sup> To generate the binary configuration files used when the Hardware has failed use the "File >Archive ..." menu in the zCui Compiler User Interface software and select the "Runtime Required Files" Archive Type.

6. Have you run the Diagnostic Software on the board and system? \_\_\_\_\_

7. What were the results?

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By: \_\_\_\_\_  
Authorized representative

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

Title: \_\_\_\_\_

Date: \_\_\_\_\_