

Source and Object Code Software Distribution Agreement

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ii. Object Code Evaluation, Testing and Use License. make copies, display internally, distribute internally and use internally the Licensed Materials in object code for the sole purposes of evaluating and testing the Licensed Materials and designing and developing Products, and maintaining and supporting the Products;

iii. Demonstration License. demonstrate to third parties the Licensed Materials as they are used in Products, provided that such Licensed Materials are demonstrated in object or executable versions only; and

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- a provision whereby the third party agrees that neither TI nor TI's licensors shall be liable for any special, indirect, incidental, punitive or consequential damages in connection with the use of the Licensed Materials, regardless of how arising, and regardless of whether advised beforehand of the possibility of such damages;
- includes the Restrictions in section 1(e);
- includes the provisions of Section 3, Intellectual Property Rights, including without limitation the prohibition on reverse engineering;
- includes the Confidentiality restrictions contained in Section 5;
- includes a requirement that the Licensed Materials be used in Products; and
- includes a provision that the above terms shall survive any termination of the sublicense agreement.

b. Contractors. The licenses granted to you hereunder shall include your on-site and off-site contractors (either an individual or entity), while such contractors are performing work for or providing services to you, provided that such contractors have executed work-for-hire agreements with you containing applicable terms and conditions consistent with the terms and conditions set forth in this Agreement and provided further that you shall be liable to TI for any breach by your contractors of this Agreement to the same extent as you would be if you had breached the Agreement yourself.

c. No Other License. Nothing in this Agreement shall be construed as a license to any intellectual property rights of TI other than those rights embodied in the Licensed Materials provided to you by TI. EXCEPT AS PROVIDED HEREIN, NO OTHER LICENSE, EXPRESS OR IMPLIED, BY ESTOPPEL OR OTHERWISE, TO ANY OTHER TI INTELLECTUAL PROPERTY RIGHTS IS GRANTED HEREIN.

d. Covenant not to Sue. During the term of this Agreement, you agree not to assert a claim against TI or its licensees that the Licensed Materials infringe your intellectual property rights.

e. Restrictions. You shall maintain the source code versions of the Licensed Materials provided to you (as applicable) under password control protection and shall not disclose such source code versions of the Licensed Materials, to any person other than your employees and contractors whose job performance requires access. You agree that any such unauthorized use of the Licensed Materials is a material breach of this Agreement. You shall not use the Licensed Materials for the purpose of analyzing or proving infringement of any of your patents by either TI or TI's customers. Except as expressly provided in this Agreement, you shall not copy, publish, disclose, display, provide, transfer or make available the Licensed Materials to any third party and you shall not sublicense, transfer, or

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f. **Termination.** This Agreement is effective on the date the Licensed Materials are delivered to you together with this Agreement and will remain in full force and effect until terminated. You may terminate this Agreement at any time by written notice to TI. Without prejudice to any other rights, if you fail to comply with the terms of this Agreement or you are acquired, TI may terminate your right to use the Licensed Materials upon written notice to you. Upon termination of this Agreement, you will destroy any and all copies of the Licensed Materials in your possession, custody or control and provide to TI a written statement signed by your authorized representative certifying such destruction. Except for Sections 1(a), 1(b) and 1(d), all provisions of this Agreement shall survive termination of this Agreement.

2. Licensed Materials Ownership. The Licensed Materials are licensed, not sold to you, and can only be used in accordance with the terms of this Agreement. Subject to the licenses granted to you pursuant to this Agreement, TI and its licensors own and shall continue to own all right, title and interest in and to the Licensed Materials, including all copies thereof. You agree that all fixes, modifications and improvements to the Licensed Materials conceived of or made by TI that are based, either in whole or in part, on your feedback, suggestions or recommendations are the exclusive property of TI and all right, title and interest in and to such fixes, modifications or improvements to the Licensed Materials will vest solely in TI. Moreover, you acknowledge and agree that when your independently developed software or hardware components are combined, in whole or in part, with the Licensed Materials, your right to use the combined work that includes the Licensed Materials remains subject to the terms and conditions of this Agreement.

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a. The Licensed Materials contain copyrighted material, trade secrets and other proprietary information of TI and its licensors and are protected by copyright laws, international copyright treaties, and trade secret laws, as well as other intellectual property laws. To protect TI's and its licensors' rights in the Licensed Materials, you agree, except as specifically permitted by statute by a provision that cannot be waived by contract, not to "unlock", decompile, reverse engineer, disassemble or otherwise translate to a human-perceivable form any portions of the Licensed Materials provided to you in object code format only, nor permit any person or entity to do so. You shall not remove, alter, cover, or obscure any confidentiality, trade secret, trade mark, patent, copyright or other proprietary notice or other identifying marks or designs from any component of the Licensed Materials and you shall reproduce and include in all copies of the Licensed Materials the copyright notice(s) and proprietary legend(s) of TI and its licensors as they appear in the Licensed Materials. TI reserves all rights not specifically granted under this Agreement.

b. Certain Licensed Materials may be based on industry recognized standards or software programs published by industry recognized standards bodies and certain third parties may claim to own patents, copyrights, and other intellectual property rights that cover implementation of those standards. You acknowledge and agree that this Agreement does not convey a license to any such third party patents, copyrights, and other intellectual property rights and that you are solely responsible for any patent, copyright, or other intellectual property right claim that relates to your use or distribution of the Licensed Materials or your use or distribution of your products that include or incorporate the Licensed Materials. Moreover, you acknowledge that you are responsible for any fees or royalties that may be payable to any third party based on such third party's interests in the Licensed Materials or any intellectual property rights that cover implementation of any industry recognized standard, any software program published by any industry recognized standards bodies or any other proprietary technology.

4. Audit Right. At TI's request, and within thirty (30) calendar days after receiving written notice, you shall permit an internal or independent auditor selected by TI to have access, no more than twice each calendar year (unless the immediately preceding audit revealed a discrepancy) and during your regular business hours, to all of your equipment, records, and documents as may contain information bearing upon the use of the Licensed Materials. You shall keep full, complete, clear and accurate records with respect to product sales and distributions for a period beginning with the then-current calendar year and going back three (3) years.

5. **Confidential Information.** You acknowledge and agree that the Licensed Materials contain trade secrets and other confidential information of TI and its licensors. You agree to use the Licensed Materials solely within the scope of the licenses set forth herein, to maintain the Licensed Materials in strict confidence, to use at least the same procedures and degree of care that you use to prevent disclosure of your own confidential information of like importance but in no instance less than reasonable care, and to prevent disclosure of the Licensed Materials to any third party, except as may be necessary and required in connection with your rights and obligations hereunder; provided, however, that you may not provide the Licensed Materials to any business organization or group within your company or to customers or contractors that design or manufacture semiconductors unless TI gives written consent. You agree to obtain executed confidentiality agreements with your employees and contractors having access to the Licensed Materials and to diligently take steps to enforce such agreements in this respect. TI may disclose your contact information to TI's licensors.
6. **Warranties and Limitations.** THE LICENSED MATERIALS ARE PROVIDED "AS IS". FURTHERMORE, YOU ACKNOWLEDGE AND AGREE THAT THE LICENSED MATERIALS HAVE NOT BEEN TESTED OR CERTIFIED BY ANY GOVERNMENT AGENCY OR INDUSTRY REGULATORY ORGANIZATION OR ANY OTHER THIRD PARTY ORGANIZATION. YOU AGREE THAT PRIOR TO USING, INCORPORATING OR DISTRIBUTING THE LICENSED MATERIALS IN OR WITH ANY COMMERCIAL PRODUCT THAT YOU WILL THOROUGHLY TEST THE PRODUCT AND THE FUNCTIONALITY OF THE LICENSED MATERIALS IN OR WITH THAT PRODUCT AND BE SOLELY RESPONSIBLE FOR ANY PROBLEMS OR FAILURES.

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7. **Indemnification Disclaimer.** YOU ACKNOWLEDGE AND AGREE THAT TI SHALL NOT BE LIABLE FOR AND SHALL NOT DEFEND OR INDEMNIFY YOU AGAINST ANY THIRD PARTY INFRINGEMENT CLAIM THAT RELATES TO OR IS BASED ON YOUR USE OF THE LICENSED MATERIALS OR YOUR MANUFACTURE, USE, OFFER FOR SALE, SALE, IMPORTATION OR DISTRIBUTION OF YOUR PRODUCTS THAT INCLUDE OR INCORPORATE THE LICENSED MATERIALS.
8. **No Technical Support.** TI and its licensors are under no obligation to install, maintain or support the Licensed Materials.
9. **Notices.** All notices to TI hereunder shall be delivered to Texas Instruments Incorporated, 13588 N. Central Expressway, Mail Station 3999, Dallas, Texas 75243, Attention: Contracts Manager, Analog. All notices shall be deemed served when received by TI.
10. **Export Control.** The Licensed Materials are subject to export control under the U.S. Commerce Department's Export Administration Regulations ("EAR"). Unless prior authorization is obtained from the U.S. Commerce Department, neither

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- 11. Governing Law and Severability; Waiver.** This Agreement will be governed by and interpreted in accordance with the laws of the State of Texas, without reference to conflict of laws principles. If for any reason 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 shall continue in full force and effect. This Agreement shall not be governed by the United Nations Convention on Contracts for the International Sale of Goods, or by the Uniform Computer Information Transactions Act (UCITA). The parties agree that non-exclusive jurisdiction for any dispute arising out of or relating to this Agreement lies within the courts located in the State of Texas. Notwithstanding the foregoing, any judgment may be enforced in any United States or foreign court, and either party may seek injunctive relief in any United States or foreign court. Failure by TI to enforce any provision of this Agreement shall not be deemed a waiver of future enforcement of that or any other provision in this Agreement or any other agreement that may be in place between the parties.
- 12. PRC Provisions.** If you are located in the People's Republic of China ("PRC") or if the Licensed Materials will be sent to the PRC, the following provisions shall apply:

 - a. Registration Requirements.* You shall be solely responsible for performing all acts and obtaining all approvals that may be required in connection with this Agreement by the government of the PRC, including but not limited to registering pursuant to, and otherwise complying with, the PRC Measures on the Administration of Software Products, Management Regulations on Technology Import-Export, and Technology Import and Export Contract Registration Management Rules. Upon receipt of such approvals from the government authorities, you shall forward evidence of all such approvals to TI for its records. In the event that you fail to obtain any such approval or registration, you shall be solely responsible for any and all losses, damages or costs resulting therefrom, and shall indemnify TI for all such losses, damages or costs.
 - b. Governing Language.* This Agreement is written and executed in the English language and shall be authoritative and controlling, whether or not translated into a language other than English to comply with law or for reference purposes. If a translation of this Agreement is required for any purpose, including but not limited to registration of the Agreement pursuant to any governmental laws, regulations or rules, you shall be solely responsible for creating such translation.
- 13. Contingencies.** TI shall not be in breach of this Agreement and shall not be liable for any non-performance or delay in performance if such non-performance or delay is due to a force majeure event or other circumstances beyond TI's reasonable control.
- 14. Entire Agreement.** This is the entire agreement between you and TI and this Agreement supersedes any prior agreement between the parties related to the subject matter of this Agreement. Notwithstanding the foregoing, any signed and effective software license agreement relating to the subject matter hereof and stating expressly that such agreement shall control regardless of any subsequent click-wrap, shrink-wrap or web-wrap, shall supersede the terms of this Agreement. No amendment or modification of this Agreement will be effective unless in writing and signed by a duly authorized representative of TI. You hereby warrant and represent that you have obtained all authorizations and other applicable consents required empowering you to enter into this Agreement.