

**D-LINK SYSTEMS, INC.**  
**DEMONSTRATION/EVALUATION AGREEMENT**

This Demonstration/Evaluation Agreement (the "Agreement") is entered into by and between D-Link Systems, Inc., a California corporation with offices at 17595 Mt. Herrmann Street, Fountain Valley, California, USA ("D-Link") and you ("Evaluator").

1. **Scope of Agreement.** This Agreement sets forth the terms and conditions under which Evaluator may use, demonstrate and/or evaluate the provided D-Link demonstration/evaluation product(s).

2. **Definitions**

2.1 "**Documentation**" means any supporting, demonstration/evaluation or other testing materials, in printed or electronic format, provided to Evaluator in connection with the Product.

2.2 "**Evaluation End Date**" means the earlier of (i) ninety (90) days from the date of Evaluator's receipt of the Product or such other date as the parties may agree in writing, or (ii) the date on which either party terminates this Agreement pursuant to Section 8 below.

2.3 "**Product(s)**" means the D-Link demonstration/evaluation product(s) provided to Evaluator in connection with this Agreement, including any Software and/or Documentation provided therewith. The "Product" shall also include any subsequent or modified versions of the Product that may be provided to Evaluator.

2.4 "**Software**" means the computer software program(s) provided to Evaluator in connection with the Product, including any such programs embedded in the Product(s).

3. **Delivery and Return of Products**

3.1 **Delivery.** Unless otherwise agreed by the parties, D-Link shall be responsible for all shipping costs for delivery of the Product(s) to Evaluator.

3.2 **Return of Products; Risk of Loss.** Evaluator shall return the Product, including all copies of Software and Documentation, to D-Link on or before the Evaluation End Date, and Evaluator shall be responsible for all shipping costs incurred in the return of such items to D-Link. Alternatively, D-Link may, in its sole discretion, offer Evaluator an option to purchase the Product or an equivalent unit. If Evaluator fails to return the Product within fifteen (15) days of the Evaluation End Date or such other time period as may be mutually agreed upon in writing by the parties, D-Link shall be

entitled to charge Evaluator for the full value of the Product and Evaluator agrees to promptly pay such amount. Evaluator shall be responsible, and shall reimburse D-Link, for loss of or damage to the Product while in transit to or from Evaluator and while in Evaluator's possession, with the exception of normal wear and tear.

4. **Evaluator's Obligations.**

4.1 **Evaluation; Reports.** Evaluator may use the Product solely to use, demonstrate and/or evaluate the performance of the Product until the Evaluation End Date. While Evaluator is conducting the evaluation, Evaluator will grant D-Link access to the Product at such reasonable times as may be required by D-Link. In consideration of D-Link's provision of the Product, Evaluator agrees to conduct certain playbook actions as may be requested by D-Link from time to time or in Documentation provided to Evaluator ("Playbook Actions"). Evaluator agrees to provide written or verbal reports to D-Link that disclose: (i) the results of Evaluator's Playbook Actions; (ii) which portions of the Product have been utilized and the nature and extent or amount of that utilization; and (iii) any errors or difficulties discovered and the characteristic conditions and symptoms of such errors and difficulties (collectively, "Feedback").

4.2 **Restrictions on Use.** Evaluator agrees not to, and will not allow any third party to, (i) copy, modify, reverse engineer, decompile or disassemble the Product, make derivative works based upon the Product, or use the Product to develop any products, software or other inventions, or (ii) sell, license, rent, lease or otherwise transfer the Product (or any part thereof) to any third party. Evaluator will not export, or allow the export or re-export of the Product or any Confidential Information (as defined below) in violation of any applicable export laws, restrictions or regulations of the United States or any applicable foreign agency or authority.

4.3 **Marketing Reference.** Assuming the results of any Product testing are successful, Evaluator agrees to act as a favorable reference for D-Link and the Products, and work with D-Link to publicize the success of the testing to the market in a manner to be agreed upon by the parties.

**4.4 Indemnity.** Evaluator shall defend, indemnify and hold harmless D-Link, its officers, directors, parent company, affiliates and employees from any and all liability related to or arising from Evaluator's use of or possession of the Product(s).

**5. Software License.** D-Link hereby grants to Evaluator a personal, non-transferable, non-sublicensable, non-exclusive license under all copyrights owned or controlled by D-Link in the Software to use the Software during the term hereof solely in accordance with the Documentation and solely for the purpose of using, demonstrating and/or evaluating the Product in accordance with the terms and conditions of this Agreement.

**6. Ownership.** Evaluator acknowledges that the Product is loaned to Evaluator for evaluation and that D-Link retains ownership of all right, title and interest in and to the Product and all intellectual property rights related thereto. If Evaluator proposes or makes any modifications or improvements to the Product during the evaluation period, including any Feedback, Evaluator hereby assigns to D-Link all right, title and interest thereto (including, without limitation, all related intellectual property rights) without further compensation.

**7. Disclaimer of Warranty.** THE PRODUCT IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. D-LINK SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE. FURTHER, D-LINK DOES NOT WARRANT THAT THE PRODUCT IS ERROR FREE OR THAT ITS USE WILL BE UNINTERRUPTED. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES OR LIMITATIONS ON APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO THE ABOVE EXCLUSION AND LIMITATIONS MAY NOT APPLY TO EVALUATOR. THIS DISCLAIMER OF WARRANTY CONSTITUTES AN ESSENTIAL PART OF THIS AGREEMENT.

**8. Termination.** Either party may terminate this Agreement for any reason immediately by written notice to the other party. Upon expiration or termination of this Agreement, Evaluator shall immediately cease use of the Product and shall return the Product to D-Link, including all Software and Documentation, and all Confidential Information (and all copies thereof) then in Evaluator's possession or control. The terms of the following

sections shall survive any termination or expiration of this Agreement: 3.1, 3.2, 4.2 and 6-11.

**9. Limited Liability.** IN NO EVENT SHALL D-LINK HAVE ANY LIABILITY TO EVALUATOR OR ANY THIRD PARTY (A) FOR ANY INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF THIS AGREEMENT, UNDER ANY CAUSE OF ACTION OR THEORY OF LIABILITY, AND IRRESPECTIVE OF WHETHER D-LINK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, INCLUDING, BUT NOT LIMITED TO LOSS OF REVENUES OR PROFITS, (B) FOR LOSS OR INACCURACY OF DATA OR COST OF PROCUREMENT OF SUBSTITUTE PRODUCTS OR SERVICES, OR (C) FOR ANY AMOUNT IN THE AGGREGATE IN EXCESS OF \$500. SOME JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION MAY NOT APPLY TO EVALUATOR. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

**10. Confidential Information.** Evaluator acknowledges that, in the course of using the Products and otherwise performing under this Agreement, Evaluator may learn or obtain business, technical and financial information relating to the Products and to D-Link and that all such information is confidential and proprietary to D-Link ("Confidential Information"). Such Confidential Information includes, but is not limited to, the existence of the Product, its features and modes of operation (including any benchmarking results) and Feedback. Evaluator shall keep in trust and confidence all such Confidential Information, shall not use such Confidential Information other than to use, demonstrate and/or evaluate the Product, and shall not disclose any such Confidential Information to any third party. Confidential Information shall not include any information that (i) is available to the general public other than by a breach of confidentiality, (ii) was known to Evaluator without any limitation on use or disclosure prior to its receipt from D-Link, (iii) is received from a third party without any obligation of confidentiality, (iv) was independently developed by Evaluator without reference to or reliance on any Confidential Information of D-Link, or (v) is generally made available to third parties by D-Link without restriction on disclosure. Evaluator acknowledges and agrees that due to the unique nature of D-Link's Confidential Information, there can be no adequate remedy at law for any breach of its obligations hereunder and that upon any such breach or threat thereof, D-Link shall be entitled to injunctive and other

appropriate equitable relief in addition to whatever remedies it may have at law

11. **General.** This Agreement shall be governed by and construed under the laws of the State of California without regard to conflicts of law provisions thereof. Exclusive jurisdiction over and venue for any suit arising out of or relating to this Agreement shall be in the state and federal courts of Orange County, California. The prevailing party in any action arising out of this Agreement shall be entitled to an award of its costs and attorneys' fees. No waiver of rights under this Agreement shall constitute a subsequent waiver of any right under this Agreement and all waivers must be in writing and signed by the party to be bound by such waiver. In the event that any term of this Agreement is held by a court to be unenforceable, such provision shall

be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. Evaluator may not assign this Agreement without the prior written consent of D-Link; D-Link may assign this Agreement in whole or part. All notices required or permitted under this Agreement will be in writing and will be sent to the attention of the Legal Department at the parties' company headquarters (or such other address as a party may designate in writing). This Agreement is the complete agreement between the parties hereto concerning the subject matter of this Agreement and replaces any prior oral or written communications between the parties with respect thereto. This Agreement may only be modified by a written document executed by the parties hereto.