

EVALUATION TEST AGREEMENT

IMPORTANT: THIS SOFTWARE WAS MANUFACTURED BY BLADE NETWORK TECHNOLOGIES AND IS PROVIDED TO YOU AS PER THE TERMS OF THIS AGREEMENT. PLEASE READ THIS AGREEMENT CAREFULLY. DOWNLOADING, INSTALLING OR USING BLADE OR BLADE-SUPPLIED SOFTWARE CONSTITUTES ACCEPTANCE OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, THEN BLADE IS UNWILLING TO LICENSE THE SOFTWARE TO YOU AND DO NOT DOWNLOAD, INSTALL OR USE THE SOFTWARE.

This Evaluation Test Agreement Number ("Agreement") is made by and between BLADE NETWORK TECHNOLOGIES, INC., a Delaware corporation, with its principal place of business located at 2350 Mission College Boulevard, Suite 600, Santa Clara, CA 95054 ("BLADE"), and the user, ("Evaluator") and is effective as of the first use of the Software.

WHEREAS, BLADE has developed the Software listed on Exhibit A attached hereto, including modifications, enhancements, improvements, updates, additions, derivative works, documentation and related material ("Software");

WHEREAS, BLADE desires that the Software be evaluated;

WHEREAS, BLADE is willing to supply within the protection of a confidential relationship and subject to the terms of this Agreement, the software to Evaluator for the purpose of enabling Evaluator to test internally the Software solely to determine whether to purchase such Software from BLADE ("Purpose");

WHEREAS, Evaluator wishes to serve as a Evaluation Test Site for such Software and desires to have access to the Software for the Purpose and is willing to enter a confidential relationship with respect to the use and testing of the Software;

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants hereinafter set forth, the parties hereby agree as follows:

1. Use of Software and Software License.
 - a. BLADE grants to Evaluator a personal, nonexclusive license to use the Software for the Purpose at the address of an Evaluator facility at which the Software will be used by Evaluator employees or contractors for the Purpose, which is specified on Exhibit A ("Authorized Site") during the term of this Agreement. Although the Software may be used either from a single machine or a server, there shall be no external network access of the Software (i.e., by any computers or terminals not located at the Authorized Site). Evaluator agrees to use the Software only in the ordinary course of the Purpose, and Evaluator will not reproduce or modify the Software or any portion thereof. Evaluator shall not rent, sell, lease or otherwise transfer the Software or any part thereof or use it for the benefit of a third party. Evaluator shall not reverse assemble, reverse compile or reverse engineer the Software, or otherwise attempt to discover any Software source code or underlying Confidential Information (as that term is defined below).
 - b. In consideration for receiving a copy of the Software for testing, Evaluator agrees to serve as a "Evaluation Test Site" for the Software and will notify BLADE of all problems and ideas for enhancements which come to Evaluator's attention during the period of this Agreement, and hereby assigns to BLADE all right, title and interest to such enhancements and all property rights therein including without limitation all patent, copyright, trade secret, mask work, trademark, moral right or other intellectual property rights.
 - c. BLADE or its authorized representative shall have the right to audit the use of Software on Evaluator's premises during normal business hours upon 2 business days advance notice ("Compliance Rights") at BLADE's sole discretion. Such Compliance Rights may be exercised by BLADE at its sole discretion. If Software is found to be used without proper authorization then Evaluator will be liable to pay to BLADE the then-current List End User Price (without any discounts) for each device the Software is installed; and Customer shall be responsible for the payment of all costs associated with such audit.
2. Confidentiality; Ownership. Evaluator agrees that the Software and information relating to the Software are Confidential Information of BLADE. Title to and ownership of the Software and all copies thereof and information relating to the Software shall be and at all times remain in BLADE. With regards to this Confidential Information, the parties agree as follows:
 - a. Evaluator may use the Confidential Information only for the Purpose during the term of this Agreement and will not use (except for the Purpose) or disclose Confidential Information without the prior written consent of the disclosing party, unless such Confidential Information becomes part of the public domain without breach of this Agreement by the receiving party, its officers, directors, employees or agents.
 - b. to take reasonable measures to maintain the Confidential Information and Software in confidence.
 - c. to disclose the Software and Confidential Information only to those of its employees and consultants as are necessary for the Purpose hereunder. The receiving party shall not, without the prior written consent of the disclosing party, disclose or otherwise make available the Software or copies thereof to any third party.
 - d. not remove or export the Software or any Confidential Information or any direct product thereof from the United States other than in accordance with U.S. law.
3. Warranty Disclaimer. The Software is provided "AS IS." The entire risk arising out of the use or performance of the Software remains with Evaluator. ALL EXPRESS OR IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OR ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE, ARE HEREBY EXCLUDED TO THE EXTENT ALLOWED BY APPLICABLE LAW.
4. Limitation of Damages. IN NO EVENT WILL BLADE OR ITS SUPPLIERS BE LIABLE FOR ANY LOST REVENUE, PROFIT, OR DATA, OR FOR SPECIAL, INDIRECT, CONSEQUENTIAL, INCIDENTAL, OR PUNITIVE DAMAGES HOWEVER CAUSED AND



REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF BLADE OR ITS SUPPLIERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. Non-assignment. This Agreement may not be assigned or transferred by either party without written consent of the other party, and any such attempted assignment or transfer shall be void and without effect.

6. Term and Termination. The term of this Agreement commences on the Effective Date and shall expire ninety (90) days after the Effective Date, unless earlier terminated in accordance with the terms hereof or by the mutual written consent of the parties. Either party may terminate this Agreement by giving the other party 25 days prior written notice of such termination. This Agreement shall terminate immediately upon breach by Evaluator of this Agreement. Upon termination, Evaluator must promptly return to BLADE all Software (including but not limited to all copies thereof) hereunder, and Evaluator shall promptly certify in writing to BLADE that Evaluator has returned to BLADE all Software, including but not limited to all copies thereof, to BLADE or destroyed all Software, including but not limited to all copies thereof, by providing to BLADE the certificate attached as Exhibit B that has been signed by an authorized signatory of Evaluator. If the Software is not returned as set forth above within the term of this Agreement, BLADE will invoice Evaluator for the full list price of such Software, which is subject to the terms of BLADE's then-current end user license agreement, and payment by Evaluator is due upon receipt of such invoice. Sections 1.b., 2, 3, 4, 6 and 7 shall survive termination of this Agreement.

7. General. This Agreement constitutes the entire agreement between the parties hereto pertaining to the subject matter hereof, and any and all written or oral agreements heretofore existing between the parties hereto are expressly cancelled. Any modifications of this Agreement must be in writing and signed by both parties hereto. This Agreement shall be governed by and construed in accordance with the laws of the State of California. In any action to enforce this Agreement the prevailing party will be entitled to costs and attorneys' fees. In the event that any of the provisions of this Agreement shall be held by a court or other tribunal of competent jurisdiction to be unenforceable, such provisions shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable.

Exhibit A - SOFTWARE AND AUTHORIZED SITE

Software feature: BLADE Premium Software for this switch at this Authorized Site.

Exhibit B - RETURN CERTIFICATE

To be sent to services@bladenetwork.net at expiration of the demonstration period, 90 days from first use.

In accordance with the Evaluation Test Agreement between BLADE Network Technologies, Inc. and the party below ("Agreement"), the undersigned hereby certifies that it has returned to BLADE all Software (as defined in the Agreement), including but not limited to all copies thereof, to BLADE or destroyed all such Software, including but not limited to all copies thereof.

IN WITNESS WHEREOF, the party using the Software has caused this Certificate to be executed by its duly authorized representative as of the date of first use.