

Ethernet Alliance PoE Test Plan License Agreement

PLEASE READ THIS LICENSE AGREEMENT CAREFULLY BEFORE ACCESSING OR USING THE ETHERNET ALLIANCE PoE TEST PLAN.

THIS ETHERNET ALLIANCE PoE TEST PLAN LICENSE AGREEMENT (THE “**AGREEMENT**”) IS A LEGALLY-BINDING AGREEMENT BETWEEN YOU AND THE ETHERNET ALLIANCE, A CALIFORNIA NONPROFIT MUTUAL BENEFIT CORPORATION (“**ALLIANCE**”) REGARDING THE USE OF THE ALLIANCE PoE TEST PLAN ACCESSIBLE AT THIS WEB PAGE. BY CLICKING THE “ACCEPT” BUTTON AND/OR ACCESSING OR USING THE ALLIANCE PoE TEST PLAN, YOU AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT, CLICK THE “DECLINE” BUTTON, AND YOU WILL NOT BE ENTITLED TO ACCESS OR USE THE ALLIANCE PoE TEST PLAN.

1. License Grant.

1.1 Subject to the terms and conditions of this Agreement and for good and valuable consideration, the receipt and sufficiency of which the parties hereby acknowledge, Alliance hereby grants to you a limited, worldwide, non-exclusive, non-sublicensable (except as expressly provided in Section 1.2 below), non-assignable, non-transferable, revocable, and royalty-free license to internally reproduce and internally use the Alliance PoE Test Plan, for the sole purpose of developing and/or testing your products or services for compliance with the Alliance PoE Test Plan, and solely during the term of this Agreement. You are authorized to copy the Alliance PoE Test Plan, but only for internal purposes and only as necessary to use the Alliance PoE Test Plan for the limited purpose described in this Section 1. No other right, title, or license to any of Alliance’s test plans, technology, or proprietary rights is granted under this Agreement.

1.2 Notwithstanding the non-sublicensable nature of the license granted to you in Section 1.1 above, you may allow third parties with whom you have contracted to manufacture or assemble products or services under your trade name to use the Alliance PoE Test Plan solely on your behalf, solely in connection with manufacturing or assembling your products or services for your benefit, and solely in accordance with the terms and conditions of this Agreement. You are responsible for all use of the Alliance PoE Test Plan by such subcontractors.

2. License Restrictions. The license granted in Section 1 does not include any right, license, or authority to modify or create derivative works based on the Alliance PoE Test Plan, and you agree you will not modify or create derivative works based on the Alliance PoE Test Plan. You agree you will not redistribute the Alliance PoE Test Plan, except as expressly permitted in this Agreement. You agree to maintain and reproduce all copyright and other proprietary rights notices and disclaimers on all copies of the Alliance PoE Test Plan in the same form and manner that such notices and disclaimers are included on the original.

3. Intellectual Property Ownership.

3.1 The license granted to you in this Agreement does not constitute a transfer or sale of Alliance’s or its licensors’ ownership rights in or to the Alliance PoE Test Plan or elements thereof. Except as expressly provided in Section 1 above, Alliance and/or its licensors, successors, and assigns retain exclusive ownership of all rights, titles, and interests in and to the Alliance PoE Test Plan; in and to all modifications and derivatives of the Alliance PoE Test Plan; and in and to all copyrights, trademark rights, patent rights, and other intellectual property rights embodied therein. You agree not to challenge

Alliance's ownership of the Alliance PoE Test Plan or take action inconsistent with Alliance's rights in and to the Alliance PoE Test Plan.

3.2 If you discover any unauthorized use by any third party of the Alliance PoE Test Plan, you agree to inform Alliance promptly in writing of all such discoveries. You agree to cooperate with Alliance in the enforcement of Alliance's rights in the Alliance PoE Test Plan against third parties, at Alliance's expense.

4. Confidentiality. You acknowledge and agree that the Alliance PoE Test Plan constitutes Alliance confidential information.

4.1 For Alliance Members. If you are a Member of Alliance (as that term is defined in Alliance's Bylaws), you and Alliance agree that the confidentiality provisions set forth in the Ethernet Alliance Member Terms and Conditions (available here: http://www.ethernetalliance.org/wp-content/uploads/2011/11/EA_TC_04_15_08_approved.pdf) shall govern your confidentiality obligations with respect to the Alliance PoE Test Plan.

4.2 For Non-Members. If you are a non-member of Alliance, you agree to the following obligations:

(a) **Use Restrictions and Non-Disclosure Obligations.** You shall not: (i) use the Alliance PoE Test Plan for any purpose without Alliance's prior written authorization; or (ii) disclose the Alliance PoE Test Plan to any other person or entity without Alliance's prior written authorization; provided, however, that you may disclose the Alliance PoE Test Plan to your employees and subcontractors (pursuant to Section 1.2 above), if any, who have a need to know the Alliance PoE Test Plan in order for you to perform your obligations or exercise your rights under this Agreement, so long as such employees and subcontractors are informed of the confidential nature of the Alliance PoE Test Plan and are subject to written nondisclosure obligations to you that are at least as restrictive as those set forth in this Agreement.

(b) **Exceptions.** The confidentiality obligations imposed by this Agreement shall not apply to: (i) information that becomes part of the public domain through lawful means and without breach of any confidentiality obligation; and (ii) information required to be disclosed by compulsory judicial or administrative process or by law or regulation; provided that you first provide Alliance notice of the required disclosure, comply with any protective or similar order obtained by Alliance, and only disclose as much of Alliance's confidential information as is required to be disclosed by the legal process, law, or regulation.

5. Disclaimer of Warranties; Limitations of Liability.

5.1 THE ALLIANCE PoE TEST PLAN IS PROVIDED ON AN "AS IS" BASIS AND WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, WHETHER EXPRESS OR IMPLIED. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, ALLIANCE HEREBY DISCLAIMS ALL EXPRESS AND IMPLIED CONDITIONS, REPRESENTATIONS, AND WARRANTIES INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT OF THIRD PARTY RIGHTS, TITLE, THE VALIDITY OF ALLIANCE'S RIGHTS IN THE ALLIANCE PoE TEST PLAN, SATISFACTORY ACCURACY AND QUALITY, AND IMPLIED WARRANTIES OR CONDITIONS ARISING FROM A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. YOU ASSUME ALL RESPONSIBILITY FOR YOUR USE OF THE ALLIANCE PoE TEST PLAN. ALLIANCE FURTHER MAKES NO REPRESENTATIONS OR

WARRANTIES THAT (AND ALLIANCE DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES THAT) ANY OF YOUR PRODUCTS OR SERVICES MEET THE REQUIREMENTS OF THE ALLIANCE PoE TEST PLAN, OR THAT THE USE OF YOUR PRODUCT OR SERVICE WILL BE FIT FOR ITS INTENDED PURPOSE OR WILL BE ERROR FREE, SAFE, ACCURATE, RELIABLE, OR UNINTERRUPTED. ALLIANCE SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO YOU, ANY OF YOUR EMPLOYEES OR SUBCONTRACTORS, OR ANY DISTRIBUTOR, RETAILER, WHOLESALER, MARKETER, PROMOTER, CONSUMER, END USER, OR OTHER USER OR DISTRIBUTOR OF YOUR PRODUCTS OR SERVICES. Without limiting the generality of the foregoing disclaimer, you acknowledges and agrees that (i) Alliance is not and shall not be held responsible or liable for compliance with applicable federal, state, and local laws, rules, regulations, and/or codes relating to safety of your products or services; (ii) use of the Alliance PoE Test Plan in connection with your products or services shall not be deemed as indicating that your products or services are compliant with applicable federal, state, and local laws, rules, regulations, and/or codes relating to safety; and (iii) Alliance is not and shall not be held responsible or liable for labeling of any products' or services' operating modes, and it is your sole responsibility to ensure that any required or optional labeling is correct for all operating modes of your products and services.

5.2 UNDER NO CIRCUMSTANCES WILL ALLIANCE BE LIABLE, WHETHER IN CONTRACT, TORT, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE, EXEMPLARY, OR ENHANCED DAMAGES, INCLUDING WITHOUT LIMITATION AS A RESULT OF ANY INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, PRODUCT LIABILITY CLAIMS, FAILURE OF ESSENTIAL PURPOSE, OR ANY LOST PROFITS, SAVINGS, OR REVENUE OF ANY KIND, EVEN IF ALLIANCE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE. THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING THE FAILURE OF THE ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

5.3 THE DISCLAIMERS AND LIMITATIONS OF LIABILITY CONTAINED IN THIS SECTION 5 ARE A MATERIAL PART OF OUR AGREEMENT. IT IS POSSIBLE THAT APPLICABLE LAW MAY NOT ALLOW FOR LIMITATIONS ON CERTAIN IMPLIED WARRANTIES OR EXCLUSIONS OF CERTAIN TYPES OF DAMAGES. SOLELY TO THE EXTENT THAT SUCH LAW APPLIES TO YOU, SOME OF THE ABOVE DISCLAIMERS, EXCLUSIONS, OR LIMITATIONS MAY NOT APPLY TO YOU; AND YOU MAY HAVE ADDITIONAL RIGHTS. HOWEVER, IN ALL CIRCUMSTANCES, ALLIANCE'S MAXIMUM AGGREGATE LIABILITY FOR ALL DAMAGES, LOSSES, AND CLAIMS, WHETHER IN CONTRACT, TORT (INCLUDING WITHOUT LIMITATION NEGLIGENCE), OR OTHERWISE SHALL BE USD 50.00 (FIFTY U.S. DOLLARS). THIS LIMITATION OF LIABILITY REFLECTS AN AGREED ALLOCATION OF RISK BETWEEN YOU AND ALLIANCE IN VIEW OF THE NATURE OF THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING SENTENCES, IF APPLICABLE LAW PROHIBITS THE LIMITATION OR EXCLUSION OF A PARTY'S LIABILITY WITH RESPECT TO DEATH OR PERSONAL INJURY CAUSED BY SUCH PARTY'S NEGLIGENCE, FRAUD, OR ANY OTHER MATTER, THEN SUCH PARTY'S LIABILITY WILL NOT BE LIMITED OR EXCLUDED TO THE EXTENT OF SUCH PROHIBITION UNDER SUCH APPLICABLE LAW.

6. Your Indemnification of Alliance. You agree to indemnify, defend, and hold harmless Alliance and its officers, directors, employees, agents, and members (as discussed in the Bylaws) (each, an "**Indemnified Party**") for, from, and against any and all third-party claims, demands, damages, losses, liabilities, judgments, awards, and costs and expenses (including without limitation reasonable attorneys' fees and costs) that an Indemnified Party incurs through a claim or allegation arising out of or relating to: (i) the inaccuracy or violation of any of your representations, warranties, undertakings, or covenants contained in this Agreement; (ii) your use of the Alliance PoE Test Plan not in accordance with the terms

of this Agreement (including without limitation any use of the Alliance PoE Test Plan by any of your subcontractors when such use is in connection with manufacturing and/or assembling your products or services on your behalf); (iii) your manufacturing, marketing, advertising, promotion, endorsement, sale, or distribution of any product or service and/or any third party's use of such product or service. Alliance agrees to provide you with prompt notice of any claims or allegations covered by this Section 6 and shall provide you with reasonable assistance (at your expense) in the defense or settlement of such claims or allegations.

7. Term and Termination. This Agreement shall be effective upon the accessing or downloading the Alliance PoE Test Plan and remains effective until terminated. The Agreement may be terminated: (i) at the discretion of Alliance, in the event you breach this Agreement and fail to cure such breach within ten (10) days after notice thereof by Alliance; or (ii) at your discretion by providing written notice thereof to Alliance. Upon termination of this Agreement, regardless of the reason, you shall immediately discontinue use of the Alliance PoE Test Plan and shall, at Alliance's option and within ten (10) days following the effective date of termination, either return to Alliance or destroy the original and all copies of the Alliance PoE Test Plan in your possession and under your control, including any and all copies in the possession of your subcontractors. Upon request by Alliance, you must certify your compliance with the foregoing obligations in writing to Alliance. Termination of this Agreement will not limit any of Alliance's rights or remedies at law or in equity. The provisions of Sections 3 through 8 shall survive the termination of this Agreement in perpetuity.

8. General.

8.1 You may not assign this Agreement without the prior written consent of Alliance, which consent shall not be unreasonably withheld.

8.2 The validity, construction, and performance of this Agreement shall be governed by U.S. federal law and the laws of the State of California, U.S.A. as applied to contracts entered into and wholly performed therein by residents thereof, without reference to conflict-of-laws principles. The parties expressly disclaim the United Nations Convention on Contracts for the International Sale of Goods, and the provisions thereof will not govern this Agreement.

8.3 Except as expressly set forth in Section 8.4 of this Agreement, any dispute arising between the parties out of this Agreement shall first be subject to the conflict resolution process set forth in Alliance's PoE Certification Program Reference Guide (which conflict resolution process is located here <https://eamembers.ethernetalliance.org/wg/PoE/document/3278?downloadRevision=active> and is hereby incorporated into and made a part of this Agreement by this reference). In the event that a conflict is not ultimately resolved under the conflict resolution process, the parties agree that, after exhausting the conflict resolution process, any dispute arising out of this Agreement shall be brought exclusively in, and the parties consent to personal and exclusive jurisdiction of and venue in, the state and federal courts located within the State of California, U.S.A.

8.4 You acknowledge that the breach or other violation of any of your covenants, representations, warranties, or other terms or conditions in this Agreement might cause Alliance irreparable damage that cannot be readily remedied by monetary damages in an action at law. Notwithstanding the conflict resolution requirement in Section 8.3, in the event of any breach or other violation by you, Alliance shall (without first having to engage in the conflict resolution process discussed in Section 8.3) be entitled, in addition to any and all other remedies available at law and in equity, to an immediate temporary, preliminary, and/or permanent injunction (without posting a bond or other security and without proving damages) to stop or prevent such irreparable harm. The rights and

remedies available under this Agreement, at law, and in equity are cumulative and may be exercised singularly or concurrently.

8.5 The parties agree that the prevailing party in any action for enforcement, interpretation, or breach of or default under any provision of this Agreement shall be entitled to recover its reasonable attorneys' fees and costs.

8.6 The provisions of this Agreement are independent of each other. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, such determination shall not affect the validity of the remaining provisions, and the invalid or unenforceable provision will be deemed removed from this Agreement. If, however, Alliance determines in its discretion that the court's determination causes this Agreement to fail in any of its essential purposes, Alliance may immediately terminate this Agreement upon written notice to you.

8.7 This Agreement will not be amended or modified except in a writing signed by both parties.

8.8 The failure of either party to enforce at any time one or more of the provisions of this Agreement shall in no way be construed to be a present or future waiver of such provisions or of any other provisions, nor in any way affect the ability of either party to enforce each and every such provision thereafter.

8.9 No agency, partnership, joint venture, franchise, or employment is created between the parties as a result of this Agreement. Neither party is authorized to create any obligation, express or implied, on behalf of the other party.

8.10 This Agreement will be binding upon and inure to the benefit of the parties and any permitted successors and/or assigns of either party.

8.11 The parties do not intend to confer any right or remedy on any third party.

8.12 This Agreement constitutes the entire agreement between the parties concerning the subject matter hereof and supersedes all prior and contemporaneous agreements or representations respecting the subject matter of this Agreement, whether oral or written, expressed or implied.

YOU HEREBY ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS. IF YOU ARE ENTERING INTO THIS AGREEMENT IN A REPRESENTATIVE CAPACITY, IN SO ENTERING INTO THIS AGREEMENT, YOU ACKNOWLEDGE YOUR AUTHORITY TO DO SO AND TO BIND THE ENTITY ON WHOSE BEHALF YOU ENTER INTO THIS AGREEMENT.