

## Texas Instruments Incorporated LVDS Deserializer Software Evaluation Agreement

This LVDS Deserializer Software Evaluation Agreement (“Agreement”) is a legal agreement between you (either an individual or an entity, “Evaluator”) and Texas Instruments Incorporated (“TI”), by and through its High Performance Analog business unit with offices located at 12500 TI Boulevard Dallas, Texas 75243. The “Evaluation Materials” include the enclosed or downloaded “Software Programs.” **By installing, copying or otherwise using any of the Evaluation Materials Evaluator agrees to abide by the following provisions:**

### 1. Definitions.

- a. “Evaluation Materials” means the Software Programs and related documentation, if any, as described in Exhibit 1, which is attached hereto and incorporated herein for all purposes, and includes any updates and upgrades to such Evaluation Materials provided to Evaluator by TI under the terms of this Agreement.
- b. “Evaluation Period” means the period of time beginning from the date of shipment of the Evaluation Materials by TI to Evaluator and continuing for two (2) years thereafter. At the expiration of the initial two (2) year period, this Agreement shall automatically renew for additional periods of one (1) year, unless TI notifies Evaluator, in writing, not less than sixty (60) days prior to the expiration of the original two (2) year period or expiration of any renewal period, of its desire to terminate this Agreement.
- c. “Software Programs” means the LVDS Deserializer Software programs listed in Exhibit 1 and provided to Evaluator under the terms and conditions of this Agreement, and includes any and all updates or upgrades provided to Evaluator under the terms of this Agreement.

### 2. Evaluation Materials Delivery.

- a. Delivery of the Evaluation Materials to Evaluator will be F.O.B. point of shipment. Evaluator agrees to accept risk of loss after delivery to the carrier. Evaluator will not mortgage, pledge or encumber the Evaluation Materials in any way.
- b. TI shall have no obligation with respect to installation, support and maintenance of the Evaluation Materials. TI may, from time to time and at its sole discretion, provide Evaluator with updates to the Evaluation Materials. If TI provides Evaluator with updates to the Evaluation Materials, Evaluator agrees to destroy any and all versions of the Evaluation Materials prior to the end of the Evaluation Period. At TI’s option TI may, from time to time and at its discretion, provide system level support to Evaluator but only if Evaluator uses the Evaluation Materials solely with semiconductor devices manufactured by or for TI.

### 3. License.

- a. Commencing as of the Effective Date and continuing for the term of the Evaluation Period (unless sooner terminated as provided in Section 8), TI grants to Evaluator under all intellectual property rights owned or controlled by TI and embodied in the Evaluation Materials, a non-transferable, non-exclusive, non-assignable, non-sublicensable license to use the Evaluation Materials for the sole and exclusive purpose of testing and evaluating the Evaluation Materials on a semiconductor device manufactured by or for TI. Evaluator may not sublicense or otherwise transfer or divulge the Evaluation Materials to any third party.
- b. THE SOFTWARE PROGRAMS INCLUDED IN THE EVALUATION MATERIALS ARE NOT FAULT TOLERANT

AND ARE NOT DESIGNED, MANUFACTURED, OR INTENDED FOR USE OR RESALE AS ONLINE CONTROL EQUIPMENT IN HAZARDOUS ENVIRONMENTS REQUIRING FAIL-SAFE PERFORMANCE, SUCH AS IN THE OPERATION OF NUCLEAR FACILITIES, AIRCRAFT NAVIGATION OR COMMUNICATION SYSTEMS, AIR TRAFFIC CONTROL, DIRECT LIFE SUPPORT MACHINES, OR WEAPONS SYSTEMS, IN WHICH THE FAILURE OF THE SOFTWARE PROGRAMS COULD LEAD DIRECTLY TO DEATH, PERSONAL INJURY, OR SEVERE PHYSICAL OR ENVIRONMENTAL DAMAGE.

c. The Evaluation Materials may contain pre-release software that is not at the level of performance and compatibility of a final, generally available, product offering. Evaluator acknowledges that such pre-release software included in the Evaluation Materials may contain irregularities not found in production software. The pre-release software may not operate correctly and may be substantially modified prior to first commercial shipment.

d. Evaluator acknowledges and agrees that: (1) certain Evaluation Materials are based on or implement industry recognized standards, and contain and/or run software programs published by industry recognized standards bodies and that certain third parties may claim to own patents and copyrights that cover implementation of those standards; and (2) this Agreement does not convey a license or imply a right under any patent, copyright, trade secret, or other intellectual property right of any third party to use, reproduce, prepare derivative works of, or distribute the Evaluation Materials or to make or have made products incorporating Evaluation Materials, or to offer for sale, sell, import, export or otherwise distribute the Evaluation Materials, or portions or derivatives thereof, for use with such products.

e. Except as expressly provided herein, no other license, express or implied, to any other TI or third party intellectual property rights is granted.

4. **Compensation.** No payment is due to TI from Evaluator hereunder. TI agrees to waive any payment for the limited license to the Evaluation Materials provided to Evaluator hereunder in partial consideration of Evaluator’s testing and evaluation of the Evaluation Materials and the purchase of a deserializer evaluation module from TI.

5. **Use Restrictions.** Evaluator agrees that the following restrictions are an ongoing condition to the license granted Evaluator under this Agreement:

a. Evaluator will not disclose the Evaluation Materials, or any portion thereof, to any person (including subcontractors) other than Evaluator’s employees or consultants who have a need to know.

b. Evaluator agrees that use of the Software Programs included with the Evaluation Materials with a semiconductor device

manufactured by or for an entity other than TI is a material breach of this Agreement.

c. Evaluator will not copy, publish, disclose, display, provide, transfer or make available the Evaluation Materials, or any portion thereof, to any third party.

d. Evaluator acknowledges and agrees that this Agreement neither conveys a license nor implies any right under any patent, or any other intellectual property right of TI, its third-party suppliers or any other third party, to use the Evaluation Materials in any finished end-user or ready-to-use final product.

e. Evaluator acknowledges and agrees that if it plans to use any portion of the Evaluation Materials in any product, then Evaluator will obtain a license from TI and/or its third party suppliers before developing or distributing such products.

## 6. Intellectual Property Rights; No Reverse Engineering.

a. Subject to the license granted Evaluator pursuant to this Agreement, TI and its licensors retain all right, title and interest in and to the Evaluation Materials, including all intellectual property rights therein. The parties agree that all inventions, product improvements, and modifications to the Evaluation Materials conceived of or made by TI that are based, either in whole or in part, on Evaluator's ideas, feedback, suggestions, or recommended improvements are the exclusive property of TI, and all right, title and interest in and to any such inventions, product improvements, and modifications will vest solely in TI.

b. The Evaluation Materials contain copyrighted material, trade secrets and other proprietary information protected by copyright laws, international copyright treaties, and trade secret laws, as well as other intellectual property laws. To protect TI and its licensors' rights in the Evaluation Materials, Evaluator agrees that it will not decompile, "unlock", reverse engineer, disassemble, or otherwise translate the Software Programs included in the Evaluation Materials to human-perceivable form except as allowed by applicable legislation and only to the extent necessary to achieve interoperability of an independently created program with other programs. Evaluator further agrees not to adapt, vary, enhance or modify any portion of the Evaluation Materials, nor permit any person or entity under its control to do so. In no event will Evaluator alter, remove or destroy any copyright notice or other proprietary notices included in the Evaluation Materials. TI reserves all rights not expressly granted herein.

## 7. Confidential Information.

a. TI Confidential Information. The term "TI Confidential Information" shall mean (i) the Evaluation Materials, and any portion thereof, (ii) any other information disclosed by TI to Evaluator that is in written, graphic, machine readable or other tangible form and is marked "Confidential", "Proprietary" or in some other manner to indicate its confidential nature, (iii) oral information disclosed by TI to Evaluator pursuant to this Agreement, provided that it is designated as confidential at the time of disclosure and reduced to a written summary, which is marked in a manner to indicate its confidential nature, that is delivered by TI to Evaluator within thirty (30) days after its oral disclosure, and (iv) any feedback from Evaluator on TI Confidential Information or any information learned by Evaluator, including benchmarking data, while using the Evaluation Materials.

b. Exceptions. Notwithstanding the foregoing, "TI Confidential Information" does not include information that:

(i) was publicly known at the time it was disclosed or becomes publicly known through no fault or action of the Evaluator or any breach of any confidentiality obligation,

(ii) was known to the Evaluator, without restriction, at the time of disclosure, provided the Evaluator can demonstrate such prior knowledge with adequate evidence,

(iii) was independently developed by the Evaluator without any use of the TI Confidential Information and by employees or other agents of the Evaluator who have not been exposed to the TI Confidential Information, provided that the Evaluator can demonstrate such independent development with adequate evidence, or

(iv) becomes known to the Evaluator, without restriction, from a source other than TI without breach of this Agreement by the Evaluator and without, to the best of the Evaluator's knowledge, breach of another agreement or otherwise in violation of TI's rights.

c. Obligations. Evaluator agrees that it will (i) use TI Confidential Information only in connection with the use of the Evaluation Materials and within the scope of the license set forth in Section 3, (ii) implement reasonable procedures to prohibit the disclosure, unauthorized duplication, misuse or removal of any TI Confidential Information, and (iii) not disclose such TI Confidential Information to any third party. Without limiting the foregoing, Evaluator agrees to hold TI Confidential Information in strict confidence and to use at least the same procedures and degree of care that it uses to prevent disclosure of its own confidential information of like importance but in no instance less than reasonable care. Evaluator agrees to obtain executed confidentiality agreements with its employees and consultants having access to TI Confidential Information and to diligently take steps to enforce such agreements or be responsible for the actions of such employees and consultants in this respect. The parties agree that the employment agreements Evaluator uses in the normal course of business shall satisfy the requirements of this section if they contain confidentiality obligations substantially similar to the obligations set forth above and if they apply to confidential information of third parties such as TI. Evaluator agrees that it will promptly notify TI of and be liable for any loss, unauthorized disclosure or misappropriation of the Evaluation Materials provided to Evaluator by TI.

d. Exclusion. Notwithstanding the above, Evaluator will not be liable to TI with regard to any TI Confidential Information that is disclosed pursuant to the order or requirement of a court, administrative agency, or other governmental body; provided that Evaluator provides sufficient advance notice of the required disclosure to allow TI a reasonable opportunity to seek a protective order or otherwise prevent or limit such disclosure.

## 8. Term and Termination.

a. This Agreement expires at the end of the Evaluation Period unless terminated earlier in accordance with the terms hereof. Upon expiration of this Agreement, Evaluator will at TI's option, return the Evaluation Materials to TI, or certify the destruction of the Evaluation Materials, and in either case including any modifications or derivatives thereof and all related documentation.

b. In the event of a material breach of this Agreement by Evaluator, TI may immediately terminate this Agreement if within twenty (20) days after receiving written notice of such breach, Evaluator has not cured such breach. TI reserves the right to seek all other remedies available to it in law and equity.

c. Notwithstanding anything in this Agreement to the contrary, TI may immediately terminate this Agreement without notice or liability and be entitled to immediate possession of the Evaluation Materials, without prejudice to any other rights or remedies which TI may have, upon the occurrence of any of the following events:

(i) Evaluator is involved in any voluntary or involuntary bankruptcy proceeding or any other proceeding concerning insolvency, dissolution, cessation of operations, reorganization or indebtedness or the like and the proceeding is not dismissed within sixty (60) days;

(ii) Evaluator becomes insolvent or unable to pay its debts as they mature in the ordinary course of business or makes an assignment for the benefit of its creditors;

(iii) Evaluator becomes a party to a merger or consolidation, transfers all or substantially all of its business and assets to a third party and in TI's sole opinion, a material conflict of interest occurs with respect to the retention of Evaluation Materials; or

(iv) TI believes that improper use or disclosure of the Evaluation Materials has occurred or is about to occur.

d. Injunctive Relief. Evaluator recognizes and agrees that the Evaluation Materials constitute commercially valuable and Confidential Information of TI, and that the design and development of such materials reflects the effort of skilled development experts and the investment of considerable time and money. Accordingly, Evaluator acknowledges and agrees that monetary damages will not be sufficient to compensate TI in the event of Evaluator's material breach or violation of this Agreement, and that TI will be irreparably harmed by such breach or violation, and that TI shall have the right to seek other remedies available to it in law and equity to remedy such breach or violation, including injunctive and equitable relief.

e. The parties agree that the following sections will survive any expiration or termination of this Agreement: 4 (Compensation), 5 (Use Restrictions), 6 (Intellectual Property Rights; No Reverse Engineering), 7 (Confidential Information), 9 (Warranty Disclaimer), 10 (Liability Limitations), 11 (Governing Law and Severability), and 12 (General Provisions).

## 9. Warranty Disclaimer.

a. THE EVALUATION MATERIALS ARE SUPPLIED "AS IS" AND WITH ALL FAULTS. TI DOES NOT WARRANT THAT THE USE OF THE EVALUATION MATERIALS WILL BE UNINTERRUPTED, ERROR-FREE OR WILL MEET EVALUATOR'S SPECIFIC REQUIREMENTS.

b. TI MAKES NO WARRANTY OR REPRESENTATION, EITHER EXPRESS OR IMPLIED, REGARDING THE EVALUATION MATERIALS, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, ACCURACY OR COMPLETENESS OF RESPONSES, RESULTS AND LACK OF NEGLIGENCE. TI DISCLAIMS ANY WARRANTY OF QUIET ENJOYMENT, QUIET POSSESSION, AND NON-INFRINGEMENT OF ANY THIRD PARTY INTELLECTUAL PROPERTY RIGHTS REGARDING THE EVALUATION MATERIALS OR USE OF THOSE MATERIALS.

c. EACH PARTY ACKNOWLEDGES AND AGREES THAT THE WARRANTY DISCLAIMERS SET FORTH ABOVE ARE MATERIAL TO THIS AGREEMENT AND REFLECT THE

CONSIDERATION GIVEN BY EACH PARTY UNDER THIS AGREEMENT AND EACH PARTY'S DECISION TO ENTER INTO THIS AGREEMENT.

## 10. Liability Limitations.

a. IN NO EVENT SHALL TI, OR ANY APPLICABLE LICENSOR, BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL OR INDIRECT DAMAGES, IN CONNECTION WITH OR ARISING OUT THE LICENSES GRANTED HEREIN OR EVALUATOR'S USE OF THE LICENSED MATERIALS, HOWEVER CAUSED, ON ANY THEORY OF LIABILITY AND REGARDLESS OF WHETHER TI HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCLUDED DAMAGES INCLUDE, BUT ARE NOT LIMITED TO, COST OF REMOVAL OR REINSTALLATION, COMPUTER TIME, LABOR COSTS, LOSS OF DATA, LOSS OF GOODWILL, LOSS OF PROFITS, LOSS OF SAVINGS, OR LOSS OF USE OR INTERRUPTION OF BUSINESS.

b. IN NO EVENT SHALL TI'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED THE GREATER OF THE FEES PAID TO TI BY EVALUATOR UNDER THIS AGREEMENT OR FIVE HUNDRED DOLLARS (\$500). THIS LIMITATION APPLIES REGARDLESS OF WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

c. EVALUATOR ACKNOWLEDGES AND AGREES THAT THE FOREGOING LIABILITY LIMITATIONS ARE ESSENTIAL ELEMENTS OF THIS AGREEMENT AND THAT IN THE ABSENCE OF SUCH LIMITATIONS, THE MATERIAL AND ECONOMIC TERMS OF THIS AGREEMENT WOULD BE SUBSTANTIALLY DIFFERENT.

11. Governing Law. 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. 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) as may be enacted by the State of Texas. The parties agree that non-exclusive jurisdiction for any dispute arising out of or relating to this Agreement lies within 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.

## 12. General Provisions.

a. Relationship of the Parties. The parties hereto are independent contractors. Neither party has any express or implied right or authority to assume or create any obligations on behalf of the other or to bind the other to any contract, agreement or undertaking with any third party. Nothing in this Agreement shall be construed to create a partnership, joint venture, employment or agency relationship.

b. Independent Development. The parties agree that Evaluator will not be prohibited from developing or acquiring any similar technology, provided that Evaluator has not breached the terms of this Agreement, and provided further that nothing in this Agreement shall be construed or interpreted as a license from TI under any patents, copyrights, trade secrets or other intellectual property rights

with respect to such independently developed or acquired technologies.

c. Entire Agreement. The terms and conditions of this Agreement, including its exhibits, contains the entire agreement between the parties and merges and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions concerning the subject matter hereof. Neither party shall be bound by any conditions, definitions, warranties, understandings, or representations with respect to the subject matter hereof other than as expressly provided herein. The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. No oral explanation or oral information by either party hereto shall alter the meaning or interpretation of this Agreement. No amendments or modifications to this Agreement shall be effective unless in writing signed by an authorized representative of both parties. These terms and conditions will prevail notwithstanding any different, conflicting or additional terms and conditions that may appear in any purchase order, acknowledgement or other writing not expressly incorporated into this Agreement.

d. Assignment. Neither party may directly or indirectly sell, assign, transfer, delegate, convey, pledge, encumber or otherwise dispose of this Agreement, or any of the licenses, rights, duties or obligations under this Agreement, without the prior written consent of the other party. Any attempted assignment in violation of this section will be null and void.

e. Waiver. Failure of either party to enforce any term of this Agreement shall not be deemed or considered a waiver of future enforcement of that or any other term in this Agreement. The parties

agree that no term of this Agreement may be considered waived and no breach excused by either party unless made in writing by the other party. No consent, waiver, or excuse by either party, express or implied, constitutes a subsequent consent, waiver or excuse.

f. Severability. If any provision of this Agreement is determined by a court to be unenforceable, the parties agree that the provision will be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of the Agreement will continue in effect.

g. Export Control. Evaluator hereby acknowledges and agrees that unless prior authorization is obtained from the U.S. Department of Commerce, or other competent government authorities in the case of non-U.S. export laws and/or regulations, neither Evaluator nor its subsidiaries shall export, re-export, or release, directly or indirectly, any technology, software, or software source code (as defined in Part 772 of the Export Administration Regulations of the U.S. Department of Commerce ("EAR")), or any controlled products restricted by other applicable national laws and/or regulations, received from TI, or export, directly or indirectly, any direct product of such technology, software, or software source code (as defined in Part 734 of the EAR), to any destination or country to which the export, re-export or release of the technology, software, software source code, or direct product is prohibited by the EAR or non-U.S. laws and/or regulations. The assurances provided for herein are furnished to TI by Evaluator in compliance with Part 740 (Technology and Software Under Restriction) of the EAR.

**Exhibit 1**  
**Evaluation Materials**

**LVDS Deserializer Software:**

TI Xilinx Programming Code (in object code format only)