



**MELLANOX
SOFTWARE EVALUATION LICENSE AGREEMENT**

This **MELLANOX SOFTWARE EVALUATION LICENSE AGREEMENT** (the "Agreement") is by and between **MELLANOX TECHNOLOGIES LTD.**, an Israeli corporation ("Mellanox" and "Licensor") and [REDACTED], a [REDACTED] corporation ("Licensee," "you" or "your") and is effective from the last date signed below (the "Effective Date"), and will expire at the expiration of the "Evaluation Term," as defined herein. This Agreement sets forth the terms and conditions by which you are permitted to access and use the "Mellanox Software" and any "Documentation" that are provided to you pursuant to the terms of this Agreement.

BY USING THE MELLANOX SOFTWARE OR THE DOCUMENTATION OR BY SIGNING THIS AGREEMENT YOU AGREE THAT THESE TERMS AND CONDITIONS APPLY TO YOU. IF YOU DO NOT AGREE TO THESE TERMS, YOU ARE NOT LICENSED OR PERMITTED TO USE THE MELLANOX SOFTWARE OR THE DOCUMENTATION.

1. DEFINITIONS.

1.1 "Confidential Information" shall mean all information and materials furnished by either party which: (a) if in written format is marked as confidential, or (b) if disclosed verbally is noted as confidential at time of disclosure, or (c) in the absence of either (a) or (b) is information which a reasonable party would deem to be non-public information and confidential. Confidential Information shall include, but not be limited to the Mellanox Software, Mellanox reference designs, Documentation, and the existence and contents of this Agreement, whether such is transmitted in writing, orally, visually, (e.g. video terminal display) or on magnetic media, and shall include all proprietary information, customer and prospect lists, trade secrets, or proposed trade names, know-how, ideas, concepts, designs, drawings, flow charts, diagrams and other intellectual property relating to the subject matter of this Agreement. Results of any tests or usages carried out by Licensee with the Mellanox Software shall also be considered Confidential Information.

1.2 "Documentation" shall mean any and all written or electronic information provided by Mellanox to Licensee that describes or depicts the form, fit or function of the Mellanox Software.

1.3 "Intellectual Property Rights" shall mean all patent rights, copyright rights, moral rights, trade secret rights, rights to trademarks and service marks, know-how, mask works and all other intellectual and industrial property rights, whether or not registered or perfected, anywhere in the world, and all registrations, initial applications, renewals, extensions, continuations, divisions or reissues for any of the foregoing.

1.4 "Mellanox Software" shall mean the Mellanox software in object code form, detailed in Exhibit A.

2. EVALUATION LICENSE; OWNERSHIP

2.1 Evaluation License. Subject to the terms and conditions of this Agreement, Mellanox hereby grants Licensee

a limited, personal, non-exclusive, non-transferable, non-assignable license to use the Mellanox Software solely for

internal testing and evaluation of the Mellanox Software for use in conjunction with the applicable Mellanox' products for a period of thirty (30) days from the date of electronic delivery of the Mellanox Software ("Evaluation Term"), unless extended or earlier terminated in accordance with Section 7 of this Agreement. No right is granted to Licensee, either directly or indirectly, to commercially exploit or otherwise use the Mellanox Software for any purpose other than that expressed herein.

2.2 Restrictions. Except as expressly provided herein, Licensee shall not sell, license, rent, lend, distribute or otherwise transfer the Mellanox Software or any derivative works thereof. Except as expressly provided herein, Licensee shall not copy, modify, prepare derivative works of, reverse assemble, disassemble, decompile, decrypt, or otherwise attempt to derive source code from the Mellanox Software, or allow any third party to do so. Except as expressly set forth in this Agreement, Licensee acquires no rights to any Mellanox Confidential Information, Mellanox Software, including any derivatives thereof, or any source code in any of the foregoing. The licenses granted herein are personal to the Licensee and the Mellanox Software specified during the Evaluation Term. In the event that Licensee is a division or subsidiary of a larger organization or the affiliate of a smaller organization, additional licenses for evaluation by the Licensee's subdivisions or affiliates must be separately obtained from Mellanox.

2.3 Ownership. Licensee acknowledges that any and all Intellectual Property Rights in the Mellanox Software, including the Feedback any changes or improvements to Mellanox Software resulting from the Feedback, is and shall remain the property of Mellanox. Licensee acknowledges that it is fundamental to Mellanox to own the Feedback, and accordingly Licensee irrevocably assigns to Mellanox all right, title and interest worldwide in the Feedback, including any and all Intellectual Property Rights related to the Feedback. All software is licensed not sold by Mellanox. All rights not expressly granted under this Agreement are reserved.

2.4 Open Source Software. Licensee acknowledges that if the Mellanox Software incorporates certain open source software, that such open source software is further described in the applicable End User License Agreement of the Mellanox Software and that it is Licensee's responsibility to review the license terms for each such software and ensure that it is complying with the contributor's use requirements. Mellanox makes no warranty express or implied, including but not limited to title, non-infringement and the implied warranties of merchantability and fitness for a particular purpose relating to the use of such open source software. In no event shall Mellanox be liable for any direct, indirect, incidental, special, exemplary, or consequential damages (including, but not limited to, procurement of substitute goods or services; loss of use; data, or profits; or business interruption) however caused and on any theory of liability, whether in contract, strict liability, or tort (including negligence or otherwise) arising in any way out of the use of such open source software, even if advised of the possibility of such damage.

2.5 Feedback. Licensee will notify Mellanox of any errors or deficiencies in Mellanox Software, suggestions for improvements, compatibility problems, and other information

regarding Mellanox Software (collectively, “**Feedback**”). Licensee acknowledges that Mellanox may or may not incorporate Feedback into the general release version of Mellanox Software at Mellanox’ sole discretion. Licensee acknowledges and agrees that: (i) Mellanox Software is in pre-release, beta form, and is not a supported product, and accordingly any use of Mellanox Software shall be at Licensee’s own risk. (ii) Mellanox does not warrant that it will correct all defects in Mellanox Software; (iii) Each party shall bear all of its own expenses associated with this Agreement; (iv) Mellanox is under no obligation or duty to generally release Mellanox Software or any feature contained therein.

3. WARRANTY.

THE MELLANOX SOFTWARE AND DOCUMENTATION ARE PROVIDED "AS IS," WITHOUT ANY WARRANTY OF ANY KIND. WITHOUT LIMITING THE FOREGOING, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, MELLANOX EXPRESSLY DISCLAIMS ALL WARRANTIES AND CONDITIONS REGARDING THIS AGREEMENT OR THE MELLANOX SOFTWARE OR THE DOCUMENTATION, WHETHER EXPRESS, IMPLIED OR STATUTORY, AND INCLUDING BUT NOT LIMITED TO ALL IMPLIED OR STATUTORY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT OF THIRD PARTY RIGHTS. MELLANOX DOES NOT WARRANT THAT THE MELLANOX SOFTWARE FURNISHED UNDER THIS AGREEMENT IS ERROR FREE OR WILL PERFORM ACCORDING TO ANY SPECIFICATIONS. ALL USE OF AND RELIANCE ON THE MELLANOX SOFTWARE IS AT THE SOLE RISK OF AND RESPONSIBILITY OF LICENSEE.

4. NO ILLEGAL ACTIVITY. Licensee and Licensor each individually represent and warrant that they shall at all times refrain from engaging in any illegal, unfair, deceptive or unethical business practices whatsoever, including any act that would constitute a violation of the U.S. Foreign Corrupt Practices Act, whether with respect to the Mellanox Software or otherwise.

5. CONFIDENTIALITY.

5.1 Use. Each party understands that the other party has or may disclose Confidential Information in the course of exercising its rights or performing its obligations under this Agreement. As between the parties, the Confidential Information of each party will remain its sole property. Confidential Information will be used by the recipient party only for purposes of, or as otherwise authorized by, this Agreement. Except as expressly provided herein, each party will hold the Confidential Information of the other party in strict confidence and protect such Confidential Information from disclosure using the same care it uses to protect its own confidential information of like importance, but not less than reasonable care. Except as expressly provided herein, no Confidential Information will be disclosed by the receiving party without the prior written consent of the other party, except that each party may disclose this Agreement and the other party’s Confidential Information to its directors, employees, attorneys, agents, auditors, insurers, potential investors and subcontractors who require access to such information in connection with their employment or engagement and who are obligated to keep such information confidential in a manner no less restrictive than set forth in this Section 5.1. The party employing or engaging such persons is

responsible and liable for their compliance with such confidentiality obligations.

5.2 Treatment. The parties recognize and agree that the use or disclosure of any Confidential Information of a party in a manner inconsistent with the provisions of this Agreement may cause the disclosing party irrevocable damage for which adequate remedy at law will not be available. Accordingly, each party shall be entitled to seek temporary and/or permanent injunctive relief against such breach or violation from any court of competent jurisdiction immediately upon request, without the need to obtain a bond or other security. The right of each party to seek injunctive relief shall not limit in any manner that party’s right to seek other and/or additional remedies at law or in equity. If Confidential Information is required to be disclosed by law or a governmental authority, including pursuant to a subpoena or court order, such Confidential Information may be disclosed, provided that the party required to disclose the Confidential Information: (i) promptly notifies the disclosing party of the disclosure requirement; (ii) cooperates with the disclosing party’s reasonable efforts to resist or narrow the disclosure and to obtain an order or other reliable assurance that confidential treatment will be accorded the disclosing party’s Confidential Information; and (iii) furnishes only Confidential Information that the party is legally compelled to disclose according to advice of its legal counsel. Upon written request, or at the expiration or termination of this Agreement, all documented Confidential Information (and all copies thereof) owned by the requesting party will be returned or destroyed by the receiving party, with written certification thereof delivered to the other party.

6. LIMITATION OF LIABILITY.

INDEPENDENTLY OF ANY OTHER LIMITATION HEREOF AND REGARDLESS OF WHETHER THE PURPOSE OF ANY REMEDY SET FORTH HEREIN IS SERVED, IT IS AGREED THAT IN NO EVENT SHALL MELLANOX AND/OR ITS AFFILIATES BE LIABLE FOR ANY DIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES OF ANY KIND RELATING TO THE EVALUATION OF THE MELLANOX SOFTWARE OR USE OF ANY OPEN SOURCE SOFTWARE THAT MAY BE INCORPORATED THEREIN, REGARDLESS OF WHETHER LIABILITY IS BASED ON BREACH OF A CONTRACTUAL, STATUTORY OR COMMON LAW DUTY OF ANY KIND. IN NO EVENT SHALL MELLANOX AND/OR ITS AFFILIATES BE LIABLE FOR ANY LOSS OF GOODWILL, LOSS OF PROFITS OR REVENUES, LOSS OF USE, INTERRUPTION OF BUSINESS OR DESTRUCTION OF DATA RESULTING FROM USE OF THE MELLANOX SOFTWARE EVEN IF MELLANOX AND/OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

IN NO EVENT SHALL MELLANOX BE LIABLE HEREUNDER, WHETHER IN AN ACTION IN CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, IN AN AGGREGATE AMOUNT IN EXCESS OF ONE THOUSAND DOLLAR (\$1,000). LICENSEE ACKNOWLEDGES THAT THIS LIMITATION OF LIABILITY IS AN ESSENTIAL PROVISION OF THIS AGREEMENT AND THAT MELLANOX WOULD NOT HAVE ENTERED INTO THIS AGREEMENT AND WOULD NOT HAVE PROVIDED THE BETA PRODUCTS HEREUNDER HAD ITS POTENTIAL LIABILITY BEEN IN ANY WAY HIGHER THAN THE AFORESAID LIMITED AMOUNT. **TERM AND TERMINATION.**



7.1 Term. Unless terminated earlier as provided herein, this Agreement, including the license rights provided under Section 2 hereof, shall be valid during the Evaluation Term and shall terminate automatically unless extended for an additional 30 day evaluation period by Mellanox in writing. After the Evaluation Term, you must either enter into a commercial software license agreement or return or destroy all copies of the Mellanox Software and Documentation as provided in Section 7.4 below.

7.2 Termination for Convenience. Either party may terminate this Agreement without cause upon ten (10) days' prior written notice.

7.3 Termination for Cause.

In the event Licensee (i) breaches any terms or conditions of this Agreement; (ii) becomes insolvent; (iii) makes an assignment for the benefit of creditors; (iv) files or has filed against it a petition in bankruptcy or seeking reorganization; (v) has a receiver appointed; (vi) institutes any proceedings for liquidation or winding up or has such proceedings instituted against it; then Mellanox may, in addition to other rights and remedies it may have available, terminate this Agreement immediately by written notice.

7.4 Consequences of Termination. Upon the termination or expiration of this Agreement, Licensee shall immediately cease use of the Mellanox Software, either (i) return the Mellanox Software and all related Documentation and any documents containing any Mellanox Confidential Information to Mellanox at Licensee's expense, and/or (ii) destroy or delete any copies of the Mellanox Software and Documentation at Mellanox's request. If Licensee is requested to destroy or delete the Mellanox Software and Documentation, it shall send written confirmation of such action to Mellanox within ten (10) days thereof, which shall be signed by an authorized officer of Licensee.

7.5 Commercial Agreement. At any time during or after the Evaluation Term, the parties may enter into a separate license agreement for the commercial usage of the Mellanox Software on terms and conditions to be mutually agreed. The commercial license agreement shall supersede all terms and conditions of this Agreement as it relates to the Mellanox Software. The parties agree that any such commercial license agreement for the Mellanox Software shall include a provision whereby the Mellanox Software shall be deemed accepted upon delivery based on the evaluation and testing of the Mellanox Software performed under this Agreement.

7.5 Survival. Notwithstanding any termination or expiration of this Agreement, the provisions of Sections 1, 2.2, 2.3, 3-6, and 8 shall survive any expiration or termination of this Agreement.

8. GENERAL.

8.1 Assignment. This Agreement shall not be assigned by Licensee whether voluntarily or involuntarily or by operation of law, in whole or in part, to any party without the prior written consent of Mellanox. No such assignment by Licensee howsoever occurring shall relieve Licensee of its obligations hereunder. Any assignment in violation of this Section 8.1 shall be null and void from the beginning, and shall be deemed a material breach of this Agreement.

8.2 Waiver. Failure or neglect by either party to enforce at any time any of the provisions hereof shall not be construed nor shall be deemed to be a waiver of such party's rights hereunder nor in any way affect the validity of the whole or any part of this Agreement nor prejudice such party's rights to take subsequent action.

8.3 Notices. All notices shall be sent by e-mail to the other party's mailbox where practicable, and shall also be given in writing, and shall be deemed to have been duly given when delivered by hand, posted by registered first class mail (airmail if international) or sent via recognized overnight couriers (e.g., Federal Express, DHL) or sent by fax to the party to which such notice is required to be given at the business address and/or fax number stated in this Agreement or to such other address or fax number as such party may have specified to the other in writing. Notices shall be deemed received on the earlier of the following: (i) notices delivered by hand or sent by fax shall be deemed received the first business day following such delivery or sending; (ii) notices which have been posted or sent via overnight courier shall be deemed received on the second business day following posting (third if international), and (iii) notices delivered by e-mail shall be deemed received when sent.

8.4 Headings; Construction. The headings to the clauses, sub-clauses and parts of this Agreement are inserted for convenience of reference only and are not intended to be part of or to affect the meaning or interpretation of this Agreement. Any ambiguity in this Agreement shall be interpreted equitably without regard to which party drafted the Agreement or any provision thereof. The terms "this Agreement," "hereof," "hereunder" and any similar expressions refer to this Agreement and not to any particular Section or other portion hereof. The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of this Agreement. As used in this Agreement, the words "include" and "including," and variations thereof, will be deemed to be followed by the words "without limitation" and "discretion" means sole discretion.

8.5 Amendment. Unless otherwise provided herein, this Agreement may not be changed, waived, discharged, or terminated orally, but only by a written document signed by duly authorized officers of each of the parties hereto.

8.6 Relationship of Parties. Nothing herein contained shall be deemed to create an agency, joint venture or partnership relation between the parties hereto. It is understood and agreed that Licensee is not, by reason of this Agreement or anything herein contained, constituted or appointed the agent or representative of Mellanox for any purpose whatsoever, nor shall anything herein contained be deemed or construed as granting to Licensee any right or authority to assume or to create any obligation or responsibility, express or implied, for, on behalf of, or in the name of Mellanox, or to bind Mellanox in any way or manner whatsoever. All financial and other obligations associated with Licensee's business are the sole responsibility of Licensee.

8.7 Governing Law. The rights and obligations of the parties under this Agreement shall not be governed by the provisions of the 1980 United Nations Convention on Contracts for the International Sale of Goods or the United Nations Convention on the Limitation Period in the International Sale of



Goods, as amended; rather, these rights and obligations shall be governed in all respects by the laws of the State of New York, excluding its conflict of laws rules to the extent such rules would apply the law of another jurisdiction. Licensee agrees that all disputes arising hereunder shall be adjudicated in the state and federal courts having jurisdiction over disputes arising in New York and Licensee hereby agrees to consent to the personal jurisdiction of such courts.

Name: _____
Print Name

Its: _____
Print Title

Date: _____

8.8 Export. Licensee understands and agrees that it has no right to transfer the software, technology or technical information provided under this Agreement. If Mellanox grants you such a right via written agreement, to the extent You export, re-export, or import software, technology, or technical data licensed or provided hereunder, You assume sole responsibility for complying with applicable laws and regulations and for obtaining required export and import authorizations. Mellanox may terminate this Agreement if You are in violation of any applicable laws or regulations. You agree that Mellanox may audit Your compliance with this Agreement. Any such audit would be at Mellanox's expense, require reasonable notice, and would be performed during normal business hours.

8.9 Severability. Whenever possible, each provision of the Agreement will be interpreted in such manner as to be effective and valid under applicable law, but if any provision of the Agreement is held to be prohibited by or invalid under applicable law, such provision will be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of the Agreement.

8.10 Entire Agreement. This Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the parties hereto prior to or simultaneously with this Agreement, and this Agreement constitutes the entire understanding between the parties hereto. Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is in writing and signed by and on behalf of both parties.

"Licensee"

By: _____
Signature of Duly Authorized Party

Name: _____
Print Name

Its: _____
Print Title

Date: _____

Address: _____

Telephone Nos.: _____
Facsimile Nos.: _____

"Mellanox"

MELLANOX TECHNOLOGIES LTD.

By: _____

Exhibit A

Mellanox Software

The Mellanox Software shall mean (check the box below):

- UFM
- VMA
- VSA
- FCA