

**IMPORTANT. Read the following SPANSION LLC Software License Agreement ("Agreement") completely. By selecting the "I Accept" button at the end of this page, you ("LICENSEE") indicate that you accept the terms of this Agreement. You may then install the SOFTWARE.**

## **SOFTWARE LICENSE AGREEMENT**

This is a legal agreement between you (either as an individual or as an authorized representative of your employer) and SPANSION LLC. It concerns your rights to use this file and any accompanying written materials (the "SOFTWARE"). In consideration for SPANSION LLC allowing you to access the SOFTWARE, you are agreeing to be bound by the terms of this Agreement. IF YOU DO NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT INSTALL THE SOFTWARE. If you change your mind later, stop using the SOFTWARE and delete all copies of the SOFTWARE in your possession or control. Any copies of the SOFTWARE that you have already distributed, where permitted, and do not destroy will continue to be governed by this Agreement. Your prior use will also continue to be governed by this Agreement.

### **1. Definitions.**

(i) "SOFTWARE" means the source code files, header files, related object code files and documentation contained within the installation package.

(ii) "SOURCE CODE" means only the source code and header files associated with the SOFTWARE, the User's Guide and the Detailed Design Document contained within the installation package.

(iii) "OBJECT CODE" means only the object code files associated with the SOFTWARE.

(iv) "DERIVATIVE WORKS" shall mean a work which is based on one or more preexisting works, such as a revision, modification, translation, abridgment, condensation, expansion, collection, compilation or any other form in which such preexisting works may be recast, transformed or adapted.

2. License. For as long as LICENSEE complies with its obligations under this Agreement, SPANSION LLC hereby grants to LICENSEE for the sole purposes of incorporating the corresponding OBJECT CODE into LICENSEE's products that incorporate SPANSION LLC's flash memory products, a personal, worldwide, non-exclusive, nontransferable (except as set forth below), paid-up, royalty-free license and right:

(i) to use, execute, perform and copy the SOFTWARE, and

(ii) to prepare DERIVATIVE WORKS of the SOFTWARE.

For as long as licensee complies with its obligations under this Agreement, SPANSION LLC hereby grants to LICENSEE for the sole purposes of distributing LICENSEE's products that incorporate SPANSION LLC's flash memory product, a personal, worldwide, non-exclusive, paid-up, royalty-free license and right:

(i) to distribute the SOFTWARE and/or DERIVATIVE WORKS of the SOFTWARE, and

(ii) to sublicense to others the right to use the distributed SOFTWARE and/or DERIVATIVE WORKS of the SOFTWARE.

This license is not a sale of any interest in the SOFTWARE's Copyright or any copy thereof. LICENSEE agrees not to remove or destroy any Copyright notices, proprietary markings or confidential legends placed upon, contained within or associated with the SOFTWARE.

3. Non-disclosure. LICENSEE hereby agrees (i) to hold SPANSION CONFIDENTIAL Information (the DRIVER SOURCE CODE and all other SPANSION LLC information marked with "SPANSION CONFIDENTIAL" or similar legend) furnished hereunder in confidence, and (ii) not disclose such Confidential Information to any third party for ten (10) years following LICENSEE'S receipt thereof. These confidential obligations shall not apply to information that: (a) is in or enters the public domain without breach of this Agreement by LICENSEE; or (b) is disclosed without restrictions by a third party to LICENSEE; or (c) is independently developed by LICENSEE; or (d) is already known to LICENSEE at the time of disclosure under this Agreement as shall be proved by contemporaneous written records; or (e) is disclosed by SPANSION LLC to any other person or entity without similar restrictions, or (f) is required to be disclosed by law, governmental agency or court order, except where such disclosure is disclosure of DRIVER SOURCE CODE as Restricted Rights under Section 4.

4. U.S. Government Disclosure. LICENSOR will allow LICENSEE to disclose the DRIVER SOURCE CODE to those employees of the U.S. Government that require access to the DRIVER SOURCE CODE to approve the LICENSEE 'S Products; LICENSOR understands that the U.S. Government is legally restricted in its ability to distribute contractor proprietary information. LICENSEE will maintain a legally binding contract with the U.S. Government to enforce the confidentiality of the SOURCE CODE and require the U.S. Government not to disclose the DRIVER SOURCE CODE to any and all persons; and will treat the SOURCE CODE as Restricted Rights as stated in the Defense Federal Acquisition Regulation Supplement and under DFARS clause #252.227-7014.

5. Limitation of Liability. **THE SOFTWARE IS PROVIDED "AS IS" WITHOUT ANY EXPRESS OR IMPLIED WARRANTY OF ANY KIND INCLUDING WARRANTIES OF MERCHANTABILITY, NONINFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY, OR FITNESS FOR ANY PARTICULAR PURPOSE. IN NO EVENT SHALL SPANSION LLC BE LIABLE FOR ANY DAMAGES WHATSOEVER (INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOSS OF PROFITS, BUSINESS INTERRUPTION, LOSS OF INFORMATION AND, INsofar AS IS LEGALLY POSSIBLE, CONSEQUENTIAL OR INCIDENTAL DAMAGES) ARISING OUT OF THE USE OF OR INABILITY TO USE THE SOFTWARE, EVEN IF SPANSION LLC HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SPANSION LLC SHALL NOT BE RESPONSIBLE FOR ANY ERRORS THAT MAY APPEAR IN THE SOFTWARE OR DERIVATIVE WORKS NOR SHALL SPANSION LLC BE UNDER ANY OBLIGATION TO SUPPORT OR UPDATE THE SOFTWARE.**

**SPANSION LLC RETAINS THE RIGHT TO MAKE CHANGES TO ITS SOFTWARE AT ANY TIME, WITHOUT NOTICE TO LICENSEE.**

6. Maintenance. SPANSION LLC shall be under no obligation to assist Licensee to use, execute, perform or copy the SOFTWARE, or to provide support to Licensee of the SOFTWARE, or to provide maintenance, correction, modification, enhancement, or upgrades to the SOFTWARE. SPANSION LLC may however provide such support, maintenance, correction, modification, enhancement or upgrades in its sole discretion, and, if provided, such support, maintenance, correction, modification, enhancement, or upgrades shall be considered part of the SOFTWARE and shall be subject to all terms and conditions of this Agreement.

7. Termination. This Agreement and the licenses granted by SPANSION LLC herein shall terminate immediately without notice from SPANSION LLC or by a judicial resolution, if LICENSEE fails to comply with any provisions of this Agreement. Following termination of this Agreement, LICENSEE covenants that it shall only use DERIVATIVE WORK(S) of the SOFTWARE to incorporate SPANSION LLC's flash memory products with Licensee's products. Any other use of DERIVATIVE WORK(S) of the SOFTWARE is strictly prohibited.

8. Taxes. The amount of any taxes of any kind, if any are applicable to this transaction or to the use or possession of the SOFTWARE covered hereby shall be paid by LICENSEE. The parties agree that the tangible portion of the property delivered and to be delivered by SPANSION LLC to LICENSEE or by LICENSEE to SPANSION LLC is valued at one hundred dollars (\$100.00).

9. Governing Law. This Agreement shall be governed and construed in accordance with the laws of State of California as applied to contracts entered into in California by a California corporation. California's conflict of laws principles shall not apply.

10. Damage Limitation. INDEPENDENTLY OF ANY OTHER REMEDY LIMITATION HEREOF AND NOTWITHSTANDING ANY ESSENTIAL PURPOSE OF ANY SUCH LIMITED REMEDY, IT IS AGREED THAT IN NO EVENT SHALL SPANSION LLC BE LIABLE FOR SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND UNDER THIS AGREEMENT.

11. Export Assurances. LICENSEE agrees and certifies that neither the SOFTWARE, nor any direct product thereof will be exported, directly or indirectly, into any country prohibited by the United States Export Administration Act and the regulations thereunder without the required authorization from the United States government or will be used for any purpose prohibited by the same.

12. Transferability. LICENSEE may not divide its interests under this Agreement and transfer same to different parties; however, LICENSEE may assign and transfer all its rights under this Agreement solely to a party controlling, controlled by or under common control with LICENSEE, a successor in interest in the event of a merger, consolidation or sale of substantially

all of the LICENSEE'S assets or stock, or to a successor to the portion of its business that designs or markets products incorporating the SPANSION LLC flash memory products.

13. Intellectual Property Ownership. SPANSION LLC shall retain title to and ownership of all proprietary rights with respect to the SOFTWARE and copies thereof. LICENSEE shall retain title to and ownership of all proprietary rights in DERIVATIVE WORKS of the SOFTWARE made by or for LICENSEE, and all copies thereof, excluding the portions owned by SPANSION LLC made reference to under the previous sentence. Except as expressly provided herein, SPANSION LLC does not grant any express or implied right to Licensee under SPANSION LLC's patents, Copyrights, trademarks, or trade secrets.

14. Survival Clauses. The following provisions shall survive expiration or termination of this Agreement for any reason: Section 3 (Non-disclosure), Section 5 (Limitation of Liability), Section 10 (Damage Limitation), Section 13 (Intellectual Property Ownership).

15. Entire Agreement. This Agreement and its Exhibits contain the entire Agreement and understanding between the parties with respect to the subject matter hereof and merges and supersedes all prior agreements, understandings and representations. No addition or modification to the Agreement is valid unless made in writing and signed by both parties hereto. To the extent that this Agreement contains a provision that contradicts any provision in the Exhibits hereto, this Agreement shall control. This Agreement shall be construed and controlled by the law of the State of California. In the event of any dispute hereunder, the parties agree to jurisdiction in the state and federal courts of Santa Clara County in the Northern District of California.

**NOTE: By selecting the "I Accept" button at the end of this page, this Agreement becomes a legally binding license agreement between Licensee and SPANSION LLC. Licensee shall be bound by all of the terms of this Agreement and shall use SPANSION LLC's Software only for the purposes set forth herein.**

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