Echelon OpenLDV Software License Agreement

This is a legal agreement between you ("You") and Echelon Corporation ("Echelon") regarding the Echelon OpenLDV Network Driver and associated media, printed materials, and online or electronic documentation (collectively, the "Licensed Software"). If you are entering into this License on behalf of a company or other legal entity, you represent that You have the right to bind that entity to all terms, and "You" refers both to you personally and such entity. YOU MUST READ AND AGREE TO THE TERMS OF THIS SOFTWARE LICENSE AGREEMENT BEFORE ANY LICENSED SOFTWARE CAN BE DOWNLOADED, INSTALLED OR USED. BY CLICKING ON THE "ACCEPT" BUTTON OF THIS SOFTWARE LICENSE AGREEMENT, OR DOWNLOADING LICENSED SOFTWARE, OR INSTALLING LICENSED SOFTWARE, OR USING LICENSED SOFTWARE, YOU ARE AGREEING TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT. IF YOU DO NOT AGREE WITH THE TERMS AND CONDITIONS OF THIS SOFTWARE LICENSE AGREEMENT, THEN YOU SHOULD EXIT THIS PAGE AND YOU ARE NOT AUTHORIZED TO DOWNLOAD, INSTALL OR USE ANY LICENSED SOFTWARE. As a condition of this License, you agree to comply with Echelon's Sales Order Terms and Conditions, a copy of which was sent to you along with Echelon's sales acknowledgement form of your purchase of the Product(s). The Sales Order Terms and Conditions are incorporated by reference herein.

1. <u>LICENSE.</u> Subject to the terms and conditions set for below, Echelon grants You a non-exclusive, nontransferable license to install, use, reproduce, and distribute the Licensed Software and any updates or upgrades thereto provided by Echelon in the form and as delivered to you; provided that You reproduce, unaltered, all proprietary notices and licenses on or in the copies and use Echelon's software installer (as provided in the Licensed Software) as the delivery and installation mechanism. You may not modify the installer or any of the files contained therein.

2. <u>RESTRICTIONS.</u> You may not and shall not permit others to modify, translate, reverse engineer, decompile, disassemble or otherwise attempt (i) to defeat, avoid, bypass, remove, deactivate, or otherwise circumvent any software protection mechanisms in the Licensed Software, including without limitation any such mechanism used to restrict or control the functionality of the Licensed Software, or (ii) to derive the source code or the underlying ideas, algorithms, structure or organization from the software from the Licensed Software (except to the extent that such activities may not be prohibited under applicable law).

3. <u>OWNERSHIP.</u> This license is not a sale. Except for the limited rights granted above, Echelon and its suppliers retain all right, title and interest in and to the Licensed Software and accompanying documentation, and all copies thereof, including copyrights and other proprietary rights. Certain components of the Software are subject to open source and third party licenses, the terms and conditions of which are on Echelon's website at <u>www.echelon.com/license/opensourceandthirdparty/.</u> As a condition of the License, you agree to comply with the open source and third party license terms. Unless required by applicable law, such components are provided on an 'AS IS' BASIS, WITHOUT EXPRESS OR IMPLIED WARRANTIES OR CONDITIONS OF ANY KIND. You may make appropriate and truthful reference to Echelon, Echelon products and technology in Your company and product literature; provided that You properly attribute Echelon's trademarks in accordance with Echelon's trademark guidelines and do not use the name of Echelon or any Echelon trademark in Your name or product name. No license is granted, express or implied, under any Echelon trademarks, trade names, trade dress or service marks.

4. <u>TERMINATION.</u> This license will continue until terminated. Unauthorized copying of the Licensed Software or any other failure fully to comply with the terms of this Agreement will result in automatic termination of the license granted hereby, and Echelon reserves all rights to all legal and equitable remedies for all damages resulting therefrom. This license also will automatically terminate if You go into liquidation, suffer or make any winding up petition, make an arrangement with Your creditors, or suffer or file any similar action in any jurisdiction in consequence of debt. Upon termination of this license for any reason You will destroy all copies of the Licensed Software. Any use of the Licensed Software after termination is unlawful, and Echelon expressly reserves all rights and remedies.

5. <u>LIMITED WARRANTY AND DISCLAIMER.</u> Echelon warrants that, for a period of ninety (90) days from the date of delivery or transmission to You, the Licensed Software under normal use will perform substantially in accordance with the Licensed Software specifications contained in the documentation accompanying the Licensed Software. Echelon's entire liability and Your exclusive remedy under this warranty will be, at Echelon's option, to use reasonable commercial efforts to attempt to correct or work around errors, to replace the Licensed Software with functionally equivalent Licensed Software, or to terminate this Agreement. **EXCEPT FOR THE ABOVE EXPRESS LIMITED WARRANTIES, ECHELON AND ITS SUPPLIERS MAKE AND YOU RECEIVE NO WARRANTIES OR CONDITIONS, EXPRESS, IMPLIED, STATUTORY OR IN ANY COMMUNICATION WITH YOU, AND ECHELON AND ITS SUPPLIERS SPECIFICALLY DISCLAIM ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT AND THEIR EQUIVALENTS. Echelon does not warrant that the operation of the Licensed Software will be uninterrupted or error free or that the Licensed Software will meet Your specific requirements. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF IMPLIED WARRANTIES, SO THE ABOVE EXCLUSIONS MAY**

NOT APPLY TO YOU. YOU MAY ALSO HAVE OTHER RIGHTS THAT VARY FROM STATE TO STATE AND JURISDICTION TO JURISDICTION.

6. <u>LIMITATION OF LIABILITY.</u> IN NO EVENT WILL ECHELON OR ITS SUPPLIERS BE LIABLE FOR LOSS OR CORRUPTION OF DATA, LOST PROFITS, LOSS OF CONTRACTS, COST OF PROCUREMENT OF SUBSTITUTE GOODS, TECHNOLOGY OR SERVICES OR OTHER SPECIAL, INCIDENTAL, PUNITIVE, CONSEQUENTIAL OR INDIRECT DAMAGES ARISING FROM THE SUPPLY OR USE OF THE LICENSED SOFTWARE, HOWEVER CAUSED AND ON ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE). THIS LIMITATION WILL APPLY EVEN IF ECHELON OR AN AUTHORIZED DISTRIBUTOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY PROVIDED HEREIN. IN NO EVENT SHALL ECHELON'S OR ITS SUPPLIERS' LIABILITY EXCEED IN THE AGGREGATE ONE HUNDRED UNITED STATES DOLLARS (USD \$100). YOU AGREE THAT FOREGOING LIMITATIONS ARE INCORPORATED INTO THE PRICE PAID AND REFLECT A REASONABLE ALLOCATION OF RISK. SOME STATES OR OTHER JURISDICTIONS DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THE ABOVE LIMITATIONS AND EXCLUSIONS MAY NOT APPLY TO YOU.

7. <u>SAFE OPERATION</u>. YOU ASSUME RESPONSIBILITY FOR, AND HEREBY AGREE TO USE YOUR BEST EFFORTS IN, DESIGNING, MANUFACTURING, COMMISSIONING, MONITORING, AND CONTROLLING PRODUCTS USING THE LICENSED SOFTWARE TO PROVIDE FOR SAFE OPERATION THEREOF, INCLUDING, BUT NOT LIMITED TO, COMPLIANCE OR QUALIFICATION WITH RESPECT TO ALL SAFETY LAWS, REGULATIONS AND AGENCY APPROVALS, AS APPLICABLE. ECHELON PRODUCTS AND SOFTWARE ARE NOT DESIGNED OR INTENDED FOR USE IN OR IN CONNECTION WITH APPLICATIONS IN WHICH THE FAILURE OF THE PRODUCT OR SOFTWARE COULD CREATE A SITUATION IN WHICH PERSONAL INJURY OR DEATH MAY OCCUR, AND YOU ARE NOT GRANTED ANY RIGHTS UNDER THIS AGREEMENT WITH RESPECT TO ANY SUCH APPLICATIONS.

8. <u>COMPLIANCE WITH EXPORT CONTROL LAWS.</u> You agree to comply with all applicable export and reexport control laws and regulations, including the Export Administration Regulations ("EAR") maintained by the United States Department of Commerce. Specifically, You covenant that You shall not—directly or indirectly—sell, export, re-export, transfer, divert, or otherwise dispose of any software, source code, or technology (including products derived from or based on such technology) received from Echelon under this Agreement to any country (or national thereof) subject to antiterrorism controls or U.S. embargo, or to any other person, entity, or destination prohibited by the laws or regulations of the United States, without obtaining prior authorization from the competent government authorities as required by those laws and regulations. You agree to indemnify, to the fullest extent permitted by law, Echelon and its suppliers from and against any fines or penalties that may arise as a result of Your breach of this provision. This export control clause shall survive termination or cancellation of this Agreement.

9. <u>LANGUAGE.</u> The parties hereto confirm that it is their wish that this Agreement, as well as other documents relating hereto, have been and shall be written and conveyed in the English language only.

GENERAL. This Agreement shall not be governed by the 1980 U.N. Convention on Contracts for the International Sale of Goods; rather, this Agreement shall be governed by the laws of the State of California, including its Uniform Commercial Code, without reference to conflicts of laws principles. This Agreement is the entire agreement between us and supersedes any other communications or advertising with respect to the Licensed Software and accompanying documentation. If any provision of this Agreement is held invalid or unenforceable, such provision shall be revised to the extent necessary to cure the invalidity or unenforceability, and the remainder of the Agreement shall continue in full force and effect. If You are acquiring the Licensed Software on behalf of any part of the U.S. Government, the following provisions apply. The Licensed Software and accompanying documentation were developed at private expense and are deemed to be "commercial computer software" and "commercial computer software documentation", respectively, pursuant to DFAR Section 227,7202 and FAR 12.212(b), as applicable. Any use, modification, reproduction, release, performance, display or disclosure of the Licensed Software and/or the accompanying documentation by the U.S. Government or any of its agencies shall be governed solely by the terms of this Agreement and shall be prohibited except to the extent expressly permitted by the terms of this Agreement. Any technical data provided that is not covered by the above provisions is deemed to be "technical data/commercial items" pursuant to DFAR Section 227.7015(a). Any use, modification, reproduction, release, performance, display or disclosure of such technical data shall be governed by the terms of DFAR Section 227.7015(b). You agree to indemnify, to the fullest extent permitted by law, Echelon and its suppliers ("Indemnitees"), for any claims and damages resulting from Your breach of this Agreement or noncompliance with applicable laws, rules and regulations. Echelon, IzoT, LON, LNS, LonMaker, LonTalk, LonWorks, i.LON, Neuron, OpenLDV, and the Echelon logo are trademarks of Echelon Corporation that may be registered in the United States and other countries.