

Ultimo 2/17/11

TERMS AND CONDITIONS OF EVALUATION, PURCHASE AND SALE AGREEMENT

WHEREAS, the Customer named in the written request and offer form to which these terms and conditions apply (the "Request") has requested the opportunity to evaluate for a period of time the device designed and manufactured by Ultimo identified in the Request (the "Unit") by bailing the Unit to Customer with a view to the purchase of the Unit by Customer at the purchase price indicated in the Request (the "Purchase Price"); and

WHEREAS, Ultimo agrees to such request and accepts such offer subject to and in accordance with the terms and conditions set forth herein

NOW THEREFORE, the parties agree to the provisions set forth below which are incorporated by reference into the Request and constitute the Agreement of the parties with the full force and effect as if the same were set forth in full in the Request.

1. **Deposit.** Customer has made or will make payment to Ultimo the requisite deposit (the "Deposit") to be applied to the payment of the full Purchase Price and as security for the performance of the Customer's obligations herein; or to be refunded to Customer in the event Customer declines to purchase the Unit and returns the Unit to Ultimo at its address above in the same condition as the Unit was received by Customer ("Good Condition") no later than the number of days set forth in the Request following the date of delivery of the Unit to Customer at its address set forth in the Request (or the specific date, if any, set forth in the Request (in either case, the "Return Date"). Other than the Deposit, this is a bailment without payment by the Customer.
2. **Evaluation.** Within two-days of receipt of the Unit, the Customer shall inspect the Unit and advise Ultimo in writing of the details of any visual damage to the Unit, and shall commence the installation, operation and evaluation of the Unit.
3. **Safekeeping.** The Customer shall be solely and exclusively responsible for the safekeeping of the Unit and for the timely return of the Unit in Good Condition on or before the Return Date. Without limiting the foregoing safekeeping obligation, the Customer agrees that it shall maintain exclusive possession of the Unit and shall not (or permit any person to) neglect, abuse, misuse, subject to hazard, disassemble, alter, reverse engineer, decompile or otherwise tamper with the Unit or any part or accessory thereto.
4. **Transport, Taxes and Other Costs.** The Customer shall be solely responsible for all costs of delivery of the Unit to the Customer, the safekeeping and maintenance of insurance for the Unit against all perils with coverage not less than the Purchase Price with Ultimo as a loss payee, and if applicable all costs of return of the Unit to Ultimo, including but not limited to freight, insurance, customs duties, tariffs, and taxes of any kind or nature, applicable the delivery, bailment, sale, use or return of the Unit to Ultimo.

5. Title and Ownership. Ownership and title to the Unit shall at all times remain with Ultimo until full payment of the Purchase Price has been received by Ultimo. The Customer covenants to keep the Unit free and clear of all liens, encumbrances, security interests or any other imperfections of title, or claims of any person including the Customer.
6. Evaluation Results. The Customer agrees to promptly share (no less frequently than every week from the delivery of the Unit) comments on the performance of the Unit. If the Customer decides to purchase the Unit, the Customer agrees to cooperate with Ultimo in the development of a case study for use by Ultimo in its development and marketing efforts and to grant exclusive ownership and publication rights to Ultimo regarding the evaluation and case study subject only to the limitation that no confidential information owned by the Customer is disclosed as a result.
7. No Warranty Prior to Purchase. Prior to the purchase of the Unit, THE UNIT IS BAILED TO CUSTOMER ON AN "AS IS, WITH ALL FAULTS " BASIS, AND ULTIMO DISCLAIMS ANY WARRANTY OR ASSURANCE INCLUDING BUT NOT LIMITED TO A WARRANTY OF MERCHANTABILITY OR FITNESS FOR PARTICULAR USE, AND NO WARRANTIES ARE IMPLIED. ULTIMO SHALL HAVE NO RESPONSIBILITY OR LIABILITY TO THE CUSTOMER FOR ANY DAMAGE, INJURY (INCLUDING PERSONAL INJURY OR LOSS OF LIFE) ARISING OUT OF THE CUSTOMER'S USE AND EVALUATION OF THE UNIT WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING BUT NOT LIMITED TO NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY, AND CUSTOMER SHALL INDEMNIFY AND HOLD ULTIMO HARMLESS FROM ANY AND ALL LIABILITY WHICH MAY ACCRUE AS A RESULT OF CUSTOMER'S USE OF THE UNIT
8. Return of Unit; Refund. If the Customer declines to purchase the Unit after evaluating the Unit, it shall give immediate written notice thereof to Ultimo and shall return the Unit to Ultimo for receipt prior to the Return Date in Good Condition. Following the inspection of the returned Unit by Ultimo and confirmation of Good Condition Ultimo shall return the Deposit to the Customer.
9. Purchase of Unit. If the Customer gives notice of its intention to Purchase or if the Customer fails to timely return the Unit in Good Condition prior to the Return Date, the Unit shall be thereupon purchased and the balance of the Purchase Price shall be due and payable. If the balance of the full Purchase Price shall not be paid on the Return Date, all amounts due shall bear interest on the amounts outstanding equal to one and one half percent (1 ½%) per calendar month or part thereof until paid in full. Customer shall be responsible to pay and reimburse Ultimo for any costs of collection.
10. Time of Essence. Time is of the essence with respect to all notices to be provided by the Customer and all obligations to be performed by Customer under this agreement.
11. Limited Warranty. Upon purchase by Customer, Ultimo warrants that the Unit purchased hereunder shall be free from defects in material or workmanship for a period of five (5) years from the Customer's first use of the Unit (including use during evaluation prior to purchase). THIS WARRANTY COMPRISES THE SOLE AND ENTIRE WARRANTY PERTAINING TO

ITEMS PROVIDED HEREUNDER. ULTIMO MAKES NO OTHER WARRANTY, GUARANTEE, OR REPRESENTATION OF ANY KIND WHATSOEVER. ALL OTHER WARRANTIES, INCLUDING BUT NOT LIMITED TO, MERCHANTABILITY AND FITNESS FOR PURPOSE, WHETHER EXPRESS, IMPLIED, OR ARISING BY OPERATION OF LAW, TRADE USAGE, OR COURSE OF DEALING ARE HEREBY DISCLAIMED. NOTWITHSTANDING THE FOREGOING, THERE ARE NO WARRANTIES WHATSOEVER ON ITEMS BUILT OR ACQUIRED WHOLLY OR PARTIALLY, TO CUSTOMER'S DESIGNS OR SPECIFICATIONS.

12. Limitation Of Remedy: ULTIMO'S LIABILITY ARISING FROM OR IN ANY WAY CONNECTED WITH THE UNIT PURCHASED OR THIS AGREEMENT SHALL BE LIMITED EXCLUSIVELY TO REPAIR OR REPLACEMENT OF THE UNIT PURCHASED OR REFUND OF THE PURCHASE PRICE PAID BY CUSTOMER, AT ULTIMO'S SOLE OPTION. IN NO EVENT SHALL ULTIMO BE LIABLE FOR ANY DAMAGE OR INJURY INCLUDING PERSONAL INJURY OR LOSS OF LIFE OR ANY INCIDENTAL, CONSEQUENTIAL OR SPECIAL DAMAGES OF ANY KIND OR NATURE WHATSOEVER, INCLUDING BUT NOT LIMITED TO LOST PROFITS ARISING FROM OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE UNIT PURCHASED HEREUNDER, WHETHER ALLEGED TO ARISE FROM BREACH OF CONTRACT, EXPRESS OR IMPLIED WARRANTY, OR IN TORT, INCLUDING WITHOUT LIMITATION, NEGLIGENCE, FAILURE TO WARN OR STRICT LIABILITY.

13. Taxes: All prices and charges are exclusive of excise, sales, use, property, occupational or like taxes which may be imposed by any taxing authority upon the manufacture, bailment, sale or delivery of the Unit purchased hereunder. If any such taxes must be paid by Ultimo or if Ultimo is liable for the collection of such tax, the amount thereof shall be in addition to the Purchase Price and any other amounts payable with respect to the Unit purchased or this agreement. Customer agrees to pay all such taxes or to reimburse Ultimo therefore upon receipt of its invoice. If Customer claims exemption from any sales, use or other tax imposed by any taxing authority, Customer shall save Ultimo harmless from and against any such tax, together with any interest or penalties thereon which may be assessed if the items are held to be taxable.

14 Indemnity For Infringement of Intellectual Property Rights: Ultimo shall have no liability for infringement of any patents, trademarks, copyrights, trade dress, trade secrets or similar rights except as provided in this section. Ultimo will defend and indemnify Customer against allegations of infringement of U.S. patents, U.S. trademarks, copyrights, trade dress and trade secrets (hereinafter 'Intellectual Property

Rights'). Ultimo will defend at its expense and will pay the cost of any settlement or damages awarded in an action brought against Customer based on an allegation that an item sold pursuant to this contract infringes the Intellectual Property Rights of a third party. Ultimo's obligation to defend and indemnify Customer is contingent on Customer notifying Ultimo within ten (10) days after Customer becomes aware of such allegations of infringement, and Ultimo having sole control over the defense of any allegations or actions including all negotiations for settlement or compromise. If an item sold hereunder is subject to a claim that it infringes the Intellectual Property Rights of a third party, Ultimo may, at its sole expense and option, procure for Customer the right to continue using said item, replace or modify said item so as to make it non-infringing, or offer to accept return of said item and return the purchase price less a reasonable allowance for depreciation. Notwithstanding the foregoing, Ultimo shall have no liability for claims of infringement based on information provided by Customer, or directed to items delivered hereunder for which the designs are specified in whole or part by Customer, or infringements resulting from the modification, combination or use in a system of any item sold hereunder. The foregoing provisions of this section shall constitute Ultimo's sole and exclusive liability and Customer's sole and exclusive remedy for infringement of Intellectual Property Rights.

If a claim is based on information provided by Customer or if the design for an item delivered hereunder is specified in whole or in part by Customer, Customer shall defend and indemnify Ultimo for all costs, expenses or judgments resulting from any claim that such item infringes any patent, trademark, copyright, trade dress, trade secret or any similar right.

15. Counterparts; Facsimile Signature. This agreement may be executed in several counterparts and all documents so executed shall constitute one agreement binding upon all signers of a counterpart. Execution may be signified by any electronic or facsimile signature of any party.

16. Force Majeure: Ultimo does not assume the risk of and shall not be liable for delay or failure to perform any of Ultimo's obligations by reason of circumstances beyond the reasonable control of Ultimo (hereinafter 'events of Force Majeure'). Events of Force Majeure shall include without limitation, accidents, acts of God, strikes or labor disputes, acts, laws, rules or regulations of any government or government agency, fires, floods, delays or failures in delivery of carriers or suppliers, shortages of materials and any other cause beyond Ultimo's control.

17. Entire Agreement/Governing Law: The terms and conditions set forth herein, together with any amendments, modifications and any different terms or conditions

expressly and unambiguously accepted with particularity by Ultimo in writing, shall constitute the entire Agreement concerning the Unit purchased, and there are no oral or other representations or agreements which pertain thereto. This Agreement has been entered into in the State of Rhode Island upon Ultimo's acceptance in Rhode Island of the offer represented by the Request by Customer. This Agreement shall be governed in all respects by the internal law of the State of Rhode Island without regard to such state's conflicts of laws principles. Rhode Island shall also be the exclusive forum for any litigation arising and the parties specifically agree to exclusive jurisdiction of any state or federal court located in Rhode Island. No actions arising out of the purchase or bailment of the Unit hereunder or this agreement may be brought by Customer more than two (2) years after the cause of action accrues.