

# PRODUCT EVALUATION AGREEMENT

Virtual Console, LLC (“Virtual Console”) and the party whose name appears below (“Customer”) agree as follows:

## 1. LOAN OF PRODUCTS

- 1.1 Virtual Console agrees to loan to Customer certain hardware and/or software listed in Exhibit A (the “Products”) for the purpose of Customer’s evaluation of the Products (the “Purpose”) in accordance with the terms and conditions of this Product Evaluation Agreement (the “Agreement”).
- 1.2 Customer agrees: (a) to use the Products only for the Purpose; (b) to assume liability for any damages to the Products from misuse, neglect, or abuse; (c) to maintain the Products only at the location specified below; (d) not to alter or modify the Products; and (e) upon termination of the Agreement, either return or pay for the Products/Licensed Material in accordance with section 6 below.
- 1.3 Customer will be charged \$300 non-refundable processing fee for each product evaluated.
- 1.4 Evaluated products may have reduced functionality such as the number of active ports or available features. Full functionality is available only after product is purchased. Customer must consult about features included in the evaluation unit before accepting the agreement.

Note: Flash card/drive duplicators available for evaluation have only 2 active ports. Remaining ports can be unlocked via firmware upgrade after the purchase.

## 2. LICENSED MATERIALS

- 2.1 Virtual Console hereby grants to Customer, a personal, nonexclusive and nontransferable license to use the software Products (including firmware) and documentation furnished with the Products (“Licensed Materials”) for the term of this Agreement. All Licensed Materials, and all copies thereof made by Customer, including translations, compilations and partial copies, are and shall remain the property of Virtual Console.
- 2.2 Customer shall not make any copies of any Licensed Materials except as may be necessary for Customer to exercise its rights under this Agreement. All copies made by Customer shall include the copyright and proprietary notices contained in or on the Licensed Materials delivered to Customer. Customer shall maintain records of the number and location of all copies of such Licensed Materials. Customer shall take appropriate action, by instruction, agreement or otherwise, regarding all persons permitted access to any Licensed Materials so as to enable Customer to fulfill its obligations under this Agreement.

## 3. CONFIDENTIALITY

Customer shall take all reasonable steps to prevent use of the Licensed Materials in any manner inconsistent with the terms of this Agreement and to prevent disclosure of the Licensed Materials to third parties, and shall protect the Licensed Materials in at least the same manner as it would protect its own confidential information.

## 4. TITLE

The Products shall at all times remain the property of Virtual Console. Customer agrees not to pledge, loan, mortgage or dispose of the Products, or to permit any liens to be placed on the Products.

## 5. TERMINATION

This Agreement shall terminate upon the expiration of the term stated below or upon written request from either party, whichever occurs first.

## 6. RETURN OF PRODUCTS AND LICENSED MATERIALS

Upon termination of this Agreement, Customer shall return to Virtual Console, at Customer’s expense and risk of loss, the Products and all copies of the licensed Materials, in the same condition as at the time of delivery, and the license granted under this Agreement shall automatically terminate. Customer must ship back the evaluated products within one business day after this agreement is terminated. Shipping must be administered via carrier with tracking ability and products must be fully insured at the quoted cost. Customer is obligated to provide tracking number to [sales@vconsole.com](mailto:sales@vconsole.com). If the tracking number and consequently licensed materials are not received, Customer shall be invoiced and agrees to pay for the Licensed Materials at the prices listed in Exhibit A.

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Customer shall return the products to:

Virtual Console, LLC  
2525 Sunstone Lane  
Pearland, TX 77584

## 7. SHIPPING

Unless otherwise arranged with Virtual Console, all shipping and insurance costs involved in the transportation of the products to and from the Customer's site are the responsibility of the Customer. If no special arrangements are made, standard \$45 FEDEX ground shipping charge (insurance included) for each product will be billed to the Customer if destination is in continental USA and \$150 for international. **Shipping and Insurance Costs are non-refundable.**

## 8. WARRANTY

THE PRODUCTS ARE FURNISHED TO CUSTOMER ON AN "AS IS" BASIS. VIRTUAL CONSOLE MAKES NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. LIMITATION OF LIABILITY

IN NO EVENT SHALL VIRTUAL CONSOLE BE LIABLE TO CUSTOMER FOR ANY CLAIMS FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL LOSSES, DAMAGES OR EXPENSES ARISING OUT OF THIS AGREEMENT, OR THE USE OR PERFORMANCE OF THE PRODUCTS, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR UNDER ANY STATUTE, INCLUDING NEGLIGENCE AND STRICT LIABILITY OR OTHERWISE, EXCEPT FOR BODILY INJURY CAUSED BY NEGLIGENT ACTS OR OMISSIONS OF VIRTUAL CONSOLE.

## 10. SEVERABILITY

If any provision of this Agreement shall be held invalid, illegal or unenforceable, the remaining provisions shall in no way be affected or impaired thereby.

## 11. ASSIGNMENT

This Agreement and the rights granted hereunder may not be assigned by Customer without the prior written consent of Virtual Console. Any assignment contrary to this section shall be void.

## 12. GOVERNING LAW

THE VALIDITY AND PERFORMANCE OF THIS AGREEMENT SHALL BE GOVERNED BY NEW YORK LAW, WITHOUT REFERENCE TO CONFLICT OF LAW PRINCIPLES.

## 13. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes all proposals, oral or written, all previous negotiations and all previous communications between the parties with respect hereto. No representation, warranty or promise not specifically stated in this Agreement shall be binding on Virtual Console.

TERM: 7 days from the receipt of the Products, unless terminated earlier in accordance with this Agreement.

### Your Shipping Address:

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

State/Province \_\_\_\_\_ Phone \_\_\_\_\_

Country \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

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**Credit Card Type:**    **Visa**             **MasterCard**             **Amex**             **Discovery**

Your Credit Card Number\*: \_\_\_\_\_ Expiration date: \_\_\_\_\_

**CVV2:** \_\_\_\_\_

**Your billing address:**

First Name \_\_\_\_\_ Last Name \_\_\_\_\_

Company \_\_\_\_\_

Address \_\_\_\_\_

City \_\_\_\_\_ Zip Code \_\_\_\_\_

State/Province \_\_\_\_\_ Phone \_\_\_\_\_

Country \_\_\_\_\_ Fax \_\_\_\_\_

Email \_\_\_\_\_

By signing this agreement you authorize Virtual Console to charge your credit card for shipping and also hold funds in the amount of products' price in "authorize only" mode until products are returned. In case those products are not returned to Virtual Console within specified period, your "authorize only" funds will be captured.

This Agreement is executed as of the \_\_\_\_\_ day of \_\_\_\_\_ by and between the authorized representatives of the parties.

**VIRTUAL CONSOLE, LLC**

Corporate Headquarters  
2881 Terrell Ave  
Oceanside, NY 11572 USA

**CUSTOMER**

Company: \_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

**Exhibit A**

<b>Part Number</b>	<b>Product Description</b>	<b>Price</b>
1.		
2.		
3.		
4.		
5.		
6.		
7.		
8.		
9.		
10.		
11.		

Please complete this form and fax it to Virtual Console  
Phone: 832-754-8894 Fax: 718-228-5437  
If you encounter any problems, write to [sales@vconsole.com](mailto:sales@vconsole.com)