

Thank you for choosing the EEMBC® ULPBench™ Benchmark Application (hereafter, the “ULPBench”). Please read this EEMBC ULPBench End User License Agreement (“Agreement”) carefully.

This Agreement applies to your use of ULPBench and any updates or improvements thereof (collectively, “ULPBench”). By using or completing the installation of ULPBench, you (or if you are entering into this Agreement on behalf of an entity, then the entity that you represent) are accepting the terms of this Agreement and you are bound by its terms and conditions.

EEMBC Members in good standing are exempt from this Agreement and their use of ULPBench is governed by the terms and conditions of the EEMBC membership.

1. Acceptance of this Agreement:

- a. You accept when you do any of the following things:
 1. Provide electronic acceptance by clicking the below “OK” button or;
 2. Use ULPBench.
- b. If you are aged 13 or older but under the age of 18, you must review the terms and conditions of this Agreement with your parent or guardian who may accept this Agreement on your behalf by clicking the below “OK” button.
- c. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, THEN CLICK THE “DO NOT ACCEPT” BUTTON AND DO NOT DOWNLOAD OR USE ULPBENCH.

2. You agree to the following terms and conditions as follows:

- a. The availability of ULPBench is subject to our business policies, practices and procedures, which we can change without giving notice to you. Unless otherwise prohibited by law, we reserve the right to unilaterally add to or change the terms and conditions of this Agreement at any time.
- b. Subject to the terms and conditions of this Agreement, EEMBC hereby grants to you a limited non-exclusive, personal, non-transferable, non-sublicensable limited copyright license to access, use and run ULPBench. This Agreement entitles you to submit the results generated by ULPBench to the EEMBC website database, access the database to browse your own results, other users’ results and other performance measurement data contained in the website database. Any other use of ULPBench is expressly forbidden. This license is with respect to copyright rights only and specifically excludes any and all the rights of EEMBC or its affiliates. Except for the limited copyright rights granted to you under this Section 2.b. with respect to the use of ULPBench, you further acknowledge and agree that EEMBC has no right to sublicense or otherwise grant any rights under any other intellectual property right, including, without limitation any patent rights. For the purpose of this Agreement “Intellectual Property Rights” means all current and future worldwide copyrights, trade secrets, patents and other patent rights, utility models, trademarks, trade names, service marks and all other intellectual property rights, including all applications and registrations with respect thereto.
- c. A Commercial ULPBench license from EEMBC is required for Licensee to disclose, reference, or publish test results generated by ULPBench in Licensee’s marketing of any of Licensee’s commercially-available, product-related materials, including, but not limited to product

briefs, product brochures, product datasheets, or any white paper or article made available for public consumption.

- d. You agree not to resell ULPBench to a third party. You agree not to redistribute ULPBench to a third party, excluding the code sections indicated as the ULPBench Porting Layer. You also agree that your use of ULPBench will not be for any purpose that is illegal. We can, without notice, limit, suspend, or end availability of ULPBench or any agreement with you for good cause, including, but not limited to: a) breach of this Agreement; b) modification of ULPBench, excluding the code sections indicated as the ULPBench Porting Layer; or c) use of ULPBench to violate or infringe upon any rights of any kind of any third party, including, but not limited to, the right, trademark, agreement, defamation, right of privacy or publicity or any other right of any person or entity.
- e. You shall not attempt to knowingly permit or encourage others to attempt to: a) rent, loan, lease, sublicense, transfer, network, reproduce, display, or otherwise distribute ULPBench; b) copy, manufacture, translate, modify, enhance or extend ULPBench.
- f. EEMBC and its licensors retain all right, title, and interest in and to ULPBench and any updates and improvements thereof, including, without limitation, all copyrights, patent rights, and trademark rights and all other intellectual property rights therein. This Agreement does not convey to you any ownership interest in any of the intellectual property rights of EEMBC or its licensors. Any rights not expressly granted to you herein are hereby reserved by EEMBC and its licensors.

3. Disclaimers of Warranty and Limitation of Liability

- a. We make no representations or express warranties, express or implied, including, without limitation, to the extent permitted by applicable law, regarding any implied warranties of non-infringement of third party rights, merchantability or fitness for a particular purpose concerning ULPBench, and any warranties that may arise by law or out of course of performance, course of dealing or usage of trade. We cannot promise accuracy or error-free service and do not authorize anyone to make any warranties on our behalf.
- b. To the maximum extent permitted by law, in no event shall EEMBC or its affiliates be liable for any consequential, special, incidental, or indirect damages of any kind arising out of the use of ULPBench, or otherwise under or in connection with any provision of this Agreement (including, but not limited to, lost data, lost profits or confidential or other information, for business interruption, for personal injury, for loss of privacy, for failure to meet any duty including of good faith or of reasonable care, for negligence and for any other pecuniary or other loss whatsoever), even if EEMBC and its affiliates have been advised of the possibility of such damages. The entire liability (in the aggregate) of EEMBC, and its affiliates under any provision of this Agreement and your exclusive remedy hereunder shall be limited to fifty dollars (\$50). The foregoing limitation, shall apply to the maximum extent permitted by applicable law, even if any remedy fails its essential purpose.
- c. While EEMBC has tested the software extensively on a number of different devices, but you assume the entire risk as to the installation, operations, results and performance of ULPBench. EEMBC assumes no responsibility for the accuracy or application of or errors or omissions in ULPBench.

- d. You acknowledge that EEMBC has no control over your use or exploitation of ULPBench. You therefore agree to indemnify and hold EEMBC harmless against any costs, claims, demands, expenses and liabilities of whatsoever nature by any third party arising from such use or exploitation.

4. Miscellaneous

- a. ULPBench is available for individuals aged 13 years or older. If you are 13 or older but under the age of 18, you must review these terms and conditions with your parent or guardian to make sure that you and your parent or guardian understand these terms and conditions. If you are downloading for an organization, you are representing that you are authorized to bind it, and where the context requires, "you" means the organization.
- b. If you are acting on behalf of an agency or instrumentality of the U.S. government, ULPBench, is "commercial computer software" and developed exclusively at private expense by EEMBC. Pursuant to FAR 12.212 or DFARS 227 7202 and their successors, as applicable, use, reproduction and disclosure of the software is governed by the terms of this Agreement.
- c. Nothing under this Agreement or the fact that you have access to and use of ULPBench gives you any right, title or interest or license to reproduce, modify or otherwise use our or any third party trademarks, service marks, graphics, or logos.
- d. This Agreement shall commence upon the earlier of the date that you first use ULPBench or the date that you accept this Agreement and shall continue until terminated in accordance with Section 4.e. below.
- e. This Agreement shall terminate immediately, without notice, if you fail to comply with any term of this Agreement. In addition EEMBC, may terminate this Agreement at any time upon notice to you or by posting notice on EEMBC's website located at www.eembc.org. Upon termination, you agree to immediately cease using ULPBench. Sections 2.e, 3.b and 3.d shall survive the expiration or termination of this Agreement.
- f. A waiver of any part of this Agreement in one instance is not a waiver of any part or any other instance. You are not permitted to assign this Agreement or any of your rights or duties under it. We may assign all or part of this Agreement without notice.
- g. It is expressly understood that this Agreement is non-exclusive for both parties. Except as specifically agreed otherwise, this Agreement does not grant either party any exclusive privileges or rights.
- h. If any part of this Agreement is held invalid, that part may be severed from this Agreement while the remainder of the Agreement continues in effect. This Agreement and the documents to which it refers form the entire Agreement between us on their subjects. You cannot rely on any other documents, and you have no other rights with respect to Application or this Agreement, except as specifically provided by law. This Agreement is not for the benefit of any third party. This Agreement and all disputes between us (whether or not based on this Agreement) are governed by the laws of the state of California, without regard to that state's conflict of laws principles. The United Nations convention on Contracts for the International Sale of Goods is expressly disclaimed and shall not apply. You hereby acknowledge and agree that the restrictions, limitations, conditions and exclusions imposed

in this Agreement on the rights granted in this Agreement are not a derogation of the benefits of such rights. This Agreement is the entire and exclusive Agreement between EEMBC and you, along with any other written communications between EEMBC and you.

- i. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any of the provisions of this Agreement, we will be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which we may be entitled.

Contact Us

If you have questions or concerns about this EULA, contact us at:

EEMBC

Attention: Legal Counsel

4354 Town Center Blvd., Suite 114-200

El Dorado Hills, CA 95762