

CLA - FAQ

- Q1 Under what circumstances do I need to execute the SD Memory Card License Agreement (“CLA”)?*
- A1 You need to execute the CLA if you are making semi-conductor memory products (e.g., flash memory cards, ROM cards, SD I/O Combo Cards, miniSD Cards) which utilize SD technology (for example, cards based on the SD Group Specifications (as defined in the CLA)). Please also see Q4 below.
- Q2 How do I become a CLA Licensee (“Licensee”) and what contracts do I need to sign?*
- A2 Please contact the SD-3C LLC’s licensing representative (Miller, Kaplan, Arase and Co., LLP at Mquackenbush@millerkaplan.com) and execute the CLA NDA. After executing the CLA NDA, you will be provided with a copy of the CLA. Upon execution of the CLA and payment of certain fees, you will become a Licensee. Depending on the products that you wish to make, you may also be required to sign the License Agreement for SDA Memory Card Specifications (“LAMS”) with the SD Card Association (“SDA”). The SDA can be contacted at <http://www.sdcard.org/>.
- Q3 What types of cards are licensed under the CLA?*
- A3 The CLA allows you to select the types of cards that you wish to include in your license. These choices include standard SD Flash Memory Cards, SD OTP Cards and SD ROM Cards.
- Q4 How do I obtain a license for the miniSD Memory Card or the SD I/O Combo Card?*
- A4 To manufacture miniSD Memory Cards or SD I/O Combo Cards you must execute the CLA and the LAMS. The CLA can be obtained from the SD-3C LLC’s licensing representative (Miller, Kaplan, Arase and Co., LLP at Mquackenbush@millerkaplan.com). The LAMS can be obtained from the SDA. The SDA can be contacted at <http://www.sdcard.org/>.
- Q5 Does an SD Memory Card need to comply with all of Part 1, Part 2 and Part 3 of the SD Group Specifications?*
- A5 Yes, provided that an SD Memory Card needs to only comply with a single “mechanical form factor” and “pin assignment” therefor, and all the other portions of Part 1 of the SD Group Specifications to fully comply with Part 1 of the SD Group Specifications.

Q6 What is the cost of a CLA?

A6 The CLA includes an annual administrative fee and a royalty based on sales of licensed products. The specific costs associated with the CLA are confidential and can be obtained after executing the CLA NDA. Please contact the SD-3C LLC's licensing representative (Miller, Kaplan, Arase and Co., LLP at Mquackenbush@millerkaplan.com) and execute the CLA NDA.

Q7 Is it permitted for a Licensee to have components of a card consigned to such Licensee from another party ("Consignor"), such that the Licensee makes a card for the Consignor and then sells the card to the Consignor less the price of the consigned components, and then offers a lower total royalty amount to the Licensor based on the lower sale price to the Consignor?

A7 No. This is not permitted, and is a sham sale of an unlicensed product. If the Licensee is making cards on behalf of the Consignor, the Consignor should be a CLA Licensee, and it is the Consignor who should be paying the royalty to the Licensor. The "*Licensee*" would not need to be a CLA Licensee and would merely be making the cards under the "have-made" rights of the Consignor. Additionally, the last sentence of Section 1.9 of the CLA which states: "**Licensee shall transact no sale, the effect of which is to reduce the Royalty paid by Licensee to Licensor, provided, however, that Licensee shall be free to determine the selling price of the licensed products, and that Licensee's sale of the licensed products subject to arms-length discounts, allowances and returns shall not be deemed to be a sale, the effect of which is to reduce the Royalty paid by Licensee to Licensor,**" clearly prohibits the type of transaction referenced in Question 7. In the case of a disposition of a product to (or for the account of) a party which provided (whether by consignment or otherwise) one or more components or subassemblies of such product, revenues recognized shall mean the revenues recognized from the first third party which did not provide (or one on whose behalf there was not provided) one or more components or subassemblies of such product. For the avoidance of doubt, the royalty must be based on a price that is reasonably equivalent to the then prevailing fair market price of the entire card as a whole.

Q8 Is the following scenario a permitted use of the license under a CLA: Party A signs the CLA and makes cards under such license. Party A then sells these cards to Party B for an artificially low price of \$X. Party B then sells the card to Party C at the then prevailing fair market price of \$4X. Party A and Party B arrange for other exchanges to adjust for the \$3X "discount" that was given by Party A. Party A offers the Licensor a royalty based on the sale at \$X.

A8 Although the manufacture by Party A is a permitted use under the CLA, the royalty being offered to the Licensor is based on a sham sale and thus is an unlicensed sale. Section 1.9 of the CLA which states: “**Licensee shall transact no sale, the effect of which is to reduce the Royalty paid by Licensee to Licensor, provided, however, that Licensee shall be free to determine the selling price of the licensed products, and that Licensee’s sale of the licensed products subject to arms-length discounts, allowances and returns shall not be deemed to be a sale, the effect of which is to reduce the Royalty paid by Licensee to Licensor,**” clearly prohibits the type of transaction referenced in Question 8. The correct royalty offered to the Licensor by Party A should be based on the sale of cards at the then prevailing fair market price. One way to judge whether the price at which Party A is selling its cards is a fair market price, is if Party A makes its cards available for purchase at the same price by any and all third parties.

Q9 *With regard to Section 1.9 of the CLA, what types of “discounts, allowances and returns” are permitted under the CLA?*

A9 Normal and customary discounts, allowances and returns are permitted under the CLA. Such normal and customary discounts, allowances and returns are limited to those amounts which are routinely provided by Licensee to its customers and are generally considered as normal and customary in the industry.

Q10 *In the following scenario do Party A and Party B both have to pay royalties to Licensor on the sale of the Memory Card? Scenario: Party A is a Licensee who makes and sells the Memory Card to Party B. Party A pays the applicable royalty for the Memory Card to Licensor. Party B then sells the Memory Card to Party C.*

A10 No. Only Party A has to pay a royalty to Licensor. Please note that the sale by Party A must be in compliance with the terms and conditions of the CLA.

Q11 *What names can I use for a SD Memory Card?.*

A11 Pursuant to Section 4.8 of the CLA, the names that are permitted for use by a Licensee for SD Memory Cards are:

(A) For SD Flash Memory Cards: (i) SD Flash Memory Card, (ii) SD Memory Card; (iii) SD Card; (iv) miniSD Flash Memory Card, (v) miniSD Memory Card; or (vi) miniSD Card, as applicable.

(B) For SD ROM Cards: (i) SD ROM Card, (ii) SD Memory Card; (iii) SD Card; (iv) miniSD ROM Card, (v) miniSD Memory Card; or (vi) miniSD Card, as applicable.

(C) For SD OTP Cards: (i) SD OTP Card, (ii) SD Memory Card; (iii) SD Card; (iv) miniSD OTP Card, (v) miniSD Memory Card; or (vi) miniSD Card, as applicable.

Q12 If Party A and Party B are both CLA Licensees as well as licensees under the SD Host/Ancillary Product License Agreement ("HALA"), do they get the benefit of the royalty-free license from the other party under Section 2.4 of the CLA or are they covered by the non-discriminatory, fair and reasonable license under Section 2.5 of the HALA?

A12 Party A and Party B shall each receive the benefit of the more favorable royalty-free license under Section 2.4 of the CLA with respect to the other party.

Q13 How do I obtain a license for an SD I/O Card which is capable of performing any function other than memory storage and which has a non-volatile memory capacity of 2.0 Megabytes (uncompressed) or less where this memory is used expressly for storing executable code that is used solely for facilitating the interface between a host device and the SD I/O Card, or storing executable code solely for the performance of a non-memory storage ancillary function ("SD I/O Supplemental Code Storage Card" or "SD I/O SCS Card")?

A13 To obtain a license for an SD I/O SCS Card, you need to execute the CLA and the LAMS. Such an SD I/O SCS Card is deemed to be an SD Memory Card under the CLA even though this SD I/O SCS Card does not comply in whole or in part with Part 3 of the SD Group Specifications and the SDA Specifications. An SD I/O SCS Card must comply: (a) with Part 1 of the SD Group Specifications and the SDA Specifications, (b) with Part E-1 of the SDA Specifications; and (c) in whole or in part with Part 2 of the SD Group Specifications and SDA Specifications with respect to a Code Storage Area ("CSA") implementation as defined in Part E-1 of the SDA Specifications.

Q14 Is it true that the non-volatile memory capacity of 2.0 Megabytes (uncompressed) for an SD I/O SCS Card referenced in Question 1 above has been raised to 16.0 Megabytes (uncompressed)?

A14 Yes, provided that such non-volatile memory capacity is used expressly for storing executable code that is used solely for facilitating the interface between a host device and the SD I/O SCS Card, or storing executable code solely for the performance of a non-memory storage ancillary function.