

PATENT LICENSE AGREEMENT

This Patent License Agreement (“**Agreement**”) is made as of _____, 2010 (the “**Effective Date**”) by and between _____, LLC, a Delaware limited liability company (“**Licensor**”), and _____ (“**Licensee**”).

RECITALS

WHEREAS, Licensor wishes to grant to Licensee, and Licensee wishes to obtain, a non-exclusive license with respect to the patent applications and patents set forth in Schedule A, together with any and all reissues, results of reexamination, extensions, divisions, continuations and continuations in part of such patents and patent applications, and any foreign counterparts of any of the foregoing, in each case to the extent Licensor has an ownership interest or has otherwise acquired a right to grant a license thereunder (the “**Licensed Patents**”), in accordance with the terms and conditions of this Agreement;

NOW, THEREFORE, in consideration of the representations, covenants and other terms and conditions contained herein, and mutual consideration which is hereby acknowledged, the parties hereto agree as follows:

AGREEMENT

1. DEFINITIONS AND RULE OF INTERPRETATION.

- 1.1 Affiliate** means, with respect to an Entity, any Entity that directly or indirectly controls, is controlled by, or is under common control with such Entity. An Entity shall be regarded as in control of another Entity if it owns, or directly or indirectly controls, fifty percent (50%) or more of the voting stock or other ownership interest of the other Entity, or if it directly or indirectly possesses the power to direct or cause the direction of the management and policies of the other Entity by any means whatsoever. In any country where the local law does not permit foreign equity participation of greater than fifty percent (50%), “Affiliate” also includes any Entity in which the Licensee owns or controls, directly or indirectly, the maximum percentage of voting stock or other ownership interest permitted by local law.
- 1.2 Authorized Third Party** means any Entity that is implicitly or explicitly authorized by Licensee or its Affiliates to exercise any legal rights or to perform any activities with respect to an Acquired Item, including without limitation manufacturers, original equipment or device manufacturers, assemblers, replicators, integrators, distributors, resellers, value-added resellers, customers and users.
- 1.3 Entity** means a corporation, association, partnership, business trust, joint venture, limited liability company, proprietorship, unincorporated association, individual or other entity that can exercise independent legal standing

- 1.4 Licensed Product** means any product, hardware, software, service or material the making, using, offering for sale, selling, importing or hosting of which would directly or indirectly infringe a claim of the Licensed Patents.
- 1.5 Program** means a plurality of instructions capable of being interpreted or executed by a device, whether or not such instructions are in machine-readable form and whether or not such instructions require some processing (such as assembly or compilation) prior to interpretation or execution and whether or not such instructions are implemented in hardware or software.
- 1.6 Scope of Activities and Rights.** The terms sell, offer for sale and import, and cognate forms thereof, as used throughout this Agreement with reference to Licensed Products and Acquired Items, include without limitation, license, lease, offer for license or lease, distribute, dispose of and any other form or type of conveyance.
- 1.7 Acquired Item** means (i) an item obtained, directly or indirectly, from Licensee or any of its Affiliates, wherein such obtained item individually embodies one or more elements of a claim of a Licensed Patent, but is not itself a Licensed Product; (ii) plural items obtained, directly or indirectly, from Licensee or any of its Affiliates, wherein such obtained items, as used together, both embody one or more elements of a claim of a Licensed Patent and are not a Licensed Product; and/or (iii) a Licensed Product obtained, directly or indirectly, from Licensee or any of its Affiliates, whether any such Licensed Product is so obtained as a single product, or as a plurality of products that together form the Licensed Product.

2. LICENSE GRANT AND IMMUNITIES.

- 2.1 Grant.** Subject to the terms and conditions of this Agreement, Licensor hereby grants to Licensee a perpetual, irrevocable, non-exclusive, non-transferable (except as set forth in Section 8.1), non-sublicensable (except as set forth in Section 2.2), fully paid-up, worldwide license under the Licensed Patents (i) to research, develop, make, have made, use, host, offer for sale, sell, distribute directly or indirectly, import and otherwise dispose of any Licensed Product, and (ii) to practice any method, service, process or procedure within the Licensed Patents.
- 2.2 Sublicenses.**
- 2.2.1 Sublicenses to Affiliates.** The license set forth in Section 2.1 includes the right of Licensee to grant sublicenses to any of its Affiliates. Any sublicense granted by Licensee to its Affiliate hereunder shall not include the right of such Affiliate to grant further sublicenses to any unaffiliated third party except as set forth in Section 2.2.2.
- 2.2.2 Sublicenses for Software.** The license set forth in Section 2.1 and any sublicense to Affiliates granted pursuant to Section 2.2.1 each includes the limited right by Licensee or its applicable Affiliates to sublicense to

(a) distributors or resellers of Licensee or its Affiliates through multiple tiers solely for the purpose of reproducing and distributing (optionally, under such distributor's or reseller's own license(s)) Licensed Product(s) (including bundling unmodified software component(s) of the Licensed Product(s) with other software products) developed by or for the Licensee or its Affiliates, and (b) end user customers of Licensee's or its Affiliate's Licensed Product(s) to permit such customers to use such Licensed Product(s) (including practicing any method, process or procedure applicable to such Licensed Product) and to reproduce any software component(s) of such Licensed Product(s).

2.2.3 Sublicense Upon Sale of a Business. Licensee shall have the right to sublicense a third party under all or any portion of the rights and licenses granted herein in connection with the sale, transfer or other disposition to that third party of a portion of Licensee's or any of its Affiliates' business related to this Agreement (a "Spin-Out"), and any such sublicensee shall have the same right to grant further sublicenses to another third party in connection with any further sale, transfer or other disposition of a material portion of the Spin-Out. All sublicenses granted pursuant to this Subsection 2.2.3 shall be limited to Licensed Products having substantially similar specifications as those Licensed Products sold, licensed or under development by Licensee within the scope of the Spin-Out immediately prior to the sale, transfer or other disposition of the Spin-Out by Licensee, and future versions of such Licensed Products

In addition, the sublicense granted under this Section 2.2.3 is limited to the following gross revenue amounts:

(A) For the first year after the effective date of the Spin-Out, such sublicense is limited to the greater of (i) 25 million U.S. dollars gross revenue of Licensed Product; or (ii) the prior year's gross revenue of Licensed Product increased by the Annual Growth Rate.

The "Annual Growth Rate is the greater of (i) 1.5 times the growth rate for Licensee's gross revenue of Licensed Product for the year immediately preceding the effective date of the Spin-Out; or (ii) 1.5 times the reported growth rate in gross revenue for the entire market for the Licensed Product, as reported by IDC or by a similar provider of market intelligence, advisory services, and events, if no relevant IDC assessment exists, for the year immediately preceding the effective date of the Spin-Out. The Annual Growth Rate is calculated once and is constant thereafter; that is, the Annual Growth Rate does not change from year to year.

(B) In the second and subsequent years after the effective date of the Spin-Out, such sublicense is limited to the previous year's gross revenue limit increased each year by the Annual Growth Rate, as defined above.

2.2.4 Immunity for Certain Program Modifications. Licensor hereby grants to all third parties (including but not limited to Licensee's Affiliates, customers, distributors (direct and indirect) and end users) who receive Programs from Licensee or any of its Affiliates that are Licensed Products a perpetual, irrevocable, non-exclusive, non-transferable, non-sublicensable, fully paid-up, worldwide license under the Licensed Patents for the formation, modification, use, sale, offer for sale, importation, distribution or other transfer of any changes or modifications or any additions where such additions do not significantly change the features or functions of such Programs or significantly add to the value of the such Programs.

2.2.5 The license set forth in Section 2.1 and any sublicense to Affiliates granted pursuant to Section 2.2.1 each includes the rights required to distribute software licensed under the GNU General Public License Version 2 (in particular, as required by Section 7) and Version 3 (in particular, as required by clause 3 of the fifth paragraph of Section 11 and Section 12).

2.3 Combinations. Authorized Third Parties who obtain an Acquired Item shall be granted a non-exclusive sublicense under the Licensed Patents to:

- (a) make, use, sell, offer for sale, or import:
 - (i) a combination of Acquired Items; and/or
 - (ii) a combination of one or more Acquired Items with one or more other items;

provided and to the extent that the Acquired Item(s), so combined, give rise to the combination being a Licensed Product; and provided further that, the Authorized Third Parties are not so licensed under this Section 2.3(a) for making, using, selling, offering for sale or importing of the one or more other items apart from such combination; and/or

- (b) use a method or process that includes steps implemented by an Acquired Item in combination with other steps, and to sell, offer for sale, or import products resulting from such method or process.

2.4 Rights of Third Party Manufacturer. A product or Program which, if assembled or copied by Licensee or any of its Affiliates, would be a Licensed Product shall also be licensed and subject to the same rights and immunities granted herein if assembled or copied by a third party for or on behalf of Licensee or any of Licensee's Affiliates.

2.5 Interfaces. If Licensee or any of its Affiliates licenses or provides a proprietary specification to a third party, where such specification includes a definition of one or more proprietary communication interfaces or protocols that are necessary

for a third party product to interoperate with a Licensed Product and such proprietary specification is not associated with any industry standards specification, such third party shall be immune from any claim or suit under any Licensed Patent for making, using, importing, selling and/or offering for sale those portions of such third party product that implement such proprietary communication interfaces or protocols to communicate with such product or portion thereof that is a Licensed Product.

3. **RELEASE**

- 3.1** Licensor hereby releases, acquits and forever discharges Licensee, its Affiliates, Authorized Third Parties, and all of their respective current and former predecessors, successors, agents, attorneys, insurers, servants, distributors, retailers, resellers (including but not limited to value-added resellers), manufacturers (including but not limited to original equipment or device manufacturers), suppliers, replicators, integrators, employees, officers, directors, users, and customers (collectively “**Licensee Released Parties**”) from any and all actions, causes of action, claims or demands, liabilities, losses, damages, attorneys’ fees, court costs, or any other form of claim or compensation for known and unknown acts, related to or based upon any claim of infringement of the Licensed Patents, that happened prior to the Effective Date, and Licensor covenants not to sue or threaten to sue (or instruct, encourage, or aid a third party to sue or threaten to sue) any Licensee Released Party on account of any such claim; provided that this Agreement would be a complete defense against such claim had such acts happened after the Effective Date.
- 3.2** **Acquired Company.** In the event of an acquisition of an Entity (“**Acquired Company**”) by Licensee or its Affiliates, then Licensor shall release, acquit and forever discharge the Acquired Company, its Authorized Third Parties and all of its current and former insurers, attorneys, servants, officers, employees, agents, directors, shareholders, owners, users, customers, distributors, resellers (including but not limited to value-added resellers), manufacturers (including but not limited to original equipment or device manufacturers), suppliers, assemblers, replicators, and integrators from any and all actions, causes of action, claims or demands, liabilities, losses, damages, attorneys’ fees, court costs, or any other form of claim or compensation for known and unknown acts related to or based upon any claim of infringement of the Licensed Patents based upon acts occurring prior to the acquisition date of such Acquired Company.
- 3.3** **Release of Unknown Claims.** Each release contained in this Agreement extends to claims to which Licensor does not know or suspect to exist in its favor, which if known by it, would have materially affected its decision to enter into the releases contained in this Agreement. Licensor acknowledges that it is familiar with Section 1542 of the Civil Code of the State of California (and similar or analogous statutes and common law in other relevant jurisdictions), which is quoted as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW, OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR.

Licensor expressly waives its right under Section 1542 (and the similar or analogous statutes and common law in other relevant jurisdictions) as to any unknown claims within the scope of the releases under this Agreement.

4. FEES AND PAYMENT.

4.1 License Fee. In full consideration of the license granted to Licensee hereunder, Licensee shall pay to Licensor a non-refundable license fee of _____ Dollars (\$_____) within ten (10) days after the Effective Date. If the foregoing fee is not received within ten (10) days after the Effective Date, this Agreement shall terminate and no license or other rights to the Licensed Patents shall have been granted under this Agreement.

4.2 Wire Transfer. All fees due hereunder shall be paid in U.S. Dollars by wire transfer to such financial institution and account number as Licensor may designate in writing to Licensee.

5. CONFIDENTIALITY.

Except as the parties may have agreed in writing previously (which shall not be affected by reason of this Agreement), neither party shall disclose, in whole or in part, the terms and conditions set forth in this Agreement; provided, however, that (a) Licensee shall have the right to disclose a copy of this Agreement without the prior consent of Licensor (i) to any third party, under a binding obligation of confidentiality that prohibits such third party from distributing such copy in whole or in part, (ii) to the extent reasonably necessary to defend itself in any litigation proceeding regarding the Licensed Patents, and (iii) to the extent required by applicable law, regulation or court order, and (b) Licensor shall only have the right to disclose a copy of this Agreement to a third party with the prior written consent of Licensee, or to the extent required by applicable law, regulation or court order.

6. TERM.

The term of this Agreement shall commence on the Effective Date and shall continue in full force and effect until the last to expire of the Licensed Patents.

7. DISCLAIMER; LIMITATION OF LIABILITY.

LICENSOR MAKES NO REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, OR ANY WARRANTIES THAT MAY ARISE FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE. TO THE EXTENT

ALLOWED BY APPLICABLE LAW, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITATION OF LIABILITY OR LIMITED REMEDY, NEITHER LICENSOR NOR LICENSEE SHALL UNDER ANY CIRCUMSTANCES HAVE ANY LIABILITY WHATSOEVER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES OF ANY KIND, OR ANY DAMAGES FOR LOST REVENUES, PROFITS, BUSINESS OR DATA, ARISING OUT OF OR RELATING TO THIS AGREEMENT, EVEN IF SUCH PARTY IS INFORMED IN ADVANCE OF THE POSSIBILITY OF SUCH DAMAGES.

8. MISCELLANEOUS.

8.1 Assignment. Licensee shall not assign or transfer any rights under this Agreement without the prior written consent of Licensor, except as follows:

- (a) Licensee shall have the right to assign this Agreement, without such written consent, to (i) one of its Affiliates, except to any of its Affiliates that resulted from a Change in Control (as defined in Section 8.1(b) below), or (ii) a Spin-Out to which Licensee has sold or transferred all or a portion of Licensee's business related to this Agreement.
- (b) Licensee shall have the right to assign this Agreement to the surviving entity following a Change in Control (as defined below) provided that (i) such surviving entity promptly, and in any event not later than ninety (90) days following the date of such assignment, executes a counterpart signature page reaffirming its rights and obligations hereunder and expressly agreeing in writing to be bound by the terms of this Agreement, and (ii) as of the date of the Change in Control, the licenses granted under this Agreement (and the right to grant sublicenses therefor) shall be limited in all respects to (A) the current products and services being offered by Licensee or its Affiliates, distributors or resellers immediately prior to the effective date of the Change in Control and (B) to any future products and services that are then being developed in good faith by Licensee or its Affiliate for which there is a development plan and budget in place as of the effective date of the Change in Control. As used in this Section 8.1(b), "Change in Control" means with respect to Licensee (i) the acquisition of Licensee by one or more entities by means of a transaction or series of related transactions (including, without limitation, any reorganization, merger or consolidation or recapitalization, but excluding any merger effected primarily for the purpose of changing the domicile of Licensee) unless Licensee's shareholders of record as constituted immediately prior to such transaction or series of related transactions will, immediately after such transaction or series of related transactions, hold (by virtue of securities issued in consideration of Licensee's securities), a majority of the voting power of the resulting or surviving entity, (ii) the sale, transfer, license or lease (but not including a transfer or lease by pledge or mortgage to a bona fide lender) of all or substantially all of the assets of Licensee, whether in a single transaction or in a series of related

transactions, or (iii) the closing of the transfer (whether by merger, consolidation or otherwise, but excluding any merger effected primarily for the purpose of changing the domicile of Licensee and any transaction or series of related transactions the sole purpose of which is to create a holding company that is owned in substantially the same proportions by the persons who held Licensee's securities immediately prior to such transaction or series of related transactions), pursuant to any transaction or series of related transactions, to a person or group of affiliated persons, of Licensee's securities if, after such closing, such person or group of affiliated persons would hold a majority of the voting power of Licensee. Notwithstanding the foregoing, Change in Control shall not include (x) any transaction (or series of related transactions) by which Licensee, the securities of Licensee, or all or any part of Licensee's assets, or any interest therein, are transferred by any means within a holding company group of which Licensee is a part, so long as the shareholders of record of the ultimate parent entity ("UPE") of such holding company structure, as constituted immediately prior to such transaction or series of related transactions, will immediately after such transaction or series of related transactions hold a majority of the voting power of the UPE of such holding company structure, as constituted immediately after such transaction or series of related transactions, (y) any transaction (or series of related transactions) consisting of the sale, transfer, issuance or exchange of securities of Licensee in connection with one or more private placements of securities, debt or other equity for financing or capital raising purposes, or (z) the sale, transfer or issuance of securities of Licensee in connection with one or more public offerings of the securities of Licensee (including without limitation any initial public offering of securities by Licensee).

- (c) Except as otherwise permitted herein, any purported assignment or transfer of this Agreement or the license herein by Licensee without the prior written consent of Licensor shall be null and void.

8.2 Notice. All notices required or permitted to be given hereunder shall be in writing and shall be hand delivered or sent by certified or registered mail, private industry express courier (with written confirmation of receipt) or facsimile (with a confirmation letter of the facsimile) to the address specified below or to such changed address as may have been previously specified in writing by the addressed party:

If to Licensor:

Attention: _____

Telephone: _____

Facsimile: _____

If to Licensee:

Attention: _____

Telephone: _____

Facsimile: _____

Each such notice shall be effective upon receipt.

8.3 Governing Law. This Agreement is to be construed in accordance with and governed by the internal laws of the State of Delaware and/or U.S. federal law, if applicable, without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of Delaware and/or U.S. federal law, if applicable, to the rights and duties of the parties.

8.4 No Waiver. Any failure of either party to enforce, at any time or for any period of time, any of the provisions of this Agreement shall not be construed as a waiver of such provisions or of the right of such party thereafter to enforce such provisions.

8.5 Severability. If any term, clause or provision of this Agreement shall be determined to be invalid, the validity of any other term, clause or provision shall not be affected; and such invalid term, clause or provision shall be deemed deleted from this Agreement.

8.6 Headings. The headings and captions used in this Agreement are for convenience only and shall not be considered in construing or interpreting this Agreement.

8.7 No Implied Obligations; Modifications. Each party expressly waives any implied right or obligation concerning the subject matter hereof. This Agreement may be modified only by an instrument in writing signed by both Licensor and Licensee.

8.8 Counterparts. This Agreement may be executed in counterparts, all of which taken together shall constitute one instrument binding upon the parties.

In Witness Whereof, the parties have caused this Agreement to be executed by their duly authorized representatives:

_____, LLC

[Licensee]

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

SCHEDULE A

Licensed Patents