

COMPANY: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Attention: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

## USB-IF TRADEMARK LICENSE AGREEMENT

This Trademark License Agreement (“License Agreement” or “Agreement”) is made and entered into as of the Effective Date described below by and between USB Implementers Forum, Inc., an Oregon, USA corporation (“USB-IF”), and \_\_\_\_\_, a \_\_\_\_\_ corporation (“COMPANY”).

### RECITALS

**WHEREAS**, USB-IF owns good and valuable trademarks and logos;

**WHEREAS**, USB-IF wishes to encourage the distribution of high-quality USB products through the maintenance of a USB-IF Test Procedure; and

**WHEREAS**, COMPANY wishes to license use of the Mark(s) (as defined below) in accordance with USB-IF’s terms and conditions described below.

**NOW, THEREFORE**, the parties hereby agree as follows:

### 1. DEFINITIONS

For purposes of this License Agreement the following terms shall have the following meanings:

(a) “Effective Date” shall mean the date of execution of this License Agreement by USB-IF.

(b) “License Grant” shall mean the license grant in Section 2(a) of this License Agreement.

(c) “Mark(s)” shall mean those marks listed in USB-IF Licensed Mark(s) Requirements.

(d) “Product” shall mean the specific model or version of COMPANY’s product that meets the requirements for use of the applicable Mark(s), as set forth in USB-IF Licensed Mark(s)

Requirements and which may include having submitted a representative sample to USB-IF, having passed any applicable USB-IF Test Procedure, and having been posted on the USB-IF Integrators List.

(e) “USB-IF Logo Usage Guidelines” shall mean the logo usage guidelines published by the USB-IF, including on its website, as may be amended by USB-IF from time to time with reasonable notice.

(f) “USB-IF Licensed Mark(s) Requirements” shall mean the listing of the Mark(s), and associated requirements for use of the Mark(s), published by the USB-IF, including on its website, as may be amended by USB-IF from time to time with reasonable notice.

(g) “USB-IF Test Procedure” shall mean the applicable USB-IF product testing and compliance requirements as set forth on the USB-IF website, as may be amended by USB-IF from time to time with reasonable notice.

(h) “Subsidiary(ies)” shall mean a company, corporation, or other entity in which, on a class by class basis, more than fifty percent (50%) of the stock entitled to vote for the election of directors is owned or controlled, directly or indirectly, by COMPANY, but only so long as such ownership or control exists. A Subsidiary is bound by all terms and conditions of this License Agreement to the same extent as COMPANY.

(i) “Territory,” subject to Section 2(e), shall mean worldwide.

## **2. LICENSE GRANT**

(a) Subject to and expressly conditioned upon compliance with the terms and conditions of this License Agreement, USB-IF hereby grants to COMPANY, and any applicable Subsidiaries of COMPANY, a nonexclusive, personal right (including through manufacturing and distribution agents of COMPANY and Subsidiaries) to use in the Territory, solely in the manner described in the USB-IF Licensed Mark(s) Requirements and the USB Logo Usage Guidelines, the Mark(s) in connection with applicable Product. The license right set forth in this Section 2(a) is not intended as a “certification” program, i.e., the Mark(s) do not represent that USB-IF certifies COMPANY’S Product in any way.

(b) Where applicable, upon passing the USB-IF Test Procedure by COMPANY’S Product and the posting of the Product on the USB-IF Integrators List, USB-IF shall so notify COMPANY within thirty (30) days, authorizing COMPANY to utilize the applicable Mark(s).

(c) COMPANY agrees to ensure its Subsidiaries’ compliance with the terms and conditions of this License Agreement. COMPANY agrees that it shall be jointly and severally liable for any breach of the terms and conditions of this License Agreement by such parties.

(d) USB-IF represents and warrants that to the best of its knowledge it has the right to enter into this License Agreement, including the right to license the Mark(s).

(e) USB-IF may modify the License Grant to eliminate any country or jurisdiction from this License Agreement if USB-IF determines, in its reasonable judgment, that use or continued use of the Mark(s) in such country or jurisdiction may subject USB-IF or any third party to legal

liability, or may jeopardize USB-IF's rights in the Mark(s) or any other USB-IF trademarks in that or any other country or jurisdiction. In such event, and upon notice from USB-IF, COMPANY shall, with reasonable promptness, cease all use of the Mark(s) in such country or jurisdiction.

(f) COMPANY may not use or reproduce the Mark(s) in any manner whatsoever other than as expressly described in the USB-IF Licensed Mark(s) Requirements and the USB Logo Usage Guidelines.

(g) COMPANY agrees and acknowledges that USB-IF retains all right, title and interest in and to the Mark(s). Except as expressly granted in this License Agreement, COMPANY shall have no rights in the Mark(s). Under no circumstances will anything in this License Agreement be construed as granting, by implication, estoppel, or otherwise, a license to any USB-IF technology or proprietary right other than the permitted use of the Mark(s) pursuant to the License Grant.

(h) COMPANY represents and warrants that it will use the Mark(s) solely as provided in this License Agreement and will not use the Mark(s) for promotional goods or products which, in USB-IF's reasonable judgment, will diminish or otherwise damage USB-IF's goodwill in the Mark(s), including but not limited to uses which could be deemed to be obscene, pornographic, excessively violent or otherwise in poor taste or unlawful, or which purpose or objective is to encourage unlawful activities.

### **3. PRODUCTS EXCLUDED FROM LICENSE GRANT**

(a) A product utilizing any means of wireless communication operating within the 3.1 to 10.6 GHz spectrum, occupying a bandwidth greater than 20 percent of the center frequency or a bandwidth of at least 500 MHz, and based on any standard other than the WiMedia PHY and MAC specifications, as may be amended from time to time, cannot qualify to utilize the USB-IF Marks for wired USB products unless it also passes the Wireless USB Interoperability Test Procedure.

(b) The License Grant shall not apply to products functioning as both a wired and a wireless USB Product unless the Product simultaneously passes both the USB-IF Wireless and Wired Test Procedures. It is not permissible to qualify each functionality independently. In the event a Product functioning as both a wired and wireless USB product passes such Test Procedures, COMPANY must use the wireless USB Mark in connection with such Product, but will have the option of also using the wired USB Mark in connection with such Product.

(c) The License Grant shall not apply to Product or product including, containing, or constituting USB connectors (or the designated pins inside the connectors) for uses or technology not expressly defined in an applicable USB specification.

### **4. FURTHER CONVEYANCES**

The License Grant is personal to COMPANY, and COMPANY shall not assign, transfer, or sublicense this License Agreement (or any right granted herein) in any manner without the prior written consent of USB-IF. Notwithstanding the foregoing, where COMPANY transfers to a third party all or substantially all of the business of COMPANY that is responsible for the manufacture and distribution of Product, that party shall be entitled to use the Mark(s) under the terms of this

version of the License Agreement upon execution of same.

## **5. GENERIC TERMS**

COMPANY understands that USB-IF takes the position that the terms “USB,” “USB Wireless,” and “Universal Serial Bus” when used in connection with any USB device are generic (collectively the “Generic Terms”). COMPANY agrees not to attempt to acquire or assert any exclusive trademark rights in the Generic Terms. COMPANY may file trademark applications for a trademark incorporating any of the Generic Terms provided that the Generic Terms are expressly disclaimed to the fullest extent possible under law. COMPANY further agrees that it will not assert against any person or entity any trademark, trade name, or similar rights it may now have or hereafter acquire in the Generic Terms.

## **6. FEES**

The License Grant further requires COMPANY to be current in its applicable fees or dues to the USB-IF. If COMPANY is not a USB-IF member, it shall pay a biennial logo administration fee of Three Thousand Five Hundred Dollars (\$3,500.00), the first of which is due upon execution of this License Agreement, the second of which is due on the second anniversary of execution of this License Agreement, and the last of which is due on the fourth anniversary of execution of this License Agreement. If COMPANY is USB-IF member, no logo administration fee shall be required, but COMPANY shall be current in its USB-IF membership dues.

## **7. QUALITY, INSPECTION, AND APPROVAL**

(a) COMPANY represents and warrants that to the best of its knowledge Product was intended and designed to comply with the applicable USB specification and is in compliance with the applicable USB specification, and COMPANY agrees to maintain the quality of Product at least at a level that meets industry standards and is commensurate with the quality of Product previously distributed by COMPANY.

(b) COMPANY shall supply USB-IF with suitable samples of Product and COMPANY’s use of the Mark(s) in connection with Product at any time upon thirty (30) days notice from USB-IF. COMPANY shall cooperate fully with USB-IF to facilitate periodic review of COMPANY’s use of the Mark(s) and of COMPANY’s compliance with the quality standards described in this License Agreement, as well as the USB-IF Licensed Mark(s) Requirements and the USB Logo Usage Guidelines. In any periodic review of COMPANY’s compliance, Product will be tested under the compliance requirements that were in effect when Product was last submitted to the USB-IF Test Procedure.

(c) If USB-IF, in its sole discretion, determines that any use of the Mark(s) or that the quality of any Product submitted to USB-IF for quality control purposes fails to conform to this License Agreement, USB-IF shall provide the COMPANY with written notice of such failure or deficiency. The COMPANY shall have sixty (60) days thereafter to satisfy USB-IF that the COMPANY has fully corrected and remedied any such deficiencies. Should the COMPANY fail to cure the deficiencies within said sixty (60) day period, USB-IF may terminate this License Agreement with respect to such deficient Product.

(d) COMPANY represents and warrants that the representative sample of the specific model or version of COMPANY's Product submitted to USB-IF for testing accurately represents the specific model or version of COMPANY's Product at all times Product is available during the term of this License Agreement.

(e) COMPANY represents and warrants that it will comply with all applicable laws, rules, and regulations regarding promotion and sale of Product with any of the Marks, and will not violate or infringe any right of any third party.

## **8. IDENTIFICATION AND USE**

(a) COMPANY shall mark every use of the Mark(s) with the trademark designation as described in and shall otherwise comply with the USB Logo Usage Guidelines.

(b) COMPANY acknowledges USB-IF's ownership of the Marks. COMPANY shall employ best efforts to use the Mark(s) in a manner that does not derogate from USB-IF's rights in any of the Marks and will take no action that will interfere with or diminish USB-IF's rights in the Marks. COMPANY agrees not to adopt, use, or register any corporate name, trade name, trademark, domain name, product name, service mark or certification mark, or other designation similar to the Mark(s). COMPANY agrees that all use of the Mark(s) by COMPANY will inure to the benefit of USB-IF. COMPANY may not use the Mark(s) in any way that implies endorsement or sponsorship by USB-IF of COMPANY's Product or services.

## **9. DEFENSE OF CLAIMS**

(a) In the event USB-IF receives information concerning an intellectual property infringement claim related to the Mark(s), USB-IF may at its expense, without obligation to do so, either (i) procure for COMPANY the right to continue to use the alleged infringing Mark(s) as set forth in the License Grant, or (ii) replace or modify the Mark(s) to make it non-infringing, and in which case, COMPANY shall with reasonable promptness thereafter cease use of the alleged infringing Mark(s).

(b) USB-IF shall have no liability for any intellectual property infringement claim based on COMPANY's manufacture or distribution of Product, or its use of the Mark(s).

(c) USB-IF MAKES NO WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE MARK(S), INCLUDING ANY WARRANTY OF NON-INFRINGEMENT, IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

(d) COMPANY agrees to indemnify and defend USB-IF from and against any and all claims, damages, costs, and expenses (including reasonable attorneys' fees) and pay the amount of any adverse final judgment (or settlement to which both parties consent) arising out of or related to the Product in any manner, including user claims regarding Product's defect, failure, or malfunction, provided COMPANY is notified promptly in writing of any claim, and COMPANY has sole control over its defense or settlement.

## **10. CONSEQUENTIAL, ET AL. DAMAGES**

EXCEPT AS SET FORTH IN PARAGRAPH 9(d), NEITHER PARTY SHALL BE LIABLE FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, PUNITIVE OR SPECIAL DAMAGES (INCLUDING LOSS OF BUSINESS PROFITS) ARISING FROM OR RELATED TO COMPANY'S MARKETING OR DISTRIBUTION OF PRODUCT, OR ANY USE OF THE MARK(S), REGARDLESS OF WHETHER SUCH LIABILITY IS BASED ON BREACH OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTIES, INFRINGEMENT OF INTELLECTUAL PROPERTY, FAILURE OF ESSENTIAL PURPOSE OR OTHERWISE, EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL USB-IF BE LIABLE FOR ANY DAMAGES FOR COMPANY'S USE OF THE MARK(S) IN VIOLATION OF THE TERMS AND CONDITIONS OF THIS LICENSE AGREEMENT.

## **11. INFRINGEMENT**

COMPANY shall promptly notify USB-IF of any suspected infringement of or challenge to the Mark(s) or any of its constituent elements.

## **12. TERM OF LICENSE AGREEMENT**

(a) The term of this License Agreement shall be for a period of six (6) years from the Effective Date, except as to certain Product described in Section 12(b) below, as to which the term of this License Agreement shall be indefinite; provided however, that USB-IF shall have the right to terminate this License Agreement with cause upon thirty (30) days prior written notice.

(b) Upon expiration of this License Agreement, the license right set forth herein may be renewed for an additional term by execution of a subsequent version of this License Agreement, as amended or not in USB-IF's discretion. Notwithstanding the foregoing, with respect to Product that at the time of the expiration of this License Agreement has passed the USB-IF Test Procedure and is posted on the USB-IF Integrator's List, COMPANY may at its option continue to use the Mark(s) in conjunction with that Product under the terms of this version of the License Agreement.

(c) From and after termination of this License Agreement, COMPANY shall cease and desist from all use of the Mark(s). However, unless the License Agreement is terminated for breach in connection with more than a single Product, COMPANY may distribute then-existing units of complying Product and advertising materials containing the Mark(s) for a period of six (6) months from the termination date; provided use of the Mark(s) in connection with such inventory and such inventory is in compliance with the terms and conditions of this License Agreement.

## **13. NOTICES**

All notices and other communications under this License Agreement shall be in writing and shall be deemed given if delivered personally, mailed by registered or certified mail, return receipt requested, or sent by email or telecopy with a receipt confirmed by telephone, to the parties at the addresses herein or to such other addresses as a party may from time to time notify the other parties. Provision of an email address at which each party may be contacted is mandatory.

USB-IF: USB Implementers Forum, Inc.  
3855 SW 153rd Drive  
Beaverton, OR 97003  
USA

Telephone: (503) 619-0426

Fax: (503) 644-6708

email Address: admin@usb.org

COMPANY: Information listed at the top of this  
Agreement

#### **14. ENTIRE LICENSE AGREEMENT; AMENDMENT**

USB-IF providing this License Agreement to COMPANY does not constitute an offer by USB-IF. Upon execution by both USB-IF and COMPANY, this License Agreement, including all Exhibits expressly incorporated by reference, contains the entire agreement of the parties with respect to the subject matter hereof, and shall supersede and merge all prior and contemporaneous communications. It shall not be amended except by a written agreement subsequent to the Effective Date and signed on behalf of the parties by their respective authorized representatives.

#### **15. GOVERNING LAW; ATTORNEYS' FEES; EQUITABLE RELIEF**

(a) This License Agreement shall be governed by and construed in accordance with the laws of the State of California and the applicable federal laws. COMPANY hereby consents to jurisdiction and venue in the state and federal courts sitting in the State of California, in the Northern District of California. The parties agree to accept service of process by U.S. certified or registered mail, return receipt requested, or by any other method authorized by applicable law.

(b) If either party employs attorneys to enforce any rights arising out of or related to this License Agreement, the prevailing party shall be entitled to recover its reasonable attorneys' fees, costs, and other expenses.

(c) COMPANY acknowledges that a breach by it of this License Agreement may cause USB-IF irreparable damage which cannot be remedied by monetary damages in an action at law, and may also constitute infringement of the Mark(s). In the event of any breach that could cause irreparable harm to USB-IF, or cause some impairment or dilution of its reputation or trademarks, USB-IF shall be entitled to an immediate injunction, in addition to any other legal or equitable remedies.

#### **16. HEADINGS**

Section headings are used in this License Agreement for convenience of reference only and shall not affect the meaning of any provision of this License Agreement.

#### **17. WAIVER**

No waiver of any breach of any provision of this License Agreement shall constitute a waiver of any prior, concurrent or subsequent breach of the same or any other provision hereof, and no

waiver shall be effective unless made in writing and signed by an authorized representative of the waiving party.

**18. SEVERABILITY**

If any provision of this License Agreement (or any other agreements incorporated herein) shall be held by a court of competent jurisdiction to be illegal, invalid or unenforceable, the remaining provisions shall remain in full force and effect.

**19. RELATIONSHIP**

Neither this License Agreement, nor any terms and conditions contained hereto, shall be construed as creating a partnership, joint venture, or agency relationship or as granting a franchise. USB-IF is not a guarantor of the fitness or quality of the Products.

**20. SURVIVAL**

The provisions of Sections 2(g), 5, 8(b), 9, 10, 12, 13, 15, and 18 shall survive expiration or termination of this License Agreement.

**21. EXHIBITS INCORPORATED BY REFERENCE**

This License Agreement includes the USB-IF Licensed Mark(s) Requirements and the USB Logo Usage Guidelines that are hereby incorporated by reference.

**IN WITNESS WHEREOF**, the parties hereto have executed this License Agreement as of the Effective Date and do each hereby warrant and represent that their respective signatory whose signature appears below has been and is on the date of this License Agreement duly authorized by all necessary and appropriate corporate action to execute this License Agreement.

**USB IMPLEMENTERS FORUM, INC.**

**COMPANY**

\_\_\_\_\_  
Name (Signature)

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Name (Signature)

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Name (Print)

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Name (Print)

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