

HEWLETT-PACKARD PATENT PURCHASE AND SALE AGREEMENT

This Patent Purchase and Sale Agreement (“**Agreement**”), effective as of _____ (the “**Effective Date**”), is made and entered into by and between: (a) Hewlett-Packard Development Company, L.P., a limited partnership duly organized and existing under the laws of the State of Texas and having its principal place of business at 20555 S.H. 249 Houston, Texas 77070, U.S.A. (“**HPDC**”), and Hewlett-Packard Company, a corporation duly organized and existing under the laws of the State of Delaware and having its principal place of business at 3000 Hanover Street, Palo Alto, California 94304, U.S.A. (“**HPCO**”) (HPDC and HPCO are collectively referred to herein as “**HP**”), on the one hand; and (b) _____, a _____ duly organized and existing under the laws of _____ and having its principal place of business at _____ (“**Purchaser**”), on the other hand. HPDC, HPCO and Purchaser may hereinafter be referred to collectively as the “**Parties**” and individually as a “**Party**” when convenient.

RECITALS

WHEREAS, HP wishes to sell certain patents and patent applications;

WHEREAS, Purchaser desires to purchase said patents and patent applications; and

WHEREAS, the Parties now desire to enter into this Agreement.

NOW, THEREFORE, in consideration of the terms and provisions contained herein and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. DEFINITIONS

For the purpose of this Agreement, the following terms, whether in singular or in plural form, when used with a capital initial letter shall have the respective meanings as follows.

1.1. “**Action**” means an Assertion made or a Proceeding filed, by a Person or one of its Affiliates.

1.2. “**Adversary**” means a third Person or one of its Affiliates involved in an Action against Purchaser or one of its Affiliates.

1.3. “**Affiliate**” means, with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control of

the Person in question; provided, however, that in any country where the local law or regulation does not permit foreign equity participation of more than fifty percent (50%), an “Affiliate” shall include any Person in which the Person in question owns or controls, directly or indirectly, the maximum percentage of such outstanding stock or voting rights permitted by such local law or regulation. For purposes of the foregoing, “control,” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

1.4. “**Assert**” means to provide an Assertion by or on behalf of a Person or its Affiliate.

1.5. “**Assertion**” means a written communication that contains a specific claim of existing or potential infringement of a patent owned or controlled by a Person or its Affiliate. For purposes of this definition, “controlled by” shall include an arrangement whereby a Person or its Affiliate has a valid, written, contractual right to cause another Person to Assert a patent against a third Person, and such right is actually exercised. For purposes of this Agreement, the date on which a Person makes an Assertion is the date on which the written communication is received by the other Person or its Affiliate.

1.6. “**Assigned Patents**” means the issued patents and patent applications listed in Exhibit A hereto.

1.7. “**Closing**” and “**Closing Date**” have the meanings set forth in Section 3.1.

1.8. “**Encumbrances**” means any commitments, licenses, immunities, releases or other rights relating to any of the Licensed Patents, whether express, implied or otherwise, that are made, entered into or granted by, or that arise from any actions taken by HP, any current or former Affiliate of HP, or any other Person, on or before the Closing Date including, but not limited to, the commitments, licenses, immunities, releases and rights described in Sections 5 and 6.1.

1.9. “**HP Licensees**” means only those Persons and their Affiliates to which HP or any of HP’s current or former Affiliates has, as of the Closing Date, a written, contractual obligation to grant a license under any of the Licensed Patents.

1.10. “**Licensed Patents**” means the Assigned Patents; and (a) all extensions, renewals, reissues, and reexaminations of the issued patents of the Assigned Patents and (b) all applications claiming any right of priority to or through the patent applications of the Assigned Patents (and all patents issuing on such applications), filed or applied for by Purchaser, by any of Purchaser’s Affiliates or by any subsequent successors to, or assigns of, any of the same in any country after the Closing Date.

1.11. “**Open Source License**” means any license for computer software that provides for source code to be made available under terms that allow for modification and redistribution without the consent of, or without having to make payment to, the original author such as, but not limited to, the General Public License (GPL), the Lesser/Library GPL (LGPL), the Mozilla Public License, the Netscape Public License, the Sun Community Source License (SCSL) the Sun Industry Source License (SISL) and the Apache Software License.

1.12. **“Patent License”** means a binding agreement in writing between HP, or one of its Affiliates, and any Person pursuant to which HP, or one of its Affiliates, licenses, or is obligated to license, the Assigned Patents to the Person. For purposes of this definition and the avoidance of doubt, none of the following shall be considered a Patent License: (a) any obligation described in Section 5; and (b) any agreement between HP or one of its Affiliates and its or their direct or indirect suppliers, customers or partners in connection with the supply, development, sale, license, or distribution, by or on behalf of HP, of products, software, technology or services.

1.13. **“Person”** means any natural person, corporation, company, partnership, association, sole proprietorship, trust, joint venture, non-profit entity, institute, governmental authority, trust association or other form of entity not specifically listed herein including, without limitation, HP or any of its Affiliates, or Purchaser or any of its Affiliates.

1.14. **“Permitted Standards-Related Actions”** means to (i) disclose to a standards body any patent that may be essential or necessary for implementation of a standards specification promulgated by the standards body; (ii) provide an assurance to a standards body of a willingness to license under royalty-free or reasonable and non-discriminatory terms, one or more patents that are essential or necessary for implementation of a standards specification promulgated by the standards body; or (iii) submit one or more patents to a standards body, a patent pool or a patent pool’s agent for inclusion in the pool’s licensing activities directed at the licensing of patents owned by multiple Persons that are determined by the pool to be essential for implementation of an existing standards specification.

1.15. **“Proceeding”** means any administrative or judicial claim, counterclaim, proceeding, or lawsuit alleging infringement of a patent in any United States, or foreign, court or tribunal.

1.16. **“Pursue a Proceeding”** (or **“Pursue any Proceeding”**) means to file, by or on behalf of a Person or the Person’s Affiliate, a Proceeding based upon any patent owned or controlled by such Person or its Affiliate. For purposes of this definition, “controlled by” shall include an arrangement where a Person or its Affiliate has a valid, written, contractual right to cause another Person to Pursue a Proceeding against a third Person and such right is actually exercised.

1.17. **“Responsive Action”** means an Action filed or made by an Adversary against Purchaser or one of its Affiliates where Purchaser or one of its Affiliates filed or made an Action against the Adversary within the twelve (12) month period preceding the Action by the Adversary.

1.18. **“Successor-in-Interest”** has the meaning set forth in Section 7.1.2.

2. PURCHASE AND SALE OF PATENTS

2.1. Purchase and Sale of Assigned Patents. Effective as of the Closing Date and subject to the fulfilment of the Parties’ obligations set forth in Sections 3.2 and 3.3 below, HP hereby sells, assigns, transfers, and sets over unto Purchaser, subject to all Encumbrances, its entire right, title and interest in and to all of the Assigned Patents, including all past, present, and future causes of action and claims for damages derived by reason of patent infringement thereof (to the extent

such damages are not already paid, awarded or contractually owed to HP, its Affiliates or any predecessor of HP or HP's Affiliates), for Purchaser's own use and for the use of its assigns, successors, and legal representatives, to the full end of the term of each of the Assigned Patents. To evidence the assignment of the Assigned Patents, HP shall execute a confirmatory patent assignment document for the Assigned Patents in substantially the form as that set forth in Exhibit B hereto (the "**Patent Assignment**"). If there is any inconsistency between such Patent Assignment and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail. Notwithstanding the foregoing assignment, in the event that the Closing is not consummated within thirty (30) calendar days from the Effective Date, HP shall have the right, in its sole discretion, to terminate this Agreement including all obligations of HP and all rights of Purchaser set forth in this Agreement.

2.2. Purchase Price. Purchaser hereby agrees to pay to HP, pursuant to the terms set forth in Section 3.3.1, the non-refundable sum of _____ United States Dollars (U.S.\$_____) (the "**Purchase Price**").

2.3. Taxes. Purchaser shall pay all {insert country of Purchaser if not US} taxes (including without limitation sales, use, value-added, and similar taxes) arising from the payments made by Purchaser to HP under this Agreement, except for taxes based solely upon HP's net income and legally required withholding taxes. Where applicable, HP shall invoice Purchaser for such {insert country of Purchaser} taxes and Purchaser shall remit the amount of such taxes to HP or provide HP with the appropriate exemption certificate. In any case, where taxes are withheld, Purchaser shall provide HP with all documentation relating to withheld taxes, including receipts necessary to claim the applicable credit. Other than taxes based solely upon HP's net income and legally required withholding taxes, in the event that {insert country of Purchaser} taxes are legally imposed initially or are later assessed by any {insert country of Purchaser} taxing authority upon HP, then Purchaser shall reimburse HP for such taxes, plus any interest suffered by HP, within sixty (60) days.

3. SALE CLOSING AND DELIVERABLES

3.1. The Closing. The transactions described in Sections 3.2 and 3.3 below shall be consummated (the "**Closing**") at HPCO's corporate headquarters at 3000 Hanover Street, Palo Alto, California as soon as practicable, and in any event within thirty (30) calendar days of the Effective Date (the "**Closing Date**," being the date on which such transactions actually occur).

3.2. HPCO Deliverables. At the Closing, HPCO shall deliver to Purchaser the following:

3.2.1. A duly executed Patent Assignment in substantially the form as that set forth in Exhibit B hereto; and

3.2.2. A duly executed counterpart to the Patent License Agreement in substantially the form as that set forth in Exhibit C hereto (the "**Grant-Back Patent License Agreement**").

3.3. Purchaser Deliverables. At the Closing, Purchaser shall deliver or cause to be delivered

to HPCO or a designated HPCO Affiliate the following:

- 3.3.1. The Purchase Price by wire transfer of immediately available funds to the following account:

Bank of America,
1850 Gateway Boulevard,
Concord, CA 94520;
Account name: Hewlett-Packard Development Company;
ABA No. 026009593,
Swift No. BOFAUS3N,
Account Number: 3752072176,

with notice as to the confirmation of wire transfer to be sent to the HPCO address specified in Section 10.11, and an electronic mail copy thereof sent to IPL.Wiretransfer@hp.com;

- 3.3.2. A duly executed counterpart to the Grant-Back Patent License Agreement in substantially the form set forth in Exhibit C hereto; and

- 3.3.3. A duly executed counterpart to the Notice of New Counsel in substantially the form set forth in Exhibit D hereto.

3.4. Survival. In addition to those provisions which are by their nature intended by the Parties to survive the Closing, the following provisions shall survive the Closing Date: Sections 1, 2.3, and 4 – 10.

4. REPRESENTATIONS AND WARRANTIES

4.1. Patent Fees. HP is responsible for the payment of all filing, maintenance and annuity fees relating to the Assigned Patents due on or before the Closing Date, and Purchaser shall be responsible for the payment of all such fees due after the Closing Date.

4.2. Confirmed Unlicensed Companies. HP warrants and represents that, as of the Effective Date and to the specific knowledge of HP's patent counsel who supports patent sales and conducted a review of HP's legal department database of patent license agreements with regard to the Assigned Patents, such database indicates that no Patent Licenses have been granted to any of the companies specifically named in Schedule 4.2 of Exhibit E (excluding any of their affiliates that are not also named). Schedule 4.2 shall be completed and delivered to Purchaser prior to the Closing Date.

4.3. Marketable Title, Authority & No Liens. HP warrants and represents that, as of the Effective Date and to the specific knowledge of the members of HP's Intellectual Property Licensing department who support patent sales, (a) HP has good marketable title to the US-filed and US-issued Assigned Patents, (b) all such Assigned Patents are free from all liens and security interests, and (c) all such Assigned Patents are under the control of HP, which has the authority and capacity to transfer HP's title to Purchaser as of the Effective Date.

4.4. Exclusive Warranties. Except as expressly set forth in this Section 4, the Parties acknowledge and understand that the Assigned Patents are being sold “AS IS” in all respects and with all faults, and without warranties or representations of any kind, express or implied, with respect to the Assigned Patents. HP does not represent or warrant that the Assigned Patents are or are not of any particular scope, valid, enforceable, or infringed by any product, service or method. HP further does not represent or warrant that the subject matter disclosed in the Assigned Patents does or does not infringe the patent rights of any patent owner.

4.5 Disclaimers. Except as expressly stated in this Agreement, nothing shall be construed as (a) a warranty of any kind including, without limitation, any warranty of merchantability or of fitness for a particular purpose, (b) conferring any license or other right, by estoppel or otherwise, under any intellectual property right of either Party, (c) requiring either Party to disclose or furnish to the other Party any records, materials or information or services of any nature, (d) obligating either Party to defend, indemnify or hold harmless the other Party from any suits, actions or claims alleging infringement, misappropriation, or violation of any third party’s intellectual property rights, or (e) obligating either Party to file or prosecute any application, maintain any patent in force, or bring or prosecute any action or suit against third parties for infringement.

5. PRIOR COMMITMENTS

5.1. Encumbrances and Entitlements. Purchaser accepts the assignment of the Assigned Patents under this Agreement subject to all Encumbrances. Purchaser acknowledges and agrees that to the extent that HP, or any current or former Affiliate of HP, receives or is entitled to receive any monetary or non-monetary benefit as consideration for an Encumbrance, such benefit shall continue to be paid and/or given to and for the benefit of HP and any current or former Affiliate of HP.

5.2. Open Source Licenses. HP may have contributed computer code to an open source computer program or otherwise made the contributed computer code subject to the obligations of an Open Source License. To the extent that one or more claims of the Licensed Patents read on the contributed computer code or the open source computer program, Purchaser acknowledges that the Licensed Patents may be subject to the express or implied licensing obligations of an Open Source License. Accordingly, Purchaser acknowledges and agrees that the sale and assignment of the Assigned Patents shall be subject to, and Purchaser shall abide by, all obligations of any Open Source License that relate to the Licensed Patents.

5.3. Standards Licenses. Purchaser acknowledges that HP may have made or offered to make one or more of the Licensed Patents subject to the express or implied licensing obligations of a standards body or patent pool. Accordingly, Purchaser acknowledges and agrees that the sale and assignment of the Assigned Patents shall be subject to, and Purchaser shall abide by, all obligations arising out of any Permitted Standards-Related Actions that relate to the Licensed Patents.

6. ADDITIONAL OBLIGATIONS

6.1. Patent License Grants between the Parties & Covenant not to sue HP's Customers.

6.1.1. Interim License Grant from HP to Purchaser. HP hereby grants to Purchaser a worldwide, sole and limited term license, without any right to sublicense, under the Assigned Patents to make, have made, use, sell, offer for sale, have sold, lease, import, export, and/or otherwise transfer any product, service, or method ("**Interim License**"), which Interim License shall be effective only during the period between the Effective Date and the Closing Date, such period not to exceed thirty-one (31) calendar days, regardless of whether the Closing does or does not occur ("**Limited Term**"). During the Limited Term HP hereby agrees not to grant any licenses under the Assigned Patents unless HP has received prior written permission from Purchaser expressly granting HP the right to grant such a license. Notwithstanding the foregoing, such Interim License shall be subject to all Encumbrances and, during the Limited Term, shall not include the right of Purchaser or its Affiliates to (a) license any right under the Assigned Patents to any Person, (b) assign the Interim License or any right under it to any Person, (c) place any lien or encumbrance on any of the Assigned Patents, or (d) Pursue a Proceeding or make an Assertion with respect to the Assigned Patents.

6.1.2. License Grant from Purchaser to HP. Effective as of the Closing Date, Purchaser agrees to grant and hereby grants to HP and its current and future Affiliates a worldwide, non-exclusive, perpetual, irrevocable, royalty-free and fully paid up license, without any right to sublicense, under each of the Licensed Patents, to make, have made, use, sell, offer for sale, have sold, lease, import, export, and/or otherwise transfer any product or service, and to practice or have practiced any method or process for the manufacture or use of any product or service. Purchaser acknowledges and agrees that any products or services purchased from third parties, by or on behalf of HP or HP's Affiliates, shall be deemed made or had made, and any method or process for the manufacture of any such products or services shall be deemed practiced or had practiced pursuant to the foregoing license grants, provided that the foregoing shall not be construed to affect the rights Purchaser may otherwise have against such third parties under the Licensed Patents with respect to products or services not purchased from third parties by or on behalf of HP or HP's Affiliates. In addition to the foregoing, Purchaser agrees to grant and hereby grants to each of HP Licensees, a worldwide, non-exclusive, perpetual, irrevocable, royalty-free and fully paid up license, under only those of the Licensed Patents which (a) are issued, granted or otherwise entering into force after the Closing Date and (b) claim priority to the Assigned Patents already respectively licensed to each HP Licensee, to make, have made, use, sell, offer for sale, have sold, lease, import, export, and/or otherwise transfer any product or service, and to practice or have practiced any method or process for the manufacture or use of any product or service, only to the extent and within the scope of rights granted to each respective HP Licensee pursuant to the written, contractual obligation between HP and such HP Licensee. To evidence the foregoing license grants, Purchaser shall execute a confirmatory patent license

document in substantially the form as that set forth in Exhibit C hereto (the “**Grant Back Patent License Agreement**”). If there is any inconsistency between such Grant Back Patent License Agreement and the terms and conditions of this Agreement, the terms and conditions of this Agreement shall prevail.

6.1.3. Covenant not to Sue or Make an Assertion against HP’s Customers. Purchaser hereby agrees not to assert or file suit based on, or permit any of its Affiliates to assert or file suit based on, any claim of the Licensed Patents in any manner against any direct or indirect distributors and/or customers of HP or its Affiliates on account of the manufacture, use, sale, offer to sell, lease, import, export or other transfer of any products or services made, had made, leased, sold or otherwise transferred by HP or its Affiliates.

6.2. Notice of New Counsel. As soon as practical and no later than the Closing Date, Purchaser shall select and appoint the patent counsel of record for the continued prosecution and maintenance of the Assigned Patents and shall further deliver to HP a completed Notice of New Counsel in substantially the form set forth in Exhibit D hereto.

6.3. After Closing. Purchaser shall, at its expense, apply for the recordation and other perfection of the Patent Assignment with all relevant government agencies and shall use all diligence to complete such recordation and perfection within thirty (30) days after the Closing Date. HP shall use commercially reasonable efforts to assist Purchaser with respect to such recordation and perfection and transferring continued representation of the Assigned Patents. Except for using commercially reasonable efforts to respond to an outstanding US Patent and Trademark Office action with a three (3) month shortened statutory due date occurring before the Closing Date, HP shall not be liable for any delays in the prosecution of the Assigned Patents or for the payment of (a) any fees or costs associated with such transfer or continued prosecution or maintenance, (b) any fees or costs incurred in recordation and/or perfection of the assignment of the Assigned Patents in any jurisdiction, or (c) any maintenance, annuity or other fees that may become due after the Closing Date. With respect to any patent applications related to the Assigned Patents (which are not sold hereunder), HP may, in its sole discretion, discontinue prosecution of or affirmatively abandon the same at any time prior to or after the Closing Date. Other than as set forth in Section 3.2.3, HP shall have no obligation to transfer copies of any documents pertaining to the Assigned Patents.

6.4. Further Assurances. Each of the Parties agrees to use commercially reasonable efforts to assist and cooperate with the other Party in doing all things necessary to consummate the purchase and sale of the Assigned Patents and the other transactions contemplated by this Agreement.

7. COVENANT NOT TO FIRST ASSERT OR SUE AND ASSIGNMENT OF THE ASSIGNED PATENTS

Purchaser hereby agrees that it shall be bound by, and shall bind and ensure compliance by all its existing and future Affiliates to, each and every obligation of Purchaser under this Section 7.

7.1. Purchaser's Covenants.

7.1.1. Covenant not to First Sue or Assert. Purchaser and each of its Affiliates hereby covenant and agree, for the life of each of the Licensed Patents, to not first Pursue any Proceeding or make any Assertion against any Person based upon one or more of the Licensed Patents except when the Adversary has, after the Closing Date: (a) first Pursued a Proceeding against Purchaser or one of its Affiliates that (i) is not a Responsive Action and (ii) is pending at the time Purchaser or its Affiliate Pursues the Proceeding or makes the Assertion; and/or (b) first made an Assertion against Purchaser or one of its Affiliates that is not a Responsive Action and is not based upon patents that are involved in any Proceeding between the Adversary and Purchaser pending at the time the Assertion is made. In the case of subsection (b) above, Purchaser or its Affiliate may only Pursue a Proceeding or make an Assertion no later than one (1) year after the date on which the Adversary made the Assertion against Purchaser or its Affiliate. For the life of each of the Licensed Patents, Purchaser and its Affiliates shall have no right to Pursue a Proceeding or make an Assertion where the Adversary has engaged in the conduct described in this Section 7.1.1 as a result of Purchaser or any of its Affiliates having engaged in conduct that violates one or more provisions of this Section 7. For the avoidance of doubt, the foregoing covenants in this Section 7.1.1 shall apply in each and every instance when Purchaser desires to Pursue a Proceeding or make an Assertion against any Adversary based upon one or more of the Licensed Patents and neither of the exceptions (a) or (b) above are satisfied with respect to such Adversary.

7.1.2. Assignment of Assigned Patents and Beneficial Interests Therein. After the Closing Date, Purchaser and its Affiliates may make an assignment, sale or other transfer or conveyance of any of the Licensed Patents or of any beneficial interests therein, including but not limited to the granting of any exclusive rights or standing to sue, (an “**Assignment**”) to only those Persons who agree in a valid, written agreement to comply with and be bound by, and to so bind all subsequent successors and assigns of any of the Licensed Patents to, Purchaser’s obligations set forth in Sections 5, 6.1.2, 6.1.3, and 7 (each such Person being a “**Successors-in-Interest**”). Such written agreement shall incorporate each such Section verbatim and each reference to Purchaser and/or its Affiliates shall be read and interpreted to mean the then-current Successor-in-Interest and/or its Affiliates. Purchaser and each of its Affiliates hereby covenant and agree that, as a condition precedent to any Assignment, Purchaser shall obtain from any Successors-in-Interest such written agreement, and in the event that such written agreement is not obtained for any Assignment, such Assignment shall be deemed null and void.

7.2. HP's Sublicense Remedy for Breach by Purchaser.

- 7.2.1. Remedy Sublicenses. In addition to any other licenses or rights to HP in this Agreement, and in addition to any other remedies that HP may have to enforce the terms and conditions of this Agreement, Purchaser agrees that HP shall have the right and license to grant, on the terms and conditions set forth in Sections 7.2, 7.3 and 7.4, the sublicenses set forth in Section 7.2.2 under one or more of the Licensed Patents which have been used in a Proceeding filed or an Assertion made in breach of any covenant set forth in Section 7.1 (“**Remedy Sublicenses**”). HP may grant the Remedy Sublicenses to any Person directly or indirectly involved in a breach of any covenant set forth in Section 7.1 (“**Breach of Covenant**”) including, without limitation, such Person's and/or its Affiliates’ distributors customers and suppliers (all of the foregoing referred to as “**Sublicensees**”). HP shall have the right, in its sole and absolute discretion, to grant such Remedy Sublicenses in the event that (a) Purchaser or one of its Affiliates commits a Breach of Covenant (a “**Breaching Party**”), (b) if reasonably possible to provide notice pursuant to Section 7.3.1, HP has provided the Breaching Party with notice of the Breach of Covenant, and (c) the Breaching Party fails to cure the Breach of Covenant in accordance with Section 7.3.
- 7.2.2. Grant of Remedy Sublicenses. Purchaser agrees to grant and hereby grants to HP the right to grant to Sublicensees worldwide, non-exclusive, perpetual, irrevocable, royalty-free and fully paid up sublicenses under all of the Licensed Patents directly or indirectly involved in the Breach of Covenant to make, have made, use, sell, offer for sale, have sold, lease, import, export, and/or otherwise transfer any product, service or method.
- 7.2.3. Notwithstanding the foregoing, HP shall provide in any Remedy Sublicense that the Remedy Sublicense shall be void *ab initio* in the event that it is later determined by HP or a court of competent jurisdiction that the Breaching Party has not committed a Breach of Covenant.

7.3. Notice to Purchaser & Opportunity to Cure.

- 7.3.1. Notice Requirement. HP shall not grant any Remedy Sublicense without first providing the Breaching Party, if it is reasonably possible to identify the Breaching Party’s then-current contact information, with at least thirty (30) calendar days written notice of a Breach of Covenant (the “**Notice Period**”), during which period the Breaching Party may provide information and evidence to HP demonstrating that the Breaching Party has not committed the Breach of Covenant or, as permitted by Section 7.3.2, to cure the Breach of Covenant within the Notice Period.
- 7.3.2. What Constitutes Cure. In order for the Breaching Party to cure a Breach of Covenant, the Breaching Party shall, within the Notice Period, furnish to the Person against whom the breaching Proceeding has been filed or the breaching Assertion has been made (the “**Accused Person**”) a written offer stating that the Breaching Party shall promptly dismiss with prejudice such Proceeding or cease such Assertion, as applicable. In addition, the Breaching Party shall, within the Notice Period, furnish to the Accused Person a written offer stating that the Breaching Party covenants that no act or communication by the Breaching Party, any of its Affiliates, or any of its or

their agents that was a part of the Breach of Covenant may be used by the Breaching Party, any of its Affiliates, or any of its or their direct or indirect Successors-in-Interest to prove any element of willful infringement by the Accused Person of any Licensed Patent involved in such Breach of Covenant. If such offers are accepted by such Accused Person, the Breaching Party shall have the additional duties of promptly dismissing the Proceeding or ceasing the Assertion, as applicable, and of abiding by the covenant set forth in the previous sentence. Purchaser and its Affiliates shall have one – and only one – opportunity to invoke the cure provision set forth in this Section 7.3.2 to cure a Breach of Covenant against the same Person or against any other Person. After Purchaser or one of its Affiliates has invoked the cure provision on that single occasion, then notwithstanding anything to the contrary in this Agreement, for any and all subsequent Breaches of Covenant, HP shall have the right, in its sole and absolute discretion, to grant Remedy Sublicenses in the event that either Purchaser or one of its Affiliates commits any other Breaches of Covenant provided that HP has provided notice pursuant to Section 7.3.1.

- 7.3.3. Confidentiality of Agreements. In the event that the Breaching Party and another Person have entered into a non-disclosure or other agreement that prevents the communications concerning the Pursuit of a Proceeding or the conduct of an Assertion from being disclosed to HP, the Breaching Party shall not disclose any such communications to HP unless the Person first waives its right to enforce such confidentiality agreement against the Breaching Party insofar as the disclosure of such communications to HP is concerned.

7.4 HP's Liability. Provided that HP has satisfied all of its obligations set forth in 7.2 and 7.3, HP shall not, under any circumstances or in any respect whatsoever, be liable to the Breaching Party, any of its Affiliates, or any of its or their Successors-in-Interest for granting a Remedy Sublicense regardless of whether it is later determined that a Breach of Covenant was not committed.

8. CONFIDENTIALITY

8.1. General. None of the Parties shall itself, or shall permit any of their respective Affiliates to, disclose the terms and conditions of this Agreement to any third party at any time without obtaining the prior written consent of all other Parties, except that a Party may disclose this Agreement: (a) in response to a subpoena issued by any governmental body or judicial entity or as otherwise may be required by law; (b) as may be necessary for the enforcement of the terms and conditions of this Agreement; (c) as may be necessary for the enforcement of the Assigned Patents in a court of law or other official proceeding; (d) as may be necessary pursuant to a permitted Assignment of the Licensed Patents to apprise potential Successors-in-Interest thereof of the rights and obligations of the Parties; and (e) to legal counsel, auditors or accountants for the Parties having a need to review such information. In the case of disclosure, the disclosing Party shall require each recipient to receive and hold the information pursuant to a confidentiality agreement or obligation under terms and conditions no less restrictive than those set forth herein. In the event of disclosure pursuant to subsection (a), (b) or (c) above where this Agreement is

required to be disclosed to a court of law or other official proceeding, the disclosing Party shall promptly notify the other Parties of such disclosure and requirement, and the Parties shall cooperate with each other and use commercially reasonable efforts to obtain a protective order. Notwithstanding the above, the Patent Assignment and the Grant-Back Patent License Agreement may be disclosed by any of the Parties to any Person.

9. LIMITATION OF LIABILITY.

IN NO EVENT WILL ANY OF THE PARTIES BE LIABLE FOR ANY INDIRECT, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT, OR FOR LOSS OF PROFITS OR ANY OTHER ECONOMIC LOSS, HOWEVER IT ARISES AND UNDER ANY THEORY OF LIABILITY, WHETHER IN AN ACTION FOR CONTRACT, WARRANTY, STRICT LIABILITY, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER THE PARTIES HAVE BEEN ADVISED ABOUT THE POSSIBILITY OF SUCH DAMAGE OR LOSS AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. NO PARTY SHALL BE LIABLE FOR ANY DAMAGES OR LOSS ARISING FROM OR RELATING TO THIS AGREEMENT IN EXCESS, IN THE AGGREGATE, OF THE PURCHASE PRICE AND ANY AMOUNTS PAYABLE UNDER SECTION 10.7. THE PARTIES ACKNOWLEDGE THAT THESE EXCLUSIONS OF POTENTIAL DAMAGES AND LOSSES WERE AN ESSENTIAL ELEMENT IN ESTABLISHING THE CONSIDERATION UNDER THIS AGREEMENT.

10. GENERAL PROVISIONS

10.1. Assignability of This Agreement. Between the Effective Date and the Closing Date, this Agreement shall not be assigned by any Party to any Person without the prior written consent of the other Parties. Notwithstanding anything to the contrary in this Agreement, after the Closing Date, (a) Purchaser shall, subject to Section 7.1.2, have the right to assign its entire beneficial interest in any of the Licensed Patents to any Successor-in-Interest together with Purchaser's respective rights and obligations under this Agreement relating to each such Licensed Patent and (b) HP shall have the right to assign this Agreement, the Grant Back Patent License and/or its rights under each, in whole or in part, to any Person including, without limitation, the right to separately assign to different Persons, on a patent by patent basis, any or all of the rights and licenses granted to HP pursuant to Section 6.1 of this Agreement with respect to each of the Licensed Patents.

10.2. Entire Agreement. This Agreement, together with all its exhibits, constitutes the entire agreement between the Parties relating to the subject matter hereof, and supersedes all prior agreements, proposals, discussions, agreements, representations, and other communications between the Parties with respect to the subject matter hereof.

10.3. Amendment and Waiver. No change in the terms, conditions, or provisions of this Agreement shall be binding on any Party unless in writing and signed by all Parties hereto. The

failure or delay of any Party in exercising any of its rights hereunder, including any rights with respect to a breach or default by the other Party, shall in no way operate as a waiver of such rights or prevent the assertion of such rights with respect to any later breach or default by the other Party.

10.4. Binding Nature & No Third Party Beneficiaries. This Agreement is binding upon and shall inure to the benefit of the Parties, and their respective, permitted legal successors and assigns of this Agreement, and this Agreement is made solely for such Persons' benefit. Other than as expressly provided in this Section 10.4, no other Person shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this Agreement as a third-party beneficiary or otherwise.

10.5. Severability. Should any term, condition, or provision of this Agreement be held unenforceable by an authority of competent jurisdiction, such ruling shall not affect the validity and enforceability of the remaining terms, conditions, and provisions of this Agreement. To the extent that any such provision is found to be invalid, illegal or unenforceable, the Parties shall act in good faith to substitute for such provision, to the extent possible and as necessary, a new provision with content and purpose as close as possible to the provision so determined to be invalid, illegal or unenforceable.

10.6. Governing Law. This Agreement (including without limitation, HP's grant of a Remedy Sublicense) shall be governed by and construed under the laws of the State of New York, without reference to its conflict of laws or choice of law principles. The Parties hereby submit (and with respect to subsequent assignees of the Licensed Patents, Purchaser shall require such assignees to submit) to the jurisdiction of the courts of New York or any court of the United States sitting in New York with subject matter jurisdiction, and waive any venue objections against the United States District Court for the Southern District of New York, and the Courts of the State of New York, New York County, in any litigation arising under this Agreement.

10.7. Expenses. If any action or other proceeding relating to the enforcement or interpretation of any provision of this Agreement is brought by a Party, the prevailing Party shall be entitled to recover reasonable attorneys' fees, costs and disbursements (in addition to any other relief to which the prevailing party may be entitled).

10.8. Waiver of Jury Trial. Each Party hereby irrevocably waives any and all rights it may have to trial by jury in any action, proceeding or counterclaim (whether based on contract, tort or otherwise) arising out of or relating to this Agreement.

10.9. Counterparts. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which taken together shall constitute one and the same instrument. A facsimile or an electronic copy of such originals or counterparts transmitted to the other Party is effective as if the actual originals or counterparts were sent to the other Party.

10.10. Construction. The Parties acknowledge that their respective legal counsel have reviewed this Agreement and that any rule of construction to the effect that any ambiguity is to be resolved against the drafting party shall not be applicable in the interpretation of this Agreement. The headings used herein are for reference and convenience only, and shall not be used in the

interpretation of this Agreement.

10.11. Notices. All notices and other communications given or made pursuant hereto shall be in writing and shall be deemed to have been duly given or made as of: (a) in the case of personal delivery, when actually delivered, (b) in the case of delivery by prepaid overnight courier with guaranteed next day delivery, the day designated for delivery by such courier, or (c) in the case of delivery by registered or certified mail, postage prepaid, return receipt requested, five (5) days after deposit in the mails, and in each case shall be addressed as follows:

If to HP (which single notice, unless otherwise specified, shall constitute notice to both HPDC and HPCO), to:

Hewlett-Packard Development Company
Attn: Legal Department
20555 State Highway 249
Houston, Texas 77070
U.S.A.
Fax: (650) 852-8047

With a copy (which shall not constitute notice to HP), to:

Hewlett-Packard Company
Attention: V.P., Intellectual Property Licensing
1501 Page Mill Road
MS 1601
Palo Alto, California 94304
U.S.A.
Fax: (650) 852-8047

If to Purchaser, to:

(Purchaser)

Attn:

Fax:

IN TESTIMONY WHEREOF, the Parties hereto by their fully authorized representatives have executed this Agreement as of the Effective Date indicated above.

(PURCHASER)

By: _____ Date: _____

Name: _____

Title: _____

HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.

By: HPQ Holdings, LLC, its General Partner

By: _____ Date: _____
Bruce H. Watrous, Jr., Manager
HPQ Holdings, LLC

HEWLETT-PACKARD COMPANY

By: _____ Date: _____
Susan Goodhue
VP & AGC, Intellectual Property Transactions
Hewlett-Packard Company

Exhibit A

LIST OF “ASSIGNED PATENTS”

United States Patents and Patent Applications

[TBD]

Foreign Patents and Foreign Patent Applications

[TBD]

Exhibit B

ASSIGNMENT OF PATENTS AND PATENT APPLICATIONS

WHEREAS, Hewlett-Packard Development Company, L.P., a limited partnership established and existing under the laws of the State of Texas and having its registered place of business at 20555 S.H. 249 Houston, Texas 77070, U.S.A. and Hewlett-Packard Company, a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at 3000 Hanover Street, Palo Alto, California 94304, U.S.A. (collectively "HP") are the owners of record, either individually or collectively, of the Assigned Patents (as defined below);

WHEREAS, _____ ("Purchaser"), a _____ duly organized and existing under and by virtue of the laws of _____, and having a place of business at _____, is desirous of acquiring the entire interest in and to the Assigned Patents (as defined below);

WHEREAS, HP and Purchaser have entered into a Patent Purchase and Sale Agreement for certain patents and patent applications dated _____ ("Purchase and Sale Agreement") wherein HP has agreed to sell and Purchaser has agreed to purchase the Assigned Patents subject to all prior encumbrances and licenses;

WHEREAS, Purchaser has agreed and covenanted in said Purchase and Sale Agreement to license back to HP certain rights under the Assigned Patents, as set forth in Sections 6.1.2 and 7.2 thereof, as a condition of and as part of the consideration for the Parties entering into the Purchase and Sale Agreement;

WHEREAS, this Assignment is made by HP subject to and contingent upon Purchaser concurrently providing to HP a grant-back license to the Assigned Patents and upon Purchaser and its Affiliates making certain covenants not to sue or assert the Assigned Patents, in accordance with the Purchase and Sale Agreement; and

WHEREAS, for the purpose of this Assignment, the following terms, whether in singular or in plural form, when used with a capital initial letter shall have the respective meanings as follows.

"Affiliate" means with respect to any person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control of the Person in question; provided, however, that in any country where the local law or regulation does not permit foreign equity participation of more than fifty percent (50%), an "Affiliate" shall include any Person in which the Person in question owns or controls, directly or indirectly, the maximum percentage of such outstanding stock or voting rights permitted by such local law or regulation. For purposes of the foregoing, "control," including the terms "controlling," "controlled by" and "under common control with," means

the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Assigned Patents” means the issued patents and patent applications listed in Appendix A of this Assignment.

“Encumbrances” means any commitments, licenses or other rights relating to any of the Assigned Patents, whether express, implied or otherwise, that are made, entered into or granted by, or that arise from the actions taken by, HP, any current or former Affiliate of HP, or any Person, prior to the Effective Date including, but not limited to, the commitments, licenses and rights described in Sections 5 and 6.1 of the Purchase and Sale Agreement.

“Person” means any natural person, corporation, company, partnership, association, sole proprietorship, trust, joint venture, non-profit entity, institute, governmental authority, trust association or other form of entity not specifically listed herein including, without limitation, HP or any of its Affiliates, or Purchaser or any of its Affiliates.

NOW, THEREFORE, to all whom it may concern, be it known that for good and valuable consideration to HP in hand paid, the receipt of which is hereby acknowledged, HP has sold, assigned, transferred, and set over, and by these presents does sell, assign, transfer, and set over unto said Purchaser, subject to all Encumbrances, its whole right, title, and interest in and to all of the Assigned Patents, said whole right, title, and interest in and to said Assigned Patents including all past, present, and future causes of action and claims for damages derived by reason of patent infringement thereof (to the extent such damages are not already paid, awarded or contractually owed to HP, its Affiliates or any predecessor of HP or HP’s Affiliates), for said Purchaser’s own use and for the use of its assigns, successors, and legal representatives to the full end of the term of each of the Assigned Patents. For clarity, the foregoing assignment does not include (i) any trademarks, trade dress, trade names, or other indicia of origin; (ii) except for inventions of the Assigned Patents, any inventions or discoveries, whether patentable or not, and registrations, invention disclosures, patents and applications therefor; (iii) any trade secrets, confidential information or know-how; (iv) any works of authorship, whether copyrightable or not; and (v) any other intellectual property or proprietary rights of HP, its Affiliates or any predecessor of HP or HP’s Affiliates.

In Testimony Whereof, HP by its fully authorized representatives has executed this Assignment as of the dates indicated below.

HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.

By: HPQ Holdings, LLC, its General Partner

By: _____ Date: _____
Bruce H. Watrous, Jr., Manager
HPQ Holdings, LLC

HEWLETT-PACKARD COMPANY

By: _____ Date: _____
Susan Goodhue
VP & AGC, Intellectual Property Transactions
Hewlett-Packard Company

Appendix A of Exhibit B: List of Assigned Patents

Exhibit C

PATENT LICENSE AGREEMENT

This Patent License Agreement effective as of _____ (“**Effective Date**”) is between _____ (“**Purchaser**”), a _____ duly organized and existing under and by virtue of the laws of _____, having a place of business at _____ on the first part and Hewlett-Packard Development Company, L.P. (“**HPDC**”), a Texas limited partnership established and existing under the laws of the State of Texas and having its registered place of business at 20555 S.H. 249 Houston, Texas 77070, U.S.A. and Hewlett-Packard Company (“**HPCO**”), a corporation organized and existing under the laws of the State of Delaware and having its principal place of business at 3000 Hanover Street, Palo Alto, California 94304, U.S.A. on the second part. For purposes of convenience where appropriate herein, HPDC and HPCO may be referred to collectively as “**HP**”. Purchaser, HPDC and HPCO may hereinafter be referred to collectively as the “**Parties**” and individually as a “**Party**” when convenient.

WHEREAS, HP and Purchaser have entered into a Patent Purchase and Sale Agreement for certain patents and patent applications dated _____ (“**Purchase and Sale Agreement**”) wherein HP has agreed to sell and Purchaser has agreed to purchase the Assigned Patents (as defined below);

WHEREAS, Purchaser has agreed and covenanted in said Purchase and Sale Agreement to license back to HP certain rights under Licensed Patents (as defined below) as set forth in Sections 6.1.2 thereof as a condition of and as part of the consideration for the Parties entering into the Purchase and Sale Agreement;

WHEREAS, HP has prepared and duly executed a formal assignment of the Assigned Patents in favor of Purchaser; and

WHEREAS, the Parties desire to perfect the license agreed to in Section 6.1.2 of said Purchase and Sale Agreement by separately executing and delivering this Patent License Agreement in exchange for, *inter alia*, said formal executed assignment of the Assigned Patents.

NOW THEREFORE, in consideration of the terms and provisions of this License Agreement, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. DEFINITIONS

For the purpose of this License Agreement, the following terms, whether in singular or in plural form, when used with a capital initial letter shall have the respective meanings as follows.

“Affiliate” means with respect to any Person, any other Person that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under the common control of the Person in question; provided, however, that in any country where the local law or regulation does not permit foreign equity participation of more than fifty percent (50%), an “Affiliate” shall include any Person in which the Person in question owns or controls, directly or indirectly, the maximum percentage of such outstanding stock or voting rights permitted by such local law or regulation. For purposes of the foregoing, “control,” including the terms “controlling,” “controlled by” and “under common control with,” means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of a Person, whether through the ownership of voting securities, by contract or otherwise.

“Assigned Patents” means the issued patents and patent applications listed in Appendix A of this License Agreement.

“HP Licensees” means only those Persons and their Affiliates to which HP or any of HP’s current or former Affiliates has, as of the Closing Date, a written, contractual obligation to grant a license under any of the Licensed Patents.

“Licensed Patents” means the Assigned Patents; and (a) all extensions, renewals, reissues, and reexaminations of the issued patents of the Assigned Patents and (b) all applications claiming any right of priority to or through the patent applications of the Assigned Patents (and all patents issuing on such applications), filed or applied for by Purchaser, by any of Purchaser’s Affiliates or by any subsequent successors to, or assigns of, any of the same in any country after the Closing Date.

“Person” means any natural person, corporation, company, partnership, association, sole proprietorship, trust, joint venture, non-profit entity, institute, governmental authority, trust association or other form of entity not specifically listed herein including, without limitation, HP or any of its Affiliates, or Purchaser or any of its Affiliates.

II. GRANT OF LICENSE

Effective as of the Effective Date of this Patent License Agreement, Purchaser hereby grants to HP and its Affiliates a worldwide, non-exclusive, perpetual, irrevocable, royalty-free and fully paid up license, without the right to sublicense, under each of the Licensed Patents, to make, have made, use, sell, offer for sale, have sold, lease, import, export, and/or otherwise transfer any product or service, and to practice or have practiced any method or process for the manufacture or use of any product or service. Purchaser acknowledges and agrees that any products or services purchased from third parties, by or on behalf of HP or HP’s Affiliates, shall be deemed made or had made, and any method or process for the manufacture of any such products or services shall be deemed practiced or had practiced, pursuant to the foregoing license grants, provided that the foregoing shall not be construed to affect the rights Purchaser may

otherwise have against such third parties under the Licensed Patents. Purchaser agrees to grant and hereby grants to each of HP Licensees, a worldwide, non-exclusive, perpetual, irrevocable, royalty-free and fully paid up license, under only those of the Licensed Patents which (a) are issued, granted or otherwise entering into force after the Closing Date and (b) claim priority to the Assigned Patents already respectively licensed to each HP Licensee, to make, have made, use, sell, offer for sale, have sold, lease, import, export, and/or otherwise transfer any product or service, and to practice or have practiced any method or process for the manufacture or use of any product or service, only to the extent and within the scope of rights granted to each respective HP Licensee pursuant to the written, contractual obligation between HP and such HP Licensee.

III. TERM OF LICENSE

This License Agreement and the licenses granted herein shall be in effect from the Effective Date of this Agreement and shall remain in force until expiration of the last of the Licensed Patents.

IV. NOTIFICATION TO SUBSEQUENT PURCHASERS

In the event Purchaser or any of its Affiliates sells or assigns any of the Licensed Patents to a subsequent purchaser, Purchaser and its Affiliates agree to inform in writing, prior to consummation of such a sale or assignment, any and all such subsequent purchasers of the existence of this License Agreement and shall provide any and all such subsequent purchasers with an executed copy of this License Agreement.

V. GENERAL TERMS AND PROVISIONS

A. This License Agreement and its Appendix constitute the entire agreement between the Parties relating to the subject matter of this License Agreement, and supersede all prior proposals, discussions, agreements, representations, and other communications between the Parties with respect to the subject matter of this License Agreement.

B. No change in the terms, conditions, or provisions of this License Agreement shall be valid unless in writing and signed by all Parties hereto.

C. This License Agreement shall be assignable to any Person by any Party hereto without the prior consent of any other Party, and HP shall have the right to separately assign to different Persons, on a patent by patent basis, any or all of the license rights granted to HP pursuant to Section II of this License Agreement with respect to each of the Licensed Patents. This License Agreement is binding upon and shall inure to the benefit of the permitted legal successors and assigns of the Parties.

D. The failure or delay of any Party in exercising any of its rights hereunder, including any rights with respect to a breach or default by the other Party, shall in no way operate as a waiver of such rights or prevent the assertion of such rights with respect to any later breach or default by the other Party.

E. Should any term, condition, or provision of this License Agreement be held unenforceable by an authority of competent jurisdiction, such ruling shall not affect the validity and enforceability of the remaining terms, conditions, and provisions of this License Agreement.

F. The validity of any of the terms, conditions, or provisions as well as the rights, duties, and obligations of the Parties under this Agreement shall be governed by and construed under the laws of the State of New York, without reference to its conflict of laws or choice of law principles. The Parties hereby submit to the jurisdiction of the courts of New York or any court of the United States sitting in New York with subject matter jurisdiction, and waive any venue objections against the United States District Court for the Southern District of New York, and the Courts of the State of New York, New York County, in any litigation arising under this Agreement.

IN TESTIMONY WHEREOF, the Parties hereto by their fully authorized representatives have executed this License Agreement as of the Effective Date indicated above.

(PURCHASER)

By: _____ Date: _____

Name: _____

Title: _____

HEWLETT-PACKARD DEVELOPMENT COMPANY, L.P.

By: HPQ Holdings, LLC, its General Partner

By: _____ Date: _____

Bruce H. Watrous, Jr., Manager
HPQ Holdings, LLC

HEWLETT-PACKARD COMPANY

By: _____ Date: _____

Susan Goodhue
VP & AGC, Intellectual Property Licensing
Hewlett-Packard Company

Appendix A of Exhibit C: List of Assigned Patents

Exhibit D

NOTICE OF NEW COUNSEL

Pursuant to that certain Patent Purchase and Sale Agreement (“**Agreement**”) having an Effective Date of _____, 2009, which was entered into by and among Hewlett-Packard Development Company, L.P. (“**HPDC**”); Hewlett-Packard Company (“**HPCO**”); and

_____ (“**Purchaser**”)

for the purchase and sale of the Assigned Patents (as defined in the Agreement), Purchaser hereby provides notice to HPDC and HPCO that it has appointed the following law firm, agent or in-house counsel as the counsel of record for those Assigned Patents listed below:

COUNSEL OF RECORD

Name: _____

Address: _____

Telephone: _____

Email: _____

LIST OF ASSIGNED PATENTS

(PURCHASER)

By: _____

Name: _____

Title: _____

Exhibit E

SCHEDULE 4.2 – CONFIRMED UNLICENSED COMPANIES