

**LICENSE AGREEMENT** ("Agreement") with an Effective Date of the date indicated by the last-to-sign party at the end of this Agreement, between INTERNATIONAL BUSINESS MACHINES CORPORATION, a New York corporation ("IBM"), and

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a \_\_\_\_\_  
corporation.

Each party has, or may hereafter obtain, the right to license others under the Essential Claims of patents and patent applications, and the other party desires to acquire a nonexclusive license under such Essential Claims of such patents and applications for certain products which are fully compliant with the Licensed Specification.

In consideration of the premises and mutual covenants herein contained, IBM and \_\_\_\_\_ agree as follows, wherein capitalized terms shall have the meaning set forth in Section 6:

Section 1. **License and Release**

1.1 Each party (as Grantor), on behalf of itself and its Subsidiaries, agrees to grant and hereby grants to the other party (as Grantee) a worldwide, nonexclusive, nontransferable license under its Essential Claims to make, use, import, sell, offer to sell, license (in the case of software), lease, and otherwise transfer Licensed Products. The foregoing license is effective for

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upon receipt of the payment by IBM of the payment specified in Section 5. The foregoing license grant to IBM is royalty-free and fully paid up.

1.2 No license, immunity or other right is granted under this Agreement, either directly or by implication, estoppel, or otherwise:

- (a) other than under the Essential Claims;
- (b) to have Licensed Products made by a third party or to have the Licensed Product used by a third party for the Grantee;
- (c) with respect to any item other than a Licensed Product notwithstanding that such other item may be combined with or incorporate one or more Licensed Products;
- (d) to third parties acquiring any item from either party for the combination of such acquired item with any other item, including other items provided by such party, or for the use of any such combination even if such acquired item has no substantial use other than as part of such combination; or
- (e) for any use by Grantee or a third party other than in a compliant implementation of the Licensed Specification with respect to use in conjunction with a point-of-sale terminal.

1.3 The licenses granted herein also includes the right of each party (as Grantee) to grant sublicenses of or within the scope granted herein to Grantee's Subsidiaries (and Subsidiaries thereof) existing on or after the Effective Date. Each Subsidiary so licensed shall be bound by the terms and conditions of this Agreement as if it were named in place of the Grantee.

1.4 Subject to Section 2.2, below, each party, on behalf of itself and its Subsidiaries, irrevocably releases the other party, its Subsidiaries which are Subsidiaries as of the Effective Date and its and their respective customers, from any and all claims of infringement of any of the Essential Claims, which claims are based on acts prior to the Effective Date, which, had they been performed after the Effective Date, would have been licensed under this Agreement. The foregoing release is effective for

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\_\_\_\_\_ upon receipt of the payment by IBM of the payment specified in Section 5. The foregoing release to IBM is royalty-free and fully paid up.

Section 2. **Term of Agreement**

2.1 Subject to Section 2.2, the term of this Agreement shall be from the Effective Date until the expiration of the last to expire of the Essential Claims.

2.2 In the event one party (as the "Suing Party") or any of its Subsidiaries brings a claim for patent infringement against the other party (as the "Defending Party") or any of its Subsidiaries in any court of competent jurisdiction, the Defending Party may immediately and retroactively suspend the license and release granted hereunder to the Suing Party and its Subsidiaries until such claim has been settled to the satisfaction of the Defending Party. In any discussion of a settlement of such patent claim, royalties alleged to be owing by the Suing Party for such patent infringement shall be offset by the fair market value of the license and release granted hereunder to the Suing Party and its Subsidiaries.

Section 3. **Warranty**

3.1 Each party represents and warrants that it has the full right and power to grant the license and release set forth in Section 1 and that there are no outstanding agreements, assignments, or encumbrances inconsistent with the provisions of said license or with any other provisions of this Agreement. **NEITHER PARTY MAKES ANY OTHER REPRESENTATIONS OR WARRANTIES, EXPRESS OR IMPLIED, NOR SHALL EITHER PARTY HAVE ANY LIABILITY IN RESPECT OF ANY INFRINGEMENT OF PATENTS OR OTHER RIGHTS OF THIRD PARTIES DUE TO THE OTHER PARTY'S OPERATION UNDER THE LICENSE HEREIN GRANTED. NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY WITH RESPECT TO THE VALIDITY OR ENFORCEABILITY OF THE ESSENTIAL CLAIMS.**

3.2 Neither party warrants or represents that the other party will not require a license under other patent claims (whether licensable by the party or by third parties) to make, use, import, sell, offer to sell, license (in the case of software), lease, or otherwise transfer Licensed Products.

Section 4. **Payment**

4.1 As a fee for the license and release granted to

\_\_\_\_\_ hereunder,

\_\_\_\_\_ shall pay to IBM the total sum of five thousand dollars (\$5,000). Such sum shall be due upon the signing of this Agreement by both parties, shall be non-refundable, and shall be rendered by cashier's check made payable to the "IBM Corporation" and mailed to IBM in accordance with the instructions in Section 5. Payment shall be effective upon receipt by IBM.

4.2

\_\_\_\_\_ shall bear and pay any and all taxes (including without limitation, sales and value added taxes) imposed by the national government (including political subdivisions thereof) of any country in which

\_\_\_\_\_ is doing business, as the result of this Agreement or the exercise of rights hereunder.

Section 5. **Communication**

5.1 Notices and other communications shall be sent by facsimile or by registered or certified mail to the following address, shall include the License Reference Number set forth above, and shall be effective upon mailing, except as specified otherwise:

For IBM:  
Director of Licensing  
IBM Corporation  
North Castle Drive  
Armonk, NY 10504-1785  
United States of America  
Facsimile: (914) 765-4380

For:

\_\_\_\_\_  
Phone:

Facsimile:

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Section 6. **Miscellaneous**

6.1 Neither party may assign this Agreement or any of its rights or privileges, nor shall it delegate any of its obligations hereunder. Any attempt to do so shall be void.

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agrees not to use or refer to this Agreement or any of its provisions in any promotional activity.

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grants IBM the right to refer to this Agreement or any of its provisions in any promotional activity related to the Specification.

6.3 Nothing contained in this Agreement shall be construed as conferring any rights by implication, estoppel or otherwise, to or under any patents other than the Essential Claims, or any non-patent intellectual property right. Neither party is required hereunder to furnish or disclose to the other any technical or other information (including copies of Essential Claims).

6.4 Neither party shall have any obligation hereunder to institute any action or suit against third parties for infringement of any of its Essential Claims or to defend any action or suit brought by a third party which challenges or concerns the validity of any of its Essential Claims. Neither party, nor any of their Subsidiaries, is required to maintain any patent in force. Neither party shall have any right to institute any action or suit against third parties for infringement of any of the other party's Essential Claims.

6.5 Each party shall bear and pay all taxes (including, without limitation, sales and value added taxes) imposed by the national government (including any political subdivision thereof) of any country in which such party is doing business, as the result of the existence of this Agreement or the exercise of rights hereunder.

6.6 This Agreement shall not be binding upon the parties and shall not obligate either of the parties, until it has been signed herein below by both parties, in which event it shall be effective as of the Effective Date. No amendment or modification hereof shall be valid or binding upon the parties unless made in writing and signed by both parties.

6.7 If any section of this Agreement is found by competent authority to be invalid, illegal or unenforceable in any respect for any reason, the validity, legality and enforceability of any such section in every other respect and the remainder of this Agreement shall continue in effect so long as the Agreement still expresses the intent of the parties. If the intent of the parties cannot be preserved, this Agreement shall be either renegotiated or terminated.

6.8 This Agreement shall be construed and the legal relations between the parties hereto shall be determined, in accordance with the law of the State of New York, United States of America as such law applies to contracts signed and fully performed in New York.

Section 7. **Definitions**

7.1 "Essential Claims" shall mean all claims in a Qualifying Patent that a party hereto or any of its Subsidiaries has the right to grant licenses without obligation of payment or other consideration to an unrelated third party.

7.2 "Licensed Products" shall mean those portions of a product (if any) that both (i) in their entirety, implement and are fully compliant with (and in the case of a computer program, when executing, conform to and operate in full compliance with) the Licensed Specification and (ii) are a Point-of-Sale ("POS")

Device or a POS Peripheral Device designed primarily for attaching to a Point-of-Sale Device, wherein such portions contain connectors which conform to and operates in compliance with specifications for a Supported Standard. "Point-of-Sale Device" shall mean a device designed primarily for use in commercially established, permanently constructed or self-contained retail facilities primarily designed for recording sales data and handling on-site customer transactions of goods for consideration at the time a transaction is made. "POS Peripheral Device" shall mean a device adding substantial functionality to a POS Device exclusive of that provided by compliance with the specifications for a Supported Standard, for example a receipt printer, magnetic strip reader, bar code reader, or input/output (I/O) device, where the POS Peripheral Device is designed primarily for connection to a POS Device and where the added functionality directly supports or aids the POS device in recording sales data and handling on-site customer transactions at the time a sale is made.

7.3 "Licensed Specification" shall mean those portions of the Specification that are clearly delineated as required for compliance with the Specification, and shall not include any portions of the Specification that are optional or supplemental. For purposes of this definition, the Licensed Specification shall be deemed to include only architectural and interoperability requirements and shall not include (i) any portions of the Specification that are optional or supplemental, unless the optional or supplemental portion is required to compliantly implement a standard variant of the Specification, (ii) implementation examples or any other material that merely illustrates the requirements of the Licensed Specification, or (iii) portions that are outside the scope of the charter of the standards organization work group which developed the Specification,

7.4 "Qualifying Patents" shall mean U.S. Patent No. 6,086,430 (ENHANCED UNIVERSAL SERIAL BUS) and any corresponding patents or patent applications of other countries.

7.5 "Specification" shall mean the EIA Standard EIA-700BAAD (Detail, Shielded Rect., USB+Power Series "A" Connectors, May 2000) and EIA-700BAAE (Detail, Shielded Rect., USB+Power Series "B" Connectors, May 2000).

7.6 "Subsidiary" shall mean a corporation, company or other entity:  
(a) more than fifty percent (50%) of whose outstanding shares or securities (representing the right to vote for the election of directors or other managing authority) are, now or hereafter, owned or controlled, directly or indirectly, by a party hereto, or  
(b) which does not have outstanding shares or securities, as may be the case in a partnership, joint venture or unincorporated association, but more than fifty percent (50%) of whose ownership interest representing the right to make the decisions for such corporation, company or other entity is, now or hereafter, owned or controlled, directly or indirectly, by a party hereto, but such corporation, company or other entity shall be deemed to be a Subsidiary only so long as such ownership or control exists.

**This Agreement embodies the entire understanding of the parties with respect to their respective Essential Claims and replaces any prior oral or written communication between them.**

Agreed to:

\_\_\_\_\_  
\_\_\_\_\_

Agreed to:

INTERNATIONAL BUSINESS  
MACHINES CORPORATION

By: \_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Gerald Rosenthal

Title: \_\_\_\_\_

Vice President

Date: \_\_\_\_\_

Date: \_\_\_\_\_