

Notice: This agreement is not effective until a fully executed original has been received by the Secretary, Intel Corporation, at 2111 NE 25th Avenue, Mailstop JF5-373, Hillsboro, OR 97124, Attn: Brad Saunders. This agreement will not be effective if received by the Secretary after expiration of the Adoption Period (as defined in Section 1.3 below).

USB 3.0 ADOPTERS AGREEMENT

This USB 3.0 Adopters Agreement (“Agreement”) is entered into by and between the Promoters (as defined below) and the adopting party set forth below (“Adopting Party”).

Adopting Party Name

City

State

Zip

Contact Name

Telephone

Fax

The parties hereto hereby agree as follows.

Agreement

1. DEFINITIONS

1.1 “Adopter” means Adopting Party and any party that has entered into or later enters into an Adopters Agreement and delivered it to the Secretary during the Adoption Period.

1.2 “Adopters Agreement” means an agreement entered into by any party and the Promoters containing terms substantially similar to this Agreement.

1.3 “Adoption Period” for any given Adopter means any time prior to the later of the date one (1) year after: (i) the public release date of the Final Specification, or (ii) the first sale by such Adopter of a product that includes a Compliant Portion, or (iii) a date set upon vote of at least two-thirds (2/3) of the Promoters.

1.4 “Affiliate” means any entity that is directly or indirectly controlled by, under common control with or that controls the subject party. For purposes of this definition control means direct or indirect ownership of or the right to exercise (a) at least fifty percent (50%) of the outstanding shares or securities entitled to vote for the election of directors or similar managing authority of the subject entity; or (b) at least fifty percent (50%) of the ownership interest representing the right to make the decisions for the subject entity; provided, however, that in each case such entity shall be deemed to be an Affiliate only as long as such ownership or control exists and is more than fifty percent (50%).

1.5 “Compliant Portion” means only those specific portions of products (hardware, software or combinations thereof) that implement and are compliant with all relevant portions of the Final Specification(as applicable to such portions), provided such portions are within the bounds of the Scope.

1.6 “Final Specification” means the USB 3.0 Specification as adopted and published by the Promoters. For purposes of this definition, the Final Specification shall not include any implementation examples unless such implementation examples are expressly identified as being included as part of the limited patent license in the Final Specification as adopted.

1.7 “Necessary Claims” means claims of a patent or patent application that (a) are owned or controlled by a party now or at any future time until termination under Section 4 below; and (b) are necessarily infringed by implementing those portions of the Final Specification within the bounds of the Scope, wherein a claim is necessarily infringed only when it is not possible to avoid infringing it because there is no commercially plausible non-infringing alternative for implementing such portions of the Final Specification within the bounds of the Scope. Notwithstanding the foregoing sentence, Necessary Claims do not include any claims (x) other than those set forth above even if contained in the same patent or patent application as Necessary Claims; (y) that read solely on any implementations of any portion of the Final Specification that are not within the bounds of the Scope; or (z) that, if licensed, would require consent from, and/or a payment of royalties by the licensor to unaffiliated third parties.

1.8 “Promoters” means each company that has signed a USB 3.0 Specification Promoters Agreement and its Affiliates.

1.9 “Scope” means the protocols, electrical signaling characteristics, mechanical requirements for connectors and cabling, and firmware descriptors and device and driver architectures solely to the extent disclosed with particularity in the Final Specification where the sole purpose of such disclosure is to enable products to interoperate, interconnect or communicate as defined within the Final Specification. Notwithstanding the foregoing, the Scope shall not include (a) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with the Final Specification, but are not themselves expressly set forth in the Final Specification (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology, etc.); or (b) the implementation of other published specifications developed outside of this Agreement but referred to in the body of the Final Specification; or (c) any portions of any product and any combinations thereof the sole purpose or function of which is not required for compliance with the Final Specification.

1.10 “Secretary” means the party identified by the Promoters as the secretary for the Final Specification.

1.11 “Trademarks” shall have the meaning assigned in Section 3.1.

2. LICENSES

2.1 Limited Patent Licensing Obligation.

(a) To Adopter. Effective upon adoption by the Promoters of the Final Specification and receipt by the Secretary of a fully executed original of this Agreement during the Adoption Period, the Promoters and their Affiliates hereby agree that they will grant to Adopting Party and its Affiliates, (collectively “Licensee”) a nonexclusive, worldwide license under their Necessary Claims solely to make, have made, use, import offer to sell, sell and otherwise distribute and dispose of Compliant Portions; provided that such license need not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Such license shall be granted on a royalty-free basis and under otherwise reasonable and non-discriminatory terms, provided that such license grant may be conditioned upon Licensee’s grant of a reciprocal license binding Licensee.

(b) By Adopter. Effective upon adoption by the Promoters of the Final Specification, Adopting Party and its Affiliates hereby agrees that it will grant to each of the Promoters and all Adopters and their respective Affiliates (also collectively “Licensee”), a nonexclusive, worldwide license under its Necessary Claims solely to make, have made, use, import offer to sell, sell and otherwise distribute and dispose of Compliant Portions; provided that such license need not extend to any part or function of a product in which a Compliant Portion is incorporated that is not itself part of the Compliant Portion. Such license shall be granted on a royalty-free basis and under otherwise reasonable and non-discriminatory terms, provided that such license grant may be conditioned upon Licensee’s grant of a reciprocal license binding Licensee.

2.2 Copyright License. Effective upon adoption by the Promoters of the Final Specification, the Promoters hereby grant to Adopting Party and its Affiliates who agree to be bound to this Agreement a nonexclusive, royalty-free, non-transferable, non-sublicenseable, worldwide, perpetual copyright license to the Final Specification to reproduce the Final Specification as necessary in order to exercise the patent rights granted in Section 2.1(a), provided that all reproductions thereof shall include any copyright notices and disclaimers contained in the Final Specification.

2.3 Non-Circumvention. Adopter agrees (i) that neither it nor any Affiliate has transferred patents nor granted exclusive licenses having Necessary Claims, and (ii) that it will not transfer patents or grant exclusive licenses having Necessary Claims, and (iii) that it will cause its Affiliates to refrain from transferring patents or granting exclusive licenses having Necessary Claims, for the purpose of circumventing such Adopter’s obligations under this Agreement.

3. TRADEMARKS

3.1 Nonassert. Adopter hereby agrees not to assert against any Promoter or other Adopter any trademark, trade name, or similar rights it may have now or hereafter in the names “Universal Serial Bus”, “USB”, or “USB 3.0” (collectively “Trademarks”).

3.2 Obligation to Use Trademarks. Adopter is not obligated to use any of the Trademarks on any product, advertising, or on any other material in any manner.

3.3 Use of the Trademarks. Adopter agrees that, to the extent it uses the Trademarks, it shall only use the Trademarks to label and promote products in which all included features and functions reasonably capable of being implemented as Compliant Portions have been so implemented. Adopter shall not use or adopt any trademarks for any product, service or specification likely to cause confusion with the Trademarks.

4. WITHDRAWAL

4.1 Conditions for Withdrawal. An Adopter may withdraw from participation and terminate this Agreement at any time upon giving twenty one (21) days notice to the Secretary.

4.2 Effect of Withdrawal. The license grant committed to and by Adopter as defined in Section 2 above shall remain in effect for the (i) Final Specification, and (ii) any update or alteration to the Final Specification where more than twenty one (21) days has elapsed following Adopter's receipt of notice from Promoters to Adopter of an adoption of such update or alteration to a Final Specification and prior to Adopter giving the notice set forth in Section 4.1 above. If an Adopter gives the notice required in Section 4.1 prior to the end of the twenty one (21) day period following notice of an adoption of an update or alteration of a Final Specification, the license grant committed to and by Adopter in Section 2 above, in regards to such update or alteration shall be entirely null and void as though never committed.

5. GENERAL

5.1 Effective Date. This Agreement shall become effective when the Secretary receives an original, fully executed copy hereof.

5.2 No Other Licenses. Except for the rights expressly provided by this Agreement, no Promoter or Adopter grants or receives, by implication, or estoppel, or otherwise, any rights under any patents or other intellectual property rights.

5.3 No Warranty. All parties acknowledge that all information provided as part of the Final Specification and the Final Specification itself are all provided "AS IS" WITH NO WARRANTIES WHATSOEVER, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, AND THE PARTIES EXPRESSLY DISCLAIM ANY WARRANTY OF MERCHANTABILITY, NONINFRINGEMENT, FITNESS FOR ANY PARTICULAR PURPOSE, OR ANY WARRANTY OTHERWISE ARISING OUT OF ANY PROPOSAL, SPECIFICATION, OR SAMPLE.

5.4 Limitation of Liability. IN NO EVENT WILL ANY PARTY HERETO BE LIABLE TO ANY OTHER FOR THE COST OF PROCURING SUBSTITUTE GOODS OR SERVICES, LOST PROFITS, LOSS OF USE, LOSS OF DATA OR ANY INCIDENTAL, CONSEQUENTIAL, INDIRECT, OR SPECIAL DAMAGES, WHETHER UNDER CONTRACT, TORT, WARRANTY OR OTHERWISE, ARISING IN ANY WAY OUT OF THIS OR ANY OTHER

RELATED AGREEMENT, WHETHER OR NOT SUCH PARTY HAD ADVANCE NOTICE OF THE POSSIBILITY OF SUCH DAMAGES.

5.5 Governing Law. This Agreement shall be construed and controlled by the laws of New York without reference to conflict of laws principles.

5.6 Jurisdiction. The parties agree that all disputes arising in any way out of this Agreement shall be heard exclusively in, and all parties irrevocably consent to jurisdiction and venue in, the state and Federal courts of New York

5.7 Notices. All notices hereunder shall be in writing and sent to the parties at the following addresses or at such addresses as the Secretary or Adopter may later specify by such written notice. For purposes of this Section 5.7, written notice shall not include notice by electronic mail or by facsimile.

Notices to Promoters

Notices to Adopting Party

Intel Corporation
2111 NE 25th Avenue
Mailstop JF5-373
Hillsboro, OR 97124
Attn: Brad Saunders
Subject: USB 3.0 Specification

With a copy to

Intel Corporation
2200 Mission College Blvd.
Santa Clara, CA 95052
Attn.: General Counsel
Subject: Initiatives

Such notices shall be deemed served when received by addressee or, if delivery is not accomplished by reason of some fault of the addressee, when tendered for delivery. Any party may give written notice of a change of address and, after notice of such change has been received, any notice or request shall thereafter be given to such party at such changed address.

5.8 Good Faith Dealing. Adopter hereby represents and warrants that it has power to cause all patents owned or controlled by it and all of its Affiliates to be licensed as set forth in this Agreement.

5.9 Press Release. Adopter agrees that any of the Promoters may make a press or other public announcement regarding its activities as a Promoter and may include the identity of Adopter in such announcement.

5.10 Not Partners. The parties hereto are independent companies and are not partners or joint venturers with each other.

5.11 Complete Agreement; No Waiver. This Agreement sets forth the entire understanding of the parties and supersedes all prior agreements and understandings relating hereto. No modifications or additions to or deletions from this Agreement shall be binding unless accepted in writing by an authorized representative of all parties, and the waiver of any breach or default will not constitute a waiver of any other right hereunder or any subsequent breach or default.

5.12 No Rule of Strict Construction. Regardless of which party may have drafted this Agreement, no rule of strict construction shall be applied against any party. If any provision of this Agreement is determined by a court to be unenforceable, the parties shall deem the provision to be modified to the extent necessary to allow it to be enforced to the extent permitted by law, or if it cannot be modified, the provision will be severed and deleted from this Agreement, and the remainder of the Agreement will continue in effect.

5.13 Compliance with Laws. Anything contained in this Agreement to the contrary notwithstanding, the obligations of the parties hereto shall be subject to all laws, present and future, of any government having jurisdiction over the parties hereto, and to orders, regulations, directions or requests of any such government.

In witness of their agreement, the parties have executed this Agreement below:

Promoter

Adopting Party

On behalf of all Promoters

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____