

General Blade Technology License Agreement

This is an agreement between the Licensors and the Licensee identified below pursuant to which the Licensors grant to the Licensee specific rights and licenses to design and manufacture certain blade products that are fully compliant with the Blade Technology Specification.

The “Licensors” are:

International Business Machines Corporation, which has a principal place of business at New Orchard Road, Armonk, New York 10504 (“IBM”); and

Intel Corporation, which has a principal place of business at 2200 Mission College Boulevard, Santa Clara, California 95052 (“Intel”).

The “Licensee” is:

having a principal place of business at:

NOW, THEREFORE, in consideration of the premises and covenants contained herein, the receipt and sufficiency of which is acknowledged, the Licensors and the Licensee agree as follows:

1 DEFINITIONS

The definitions of the terms set forth in this Section 1 shall apply when the first letter of a term is capitalized. The terms “Licensors” and “Licensee” are defined above. Additional terms in which the first letter is capitalized may be defined throughout this Agreement.

- 1.1 “Agreement” shall mean this “Blade Technology License Agreement.”
- 1.2 “Blade” shall mean a printed circuit or other wiring board designed for insertion into a server blade slot in a Chassis, having a connector for electro-mechanical interconnection to the mid-plane or back-plane printed circuit or other wiring board in the Chassis, having circuitry and programming code for communicating with a Management Module and a Switch Module in the Chassis, and being fully compliant with all Required Portions of those chapters of the Specification pertinent to blades.
- 1.3 “Blade Daughter Card” shall mean a printed circuit or other wiring board that is designed for insertion into a daughter card connector on a Blade, that provides additional functionality for the Blade, and that is compliant with all Required Portions of the chapter of the Specification pertinent to daughter cards.
- 1.4 “Chassis” shall mean a housing for receiving and interconnecting Blades, Switch Modules, Management Modules, Power Supplies, Cooling Fans and other components.
- 1.5 “Communications Blade” shall mean a Blade that is designed and manufactured specifically to process communications traffic including packets, frames, or cells and that is not readily capable of loading and running general purpose application software or of being easily reconfigured to do so.

- 1.6 “Cooling Fans” shall mean a module designed for insertion into a cooling fan bay in a Chassis, and which moves air through Blades, Switch Modules, Management Modules, Power Supplies and other components housed in a Chassis for the purpose of removing heat from these modules.
- 1.7 “Derivative Work” shall mean a work which is based upon a preexisting work of authorship, such as a revision, modification, translation, abridgment, condensation, expansion, compilation or any other form in which such preexisting work may be recast, transformed or adapted, and which, if prepared without authorization of the owner(s) of the copyright in such preexisting work, would constitute a copyright infringement.
- 1.8 “Effective Date” shall mean the date this Agreement is executed by one of the Licensors.
- 1.9 “Fixed Function Blade” shall mean a Blade that is designed for a special limited technical purpose (e.g. firewall management) and that is not readily capable of loading and running general purpose application software or of being easily reconfigured to do so.
- 1.10 “General Purpose Blade” shall mean a Blade which incorporates a processor and that is capable of loading and running general purpose application software.
- 1.11 “Licensed Product” shall mean a Blade (including, but not limited to a General Purpose Blade, a Fixed Function Blade, and a Communications Blade), a Switch Module, and a Blade Daughter Card. Licensed Products do not include Management Modules, Chassis, Cooling Fans, Power Supplies or any other cards, modules or products, except those explicitly set forth in the previous sentence. However, by written notice to Licensee signed by an authorized representative of Licensors, the Licensors may amend this Section 1.11 “Licensed Products” to expand the types of cards, modules, and products that are included in the definition of Licensed Products, as well as to amend the definitions of any card, module, and product that has been added to the definition of Licensed Products.
- 1.12 “Management Module” shall mean a module designed for insertion to a management module bay in a Chassis and which manages Blades, Switch Modules, Power Supplies, Cooling Fans and other components housed in a Chassis.
- 1.13 “Power Supply” shall mean a module designed for insertion into a power supply bay in a Chassis and which supplies electrical power to Blades, Switch Modules, Management Modules, Cooling Fans and other components housed in a Chassis.
- 1.14 “Required Portion” shall mean those portions of a chapter 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 expressly marked as optional or supplemental.
- 1.15 “Specification” shall mean the specification entitled “Blade Technology Specification”, authored by the Licensors, and which is divided into various chapters pertaining to the specific requirements for Blades, Switch Modules, Daughter Cards and other components of a Chassis.
- 1.16 “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) that 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 the 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.

- 1.17 “Switch Module” shall mean a module designed for insertion into a switch module slot in a Chassis, and which provides a network interface between Blades and external LAN’s and WAN’s, such as an Ethernet or Fibre Channel network and that is compliant with all Required Portions of those chapters of the Specification pertinent to switch modules.

2 LICENSE GRANTS

2.1 Specification License Grant. Licensors grant Licensee and its Subsidiaries a worldwide, non-exclusive, non-transferable, royalty free and revocable (as set forth in the Section entitled “Termination”) license under Licensors’ copyright and trade secret rights in the Specification, to use the Specification for the limited purpose of designing and manufacturing Licensed Products, and to reproduce a limited number of copies of the Specification as is reasonably necessary to design and manufacture Licensed Product.

2.2 Specification Distribution and Disclosure. The license grant in Section 2.1 also includes the right of Licensee to distribute and disclose to Licensee’s subcontractors, provided that: 1) such subcontractors are designing or manufacturing Licensed Product for Licensee; 2) Licensee distributes and discloses only those portions of the Specification that are reasonably necessary for such subcontractor to design or manufacture Licensed Product; 3) Licensee has a confidentiality agreement with such subcontractor that requires the subcontractor to maintain the Specification in trust and confidence under terms and conditions no less restrictive than those set forth in Section 3 “Confidentiality”; and 4) such confidentiality agreement between Licensee and the subcontractor names the Licensors as third party beneficiaries. Licensee may disclose the Specification only to those employees of Licensee who have a need to know for the purpose set forth in Section 2.1 “License Grant”; provided that Licensee has an agreement with each such employee that requires the Specification to be held in trust and confidence under terms and conditions no less restrictive than those set forth in Section 3 “Confidentiality.”

2.3 Specification License Limitations. Licensors grant no license, by implication, estoppel or otherwise: 1) to design and manufacture any other products, other than Licensed Products; 2) to prepare Derivative Works of the Specification; 3) to distribute or disclose the Specification to any third party (except as explicitly set forth above with respect to subcontractors and employees); 4) to publicly perform or display the Specification; 5) under any patents, patent applications, mask works or trademarks of the Licensors. Licenses under any patents of IBM or Intel will be addressed in separate patent license agreements.

2.4 Use of Licensee’s Name. Licensee grants Licensors permission to use Licensee’s business name on Licensors’ web sites, in publications referencing the blade system, and in press releases to indicate that Licensee is an implementer of the Licensors’ blade technology.

3 CONFIDENTIALITY

3.1 Confidentiality. The Specification is the confidential and trade secret information of the Licensors, and Licensee agrees to maintain the Specification in trust and confidence using the same degree of care that Licensee uses to protect its own confidential and trade secret information, but no less than a reasonable degree of care. Licensee agrees that it will not use or disclose the Specification, except as expressly set forth in Section 2 “License Grants.” The period of confidentiality shall extend for seven (7) years after the release date of each version of the Specification. Licensee agrees not to remove any restrictive legends or copyright notices from any

copies of the Specification in Licensee's possession.

3.2 Exceptions. Notwithstanding Section 3.1 "Confidentiality" above, no obligation will apply to any information contained in the Specification that is: 1) known to the Licensee prior to receipt of the Specification; 2) rightfully received from a third party without any obligation of confidentiality; 3) developed independently by Licensee without use of the Specification; 4) publicly known through no fault of Licensee. Licensee may disclose the Specification to the extent required by law; however, Licensee must give both IBM and Intel prior written notice to allow the Licensors a reasonable opportunity to obtain a protective order.

4. LIMITATION OF LIABILITY

Each Licensor's liability to Licensee hereunder for damages for any cause of action whatsoever arising under this Agreement or relating to performance or nonperformance of this Agreement shall be limited to one hundred thousand dollars (\$100,000). This limitation shall apply regardless of the form of action, whether in contract or in tort, including negligence. In no event shall Licensors be liable to Licensee for punitive damages.

5. DISCLAIMER

LICENSORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE SPECIFICATION. LICENSEE AGREES THAT IT TAKES THE SPECIFICATION "AS IS" AND THAT NEITHER LICENSOR WILL HAVE ANY LIABILITY FOR DAMAGES OR OTHER CONSEQUENCES RESULTING FROM LICENSEE'S USE OF THE SPECIFICATION. LICENSORS MAKE NO REPRESENTATIONS OR WARRANTIES REGARDING THE SUITABILITY OF THE SPECIFICATION FOR THE PURPOSE OF DEVELOPING ANY PRODUCT OR ACHIEVING COMPATIBILITY WITH ANY PRODUCT.

6. TERM AND TERMINATION

6.1 Term. The initial term of this Agreement shall extend from the Effective Date, to the date five (5) years thereafter, unless earlier terminated under the provisions of this Agreement. This Agreement shall automatically be extended for additional and successive one (1) year terms, unless (a) either party gives the other written notice of its intent not to renew the Agreement at least one hundred twenty (120) days prior to the end of the then current term, or (b) the Agreement is earlier terminated under the provisions of this Agreement.

6.2 Termination

6.2.1 Termination for Fault. If any party or any of its Subsidiaries is in material default of any provision of this Agreement, and such default is not corrected within thirty (30) days of receipt of written notice, this Agreement may be terminated by the party issuing the default notice by providing written notice of termination to the party in default. If Licensee is in default, either Licensor may issue a default notice to Licensee, and either Licensor may unilaterally terminate this Agreement in the event Licensee fails to cure the default within the time limits set forth above.

6.2.2 Effect of Termination. As of the date of termination of this Agreement, then:

(i) The Licensors shall be relieved of their duties and shall have no further obligations to furnish any Specifications or any other information pursuant to the terms and conditions of this Agreement as of the date of such termination;

(ii) All rights and licenses granted by Licensors to Licensee pursuant to this Agreement shall immediately terminate; and

(iii) All copies of Specifications in Licensee's possession will be destroyed, and Licensee will certify in writing that it has destroyed all copies of such Specifications, and that Licensee has recovered and destroyed all copies in the possession of Licensee's employees.

7 LEGAL NOTICES

Any notices or other communications required under this Agreement shall be sent to the following contract coordinators. Licensee may change its contract coordinators at any time by providing advance written notice to Licensors in which the name, address, telephone number, email address and other contact information for the new coordinator is listed. Licensors may change their coordinator at any time by either providing similar advance written notice to Licensee, or by posting the name and contact information of their new coordinator on their web site.

7.1 For Licensee:

Name: _____
Title: _____
Address: _____

Phone: _____
Fax: _____
email: _____

8 General Provisions

- 8.1 All obligations and duties which by their nature survive the expiration or termination of this Agreement shall remain in effect beyond any expiration or termination, and shall bind the parties and their legal representatives, successors and assigns.
- 8.2 If any section or subsection of this Agreement is found by competent judicial authority to be invalid, illegal or unenforceable in any respect, the validity, legality and enforceability of the remainder of any such section or subsection, and the remainder of the Agreement shall continue in effect so long as the amended 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.
- 8.3 Neither this Agreement nor any activities hereunder will impair any right of Licensors or Licensee to design, develop, manufacture, market, service or otherwise deal in, directly or indirectly, products or services including those that are competitive with those offered by Licensors or Licensee.
- 8.4 Licensee is not an agent of Licensors for any purpose whatsoever. Licensee will not make any warranties or representations on behalf of either Licensor, nor will it assume or create any other obligation on behalf of either Licensor.
- 8.5 This Agreement may only be modified by a written amendment signed by persons authorized to so bind Licensee and Licensors.

- 8.6** Licensee agrees to pay amounts equal to any taxes resulting from this Agreement, or any activities hereunder, exclusive of taxes based upon Licensors' net income.
- 8.7** The parties shall not be in default or liable for any delay or failure of compliance with any obligations arising under this Agreement due to an act of nature, public enemy, freight embargoes, strikes and other causes if such act of nature, public enemy, freight embargo, strike or other cause that is beyond the control of the defaulting party.
- 8.8** The parties shall not assign this Agreement or any rights hereunder without the prior written consent of the other parties, except that Licensors may assign this Agreement to a Subsidiary without Licensee's consent. Any attempt to assign the rights, duties or obligations arising under this Agreement without such consent is void.
- 8.9** The waiver by a party of any instance of another party's noncompliance with any obligation or responsibility herein shall not be deemed a waiver of subsequent instances of either party's remedies for noncompliance.
- 8.10** The parties agree that this Agreement and its Exhibits represent the complete and exclusive statement of the agreement between the parties, which supersedes all proposals or all prior agreements, oral or written, and all other communications between the parties relating to the subject matter hereof.
- 8.11** Each party will comply with all federal, state and local laws regulations and ordinances including, but not limited to, the regulations of the U.S. Government relating to the export or re-export of machines, commodities, software and technical data insofar as they relate to the activities under this Agreement. Licensee acknowledges and agrees that machines, commodities, software and technical data provided under this Agreement are subject to restrictions under the export control laws of the United States of America, including but not limited to the U.S. Export Administration Act and the U.S. Export Administration Regulations. Licensee hereby gives its written assurance that neither machines, commodities, software or technical data provided by Licensors under this Agreement, nor the direct product thereof, is intended to be shipped, directly or indirectly, to prohibited countries or disclosed to nationals thereof. Licensee agrees it is responsible for obtaining government documents and approvals prior to export of any machine, commodity, software or technical data.
- 8.12** The substantive laws of the State of New York, USA govern this Agreement. The parties hereto expressly waive any rights they may have to a jury trial in any dispute arising out of this Agreement. Any proceedings to enforce, or to resolve disputes relating to this Agreement shall be brought before a court of competent jurisdiction in the State of New York, including a federal District Court sitting within such state. In such proceedings no party shall attest that a court lacks jurisdiction over the other parties or the subject matter hereof.
- 8.13** Each party may have similar agreements with others. Subject to the other parties' valid intellectual property rights, each party may design, develop, manufacture, acquire, or market competitive products and services, and conduct its business in whatever way it chooses.
- 8.14** Licensors are not obligated under this agreement to provide any services or support under the terms of this Agreement, and any such services and support shall be negotiated and agreed to under a separate agreement.

In WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by duly authorized representatives, and each party shall keep one copy of the executed Agreement.

Agreed to For:
<LICENSEE CORPORATION>

Authorized Signature

Name (Type or Print)

Title

Date