

## Royalty-Free Sockets Direct Protocol License Agreement

This is a legal agreement ("Agreement") between the undersigned (either an individual or an entity) ("Company"), and Microsoft Corporation ("Microsoft") (collectively the "Parties"). If Company wants a license from Microsoft to implement the Sockets Direct Protocol ("SDP", as defined in more detail below), Company must sign and return this Agreement to Microsoft. This is an offer to be accepted only on the terms set forth in this Agreement. If changes are made to this Agreement, the offer is revoked.

### RECITALS

Whereas, Microsoft developed and submitted an enhanced Windows Sockets Direct Protocol to the Software Working Group of the InfiniBand Trade Association ("IBTA") for the purpose of proposing it for adoption by the IBTA as a part of the InfiniBand Specification (as defined below); and

Whereas, Microsoft's submission formed the basis for the SDP portion of the InfiniBand Specification;

Whereas, Company wants a license from Microsoft to implement SDP as part of the InfiniBand Specification, and whereas Company understands and acknowledges that additional licenses from other third parties may also be required to implement SDP and/or the full InfiniBand Specification.

### 1. DEFINITIONS

1.1 "Affiliates" means an entity that directly or indirectly Controls, is Controlled by, or is under common Control with another entity, so long as such Control exists. For purposes of this definition Control means beneficial ownership of more than fifty percent (50%) of the voting power or equity in an entity.

1.2 "Company Implementation" means only those specific portions of Company Products that: (i) implement and are compliant with all the required and any optional portions of the InfiniBand Specification, including SDP; and (ii) are branded with a trademark owned or controlled by Company.

1.3 "Company Product" means a product branded with a trademark owned or controlled by Company that includes a Company Implementation, either alone or with other components.

1.4 "Effective Date" means the date that this agreement, fully executed by Company without any changes, is received by Microsoft pursuant to Section 6.3 below.

1.5 "End User" means a third party customer to whom a copy of or access to a product or service is licensed or otherwise provided for such customer's own use, and not for further sublicense or distribution.

1.6 "InfiniBand Specification" means the InfiniBand Specification, Volume 1, Annex A4, Version 1.1.

1.7 "Necessary Claims" means those claims of all patents and patent applications, other than design patents and design registrations, throughout the world which a Party or its Affiliates has the right, at any time during the term of this Agreement, to grant licenses of the nature agreed to be granted herein without such grant resulting in payment of fee(s) or other consideration to third parties (except for payments to Affiliates or employees), which claims are necessarily infringed by implementing SDP, as part of the InfiniBand Specification, where such claim is necessarily infringed only when it is not possible to avoid infringing it because there is no commercially reasonable non-infringing alternative for implementing such portions of SDP. Necessary Claims do not include any claims other than those set forth above even if contained in the same patent as Necessary Claims.

1.8 "SDP" means the Sockets Direct Protocol specification, as incorporated in the InfiniBand Specification (defined above).

1.9 "SDP Implementation" means only those specific portions of a product that implement and are compliant with all the required and any optional portions of SDP.

1.10 "SDP Licensee" means any entity that fully executes this Agreement without modification and returns the executed Agreement to Microsoft.

### 2. LICENSE GRANTS

2.1 Patent License. Subject to Section 2.4 and Company's grant of licenses in accordance with Section 2.3, Microsoft and its Affiliates hereby grant Company a nonexclusive, royalty-free, nontransferable, nonsublicenseable, personal, worldwide license under Microsoft's Necessary Claims to make, use, import,

offer to sell, sell, and distribute directly or indirectly to End Users, object code versions of SDP Implementations only as incorporated into any Company Implementation that is incorporated into any Company Product and only for the purpose of complying with the InfiniBand Specification.

2.2 Source Code Distribution. Company also has a nontransferable, non-sublicenseable, personal, license to distribute or otherwise disclose source code copies of the SDP Implementation licensed in accordance with Section 2.1 only if Company both: (i) prominently displays the following notice in all copies of such source code; and (ii) distributes or discloses the source code only under a license agreement that includes the following notice as a term of such license agreement and does not include any other terms that are inconsistent with, or would prohibit, the following notice:

"This source code may incorporate intellectual property owned by Microsoft Corporation. Our provision of this source code does not include any licenses or any other rights to you under any Microsoft intellectual property. If you would like a license from Microsoft (e.g., to rebrand, redistribute), you need to contact Microsoft directly."

2.3 Reciprocal Patent License. Company, on behalf of itself and its Affiliates, hereby grants to Microsoft, and hereby agrees to grant to all other SDP Licensees upon request, a nonexclusive, royalty-free, nontransferable, nonsublicenseable, personal, worldwide license under Necessary Claims of Company to make SDP Implementations, and to use, import, offer to sell, sell, and distribute directly or indirectly to End Users, SDP Implementations, only as incorporated into implementations of all the required and any applicable optional portions of the InfiniBand Specification, and only for the purpose of complying with the InfiniBand Specification.

2.4 Defensive Suspension. If Microsoft, Company, or any of their respective Affiliates ("the Sued Party") is first sued for patent infringement by the other Party hereto or any of its Affiliates, on account of the manufacture, use, sale, offer for sale, importation, or other disposition or promotion of Company's or Microsoft's SDP Implementation, as applicable, then the Sued Party may terminate all license grants and any other rights provided under this Agreement to such entity and such entity's Affiliates. The foregoing shall not apply if the patent infringement suit that would otherwise trigger such clause is solely based on a claim that the applicable SDP Implementation does not comply with the scope of the license grants set forth in this Agreement.

2.5 Limited Scope. The licenses set forth in this Agreement do not include the right (express, implied, or otherwise) to make, use, import, offer to sell, sell or otherwise distribute or dispose of: (i) any enabling technologies that may be necessary to make or use any product or portion thereof that complies with all or part of SDP, but are not themselves expressly set forth in SDP (e.g., semiconductor manufacturing technology, compiler technology, object oriented technology, basic operating system technology); or (ii) the implementation of other published specifications not developed by or for InfiniBand but referred to in the body of SDP; or (iii) application programming interfaces, device drivers, device driver models, peripheral control languages, and peripheral devices, except for the portions of peripheral devices that are required by an interconnect that is compliant with SDP.

2.6 Reservation of Rights. All rights not expressly granted in this Agreement are reserved by Microsoft and Company, respectively. No additional rights are granted by implication or estoppel or otherwise. By way of clarification, in order for a third party to distribute a Company Implementation as part of its third party branded products, such third party must be authorized to do so by Company and must also execute this license and comply with its terms.

### 3. TERM

Except as set forth herein, this Agreement and the license grants herein are effective as of the Effective Date and terminate upon the last of Microsoft's and Company's Necessary Claims to expire.

### 4. REPRESENTATIONS AND DISCLAIMERS OF WARRANTY

4.1 Company represents and warrants that the person executing this Agreement on behalf of Company and its Affiliates is authorized to do so, that Company is authorized to enter into this Agreement, and that this Agreement is a binding obligation of Company and its Affiliates.

4.2 DISCLAIMERS. SDP AND ALL INTELLECTUAL PROPERTY DELIVERED AND/OR LICENSED BY EITHER PARTY AND/OR ITS AFFILIATES TO THE OTHER PARTY PURSUANT TO THIS AGREEMENT ARE PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND. EACH PARTY AND ITS AFFILIATES DISCLAIMS ALL WARRANTIES, DUTIES AND CONDITIONS, EITHER EXPRESS, IMPLIED, OR STATUTORY, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT.

5. LIMITATION OF LIABILITY

MICROSOFT AND ITS AFFILIATES SHALL NOT BE LIABLE FOR ANY DAMAGES ARISING FROM OR RELATED TO THIS AGREEMENT, INCLUDING INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES EVEN IF MICROSOFT OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES IN ADVANCE.

6. MISCELLANEOUS

6.1 No Partnership, Joint Venture or Franchise. Neither this Agreement, nor any terms and conditions contained herein, shall be construed as creating a partnership, joint venture, or agency relationship or as granting a franchise as defined in the Washington Franchise Investment Protection Act, RCW 19.100, as amended, or 16 CFR Section 436.2(a), or any similar laws in other jurisdictions.

6.2 Export Regulations. Company acknowledges that implementations of SDP may be subject to U.S. export jurisdiction and other applicable national or international laws. Company agrees to comply with all applicable international and national laws that apply to SDP, including the U.S. Export Administration Regulations, as well as end-user, end-use and destination restrictions issued by U.S. and other governments, and privacy laws. See <http://www.microsoft.com/exporting/>.

6.3 Executed Agreements. Only one agreement per Company shall be accepted by Microsoft. To be effective, an executed Agreement must be sent by messenger, traceable express mail, or prepaid certified mail, return receipt requested, addressed to Microsoft as follows:

Microsoft Corporation  
One Microsoft Way  
Redmond, WA 98052-6399  
Attention: Microsoft Standards Inquiries (stdsreq@microsoft.com)

6.4 Governing Law; Jurisdiction; Attorneys' Fees. This Agreement shall be construed and controlled by the laws of the State of Washington, and Company consents to exclusive jurisdiction and venue in the federal courts sitting in King County, Washington, unless no federal subject matter jurisdiction exists, in which case Company consents to exclusive jurisdiction and venue in the Superior Court of King County, Washington. Company waives all defenses of lack of personal jurisdiction and forum nonconveniens. Process may be served on either Party in the manner authorized by applicable law or court rule.

6.5 Assignment. Company may not assign this Agreement, or any rights or obligations hereunder, whether by operation of contract, law, or otherwise, except with the express written consent of Microsoft, and any attempted assignment by Company in violation of this Section shall be void. For purposes of this Agreement, an "assignment" by Company under this Section shall be deemed to include, without limitation, each of the following: (a) a change in beneficial ownership of Company of greater than twenty percent (20%) (whether in a single transaction or series of transactions) if Company is a partnership, trust, limited liability company, or other like entity; (b) a merger of Company with another entity, whether or not Company is the surviving entity; (c) the acquisition of more than twenty percent (20%) of any class of Company's voting stock (or any class of non-voting security convertible into voting stock) by another entity (whether in a single transaction or series of transactions); and (d) the sale or other transfer of more than fifty percent (50%) of Company's assets (whether in a single transaction or series of transactions). In the event of such assignment or attempted assignment by Company, Microsoft shall have the right to immediately terminate this Agreement and/or any license grants to Company.

6.6 Construction. If for any reason a court of competent jurisdiction finds any provision of this Agreement, or portion thereof, to be unenforceable (other than Sections 2.2, 2.3 and 2.4), such provision and the rest of the Agreement will be enforced to the maximum extent permissible so as to effect the intent of the Parties, and the Agreement will continue in full force and effect. In the event that a court of competent jurisdiction finds that Sections 2.2, 2.3, or 2.4 are unenforceable, this entire Agreement and any licenses granted hereunder shall be rendered null and void. Failure by a Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision.

6.7 Trademark/Logo Usage. Nothing herein grants Company any right to use or display any Microsoft trademark or logo in connection with a Company Implementation or Company Product.

6.8 No Requirement to Implement. Nothing in this Agreement shall be construed as requiring Company to use or implement SDP, or limit the Parties from competing in any way without infringing each others' intellectual property, including engaging in activities, independently or with others, that may be deemed competitive with SDP.

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6.9 Identification of Licensees. The fact that Company is a SDP Licensee is not confidential. Either Party may make public announcements regarding Company's execution of this Agreement.

6.10 Entire Agreement. This Agreement constitutes the entire agreement between the Parties with respect to its subject matter and merges all prior and contemporaneous communications. It shall not be modified except by a written agreement dated subsequent to the date of this Agreement and signed on behalf of Company and Microsoft by their respective duly authorized representatives.

Agreed to and accepted on behalf of Company:

By (signature):	Your Company Name:
Name (printed):	Your Address:
Title:	City, State, Zip, Country:
Dated:	Phone Number:
Email (optional):	Fax Number (optional):